

What is a Court?

A Report by JUSTICE

Chair of the Committee
Alexandra Marks



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EXECUTIVE SUMMARY

Our justice system is undergoing a fundamental transformation. So far, delivery of justice in the 21st century has been characterised by increasing levels of state retrenchment, cuts to legal aid and a sharp rise in the number of litigants in person. Significant alterations to the family justice system, new procedural rules in tribunals, and the introduction of an online court system all promise further change.

The court and tribunal estate itself is not immune to this change. Her Majesty's Courts and Tribunals Service (HMCTS) plans to implement a large-scale programme of reform, which will simultaneously reduce the number of court and tribunal buildings, and invest heavily in technology to modernise and digitise court processes.

This JUSTICE Working Party sees this reform as an opportunity to be seized. The current court and tribunal estate is outdated and underperforming. It lacks the flexibility and technological capacity required of a modern justice system. Although motivated primarily by the demands of austerity, the HMCTS Reform Programme in fact provides a crucial opportunity to rationalise the estate in a way that maximises effective and accessible justice for all.

Our report therefore sets out a fresh, principled and research-driven approach, which will enhance access to justice and which should underpin any reform of the court and tribunal estate. It also makes specific recommendations for a new approach to the configuration and categorisation of our courts and tribunals. The hallmark of our analysis is a radical rethinking of what constitutes a court and what modern-day delivery of justice demands, coupled with an emphasis on providing technology-driven solutions to access to justice problems.

We do not propose redesigning the court and tribunal estate from scratch: rather we explore ways of improving upon the existing estate, re-using rooms and buildings freed up once digital documentation becomes the norm.

Recommendations

A fresh approach

We recommend that any reform of the court and tribunal estate in England and Wales should be motivated by a core set of principled concerns. These include the need to build flexibility into our courts and tribunals, make the court user the focus of any reform and recognise the importance of services which assist litigants – particularly those without representation. The potential of technology must be explored in order to meet user needs and maximise access to justice. Any use of technology should also be forward-looking, with an emphasis on future-proofing the system in order to avoid, so far as is possible, the in-built obsolescence that so often characterises major IT investment.

A new model – justice spaces

We recommend a new model which reconceptualises court and tribunal rooms as ‘justice spaces’. The justice space model is defined by its inherent flexibility and rejection of the over-standardisation prevalent in existing courts and tribunals. Unlike traditional courtrooms, therefore, justice spaces can adapt to the particular dispute resolution process taking place within them, and the needs of users, rather than the other way around. Our report identifies three categories of justice space:

- **Simple justice spaces:** less formal and highly flexible spaces capable of accommodating the majority of the disputes currently heard by courts and tribunals.
- **Standard justice spaces:** semi-formal and flexible spaces ideal for hearings which require some permanent fixtures – such as extensive technological equipment, or a raised judges’ bench.
- **Formal justice spaces:** formal, semi-flexible and purpose-built spaces used in a limited number of very serious cases including major criminal trials.

Which type of justice space is most appropriate should be determined by the characteristics and demands of the particular case to be heard, including: the level of security risk posed by the proceedings; the need for formality and/or solemnity; the anticipated degree of public participation; whether participants in the proceedings consent to the judicial process and; the extent to which parties may need to be segregated.

A responsive estate

Flexible justice spaces should be accommodated within a court and tribunal estate made up of a number of responsive and flexible parts. We envisage an estate that comprises:

- **Flagship Justice Centres:** found in all major urban centres, these centres should make provision for all types of justice space and dispute, as well as offering a full range of ancillary services.
- **Local Justice Centres:** found in every major town centre, these smaller centres should be composed primarily of simple and standard justice spaces.
- **‘Pop-up’ courts:** which draw on the flexibility of the justice space model to employ a range of public buildings as simple and standard justice spaces on an ad hoc basis.
- **Remote access justice facilities:** which allow participants in court proceedings to ‘beam in’ to the court both securely and effectively from a location convenient to them.
- **Digital justice spaces:** by moving suitable elements of the judicial process online, these spaces expand the court and tribunal estate beyond the constraints of physical buildings.

We suggest that a flexible estate, made up of a number of complementary physical and virtual elements, can be made much more responsive to both the needs of those it serves and the demands of access to justice.

Practical implementation

In order to achieve their aims, our recommendations and any other reforms must be underpinned by effective implementation in practice. Our Working Party has identified a number of core areas, including the provision of adequate support services and personnel, which should be considered with equal weight to the rooms and buildings themselves as the HMCTS reforms are executed. We are particularly concerned with the need for HMCTS to invest in responsive, motivated and highly skilled staff to buttress the system.

I. INTRODUCTION

*[Austerity] provides the spur to rethink our approach from first principles...It is a question of austerity forcing us to do what it took fifty years of failure in the 1800s to do: look at our systems, our procedures, our courts and tribunals, and ask whether they are the best they can be, and if not how they can be improved.*¹

- 1.1 The justice system in England and Wales has reached a critical point in its history. State retrenchment – most significantly in cutbacks to legal aid – has prompted real reflection on the strengths and weaknesses of the system, and is encouraging innovation in the delivery of justice by our courts and tribunals. This period presents the greatest opportunity within a generation to rethink how we deliver justice, and much is at stake. Thanks to a reform-minded senior judiciary, supported by a major government investment in technology, we are on the brink of transforming access to justice – by both bringing our system into the technological age, and putting the needs of ordinary people at its heart.
- 1.2 One aspect of this transformation, and the subject of this report, is a reconfiguration of our courts and tribunals. Her Majesty’s Courts and Tribunals Service (HMCTS) is currently preparing, on behalf of the Lord Chancellor and in consultation with the judiciary, a detailed plan of reform to the court and tribunal estate in England and Wales. Underpinning this reform is a determination to revolutionise the way in which courts operate. This determination can also be seen, for example, in the recommendations for the creation of an Online Court² made in the Interim Report of Lord Justice Briggs’ Civil Courts Structure Review (CCSR),³ along with significant changes to the family justice system,⁴ the criminal justice system efficiency programme,⁵ and changes to procedure rules in tribunals.

¹ The Rt. Hon. Sir Ernest Ryder, Senior President of Tribunals, *The Modernisation of Access to Justice in Times of Austerity*, 5th Annual Ryder Lecture, the University of Bolton, 3rd March 2016, p.2, at [5], available online at <https://www.judiciary.gov.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf>.

² As inspired by the Civil Justice Council Online Dispute Resolution Advisory Group’s report on *Online Dispute Resolution for Low Value Civil Claims* (2015), p.3, available online at <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>.

³ Briggs LJ, *Civil Courts Structure Review: Interim Report* (2016) (the *Interim Report*), p.75, available at <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf>.

⁴ The Single Family Court was created by s.17(3) Crime and Courts Act 2013 and came into effect in April 2014, see *The Single Family Court: A Joint Statement by the President of the Family Division and the HMCTS Family Business Authority*, April 2013, available online at <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/single-family-court-guide-final-08042013.pdf>.

⁵ For details of the Ministry of Justice’s criminal justice system efficiency programme, see <https://www.justice.gov.uk/about/criminal-justice-system-efficiency-programme>.

- 1.3 JUSTICE has made significant contributions to this new spirit of reform with its recent reports, *Delivering Justice in an Age of Austerity*;⁶ *In the Dock: Reassessing the use of the dock in criminal trials*;⁷ and *Complex and Lengthy Criminal Trials*.⁸ This Working Party was established to build upon that work. Drawing on the exceptional breadth of expertise within the JUSTICE membership, it is made up of members of the judiciary from the courts and tribunals, academic specialists, experienced policy makers and senior legal professionals. The Working Party has undertaken its own research as well as drawing on the experiences of relevant stakeholders. Our group has met with the senior judiciary, the advice sector, and the professional bodies, among others.⁹ Our recommendations contribute to the timely and critical conversation on the transformation of the court and tribunal estate in England and Wales.
- 1.4 This transformation must be debated and executed with care and attention. Recent reforms – including legal aid cuts and increased court fees – have undermined, rather than improved, access to justice and the effective operation of courts and tribunals.¹⁰ Yet the HMCTS Reform Programme presents an opportunity to go back to basics, and ask important questions about how our courts and tribunals could better serve the public. While in many respects the HMCTS Reform Programme is a response to the Government’s economic concerns, it also has the potential to strengthen access to justice in England and Wales. Through innovation, the justice system could be made more affordable and accessible to ordinary people, with appropriate and proportionate modes of dispute resolution available to all.

⁶ JUSTICE, *Delivering Justice in an Age of Austerity* (2015), available online at <http://justice.org.uk/justice-austerity/>.

⁷ JUSTICE, *In the Dock: Reassessing the use of the dock in criminal trials* (2015), available online at <http://justice.org.uk/in-the-dock/>.

⁸ JUSTICE, *Complex and lengthy criminal trials* (2016), available online at <http://justice.org.uk/8615-2/>.

⁹ The full list of consultees can be found in the Acknowledgements at the end of this report.

¹⁰ The House of Commons Justice Committee has considered the impact of legal aid cuts, drawing critical conclusions, see *Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (2015), available online at <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>.

Context

- 1.5 The underlying policy of the HMCTS Reform Programme is to refocus the court and tribunal estate into a reduced number of larger hearing centres, with alternative access to the system, independent of physical dispute resolution centres, being enhanced by the use of IT. Correspondingly, reform of the court and tribunal estate is being pursued in two broad stages.
- 1.6 The first stage of the reform is the court closure programme on which public consultation¹¹ was announced on 16th July 2015.¹² The Consultation Paper on the provision of the court and tribunal estate in England and Wales¹³ (the Consultation Paper) presented plans to close 91 court and tribunal buildings, of which 86 have since been confirmed for closure.¹⁴ The policy of refocusing the court and tribunal estate will in time drive further rationalisation, including the sale of a significant number of additional buildings.¹⁵

¹¹ JUSTICE submitted a response to the consultation, the full text of which can be found online at: <http://justice.org.uk/hmcts-proposal-on-the-provision-of-court-and-tribunal-estate-in-england-and-wales/>.

¹² The court closure programme follows an earlier programme of court estate reform which ran from 2010 to 2014. In July 2015, the Government stated that 146 courts had been closed since May 2010 (HL Deb 8 July 2015 c770). See also J Simson Caird, House of Commons Library, *Court and tribunal closures* (2016), pp.4 and 21, available online at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7346#fullreport>.

¹³ HMCTS, *Proposal on the provision of court and tribunal estate in England and Wales* (2015), available online at 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.pdf.

¹⁴ Written Ministerial Statement made by the Parliamentary Under-Secretary of State for Justice, Minister for the Courts and Legal Aid, Shailesh Vara, 11th February 2016, available online at <https://www.gov.uk/government/speeches/hm-courts-and-tribunals-service-estate>.

¹⁵ See note 3, *Interim Report*, p.44.

- 1.7 The second stage of the HMCTS Reform Programme is focussed on providing a court and tribunal estate that adequately provides for changes in processes and technology. The Spending Review and Autumn Statement 2015 allocated £738 million for the modernisation and full digitisation of the courts, moving from a paper-based to a digital system.¹⁶ This funding will be supplemented by funds released from the sale of some court buildings. The ambition of HMCTS is to digitise the whole process of the courts within four years, subject to funding and technical constraints.¹⁷ Digitisation of the courts and tribunals will have profound implications for users, both professional and lay, by affecting the way in which they interact with each other and with the court.¹⁸
- 1.8 This essential element of the HMCTS Reform Programme involves deciding how best to deliver justice in England and Wales in a modern age of information technology. Commissioned by the Lord Chief Justice and the Master of the Rolls, Lord Justice Briggs is currently carrying out his CCSR.¹⁹ His Interim Report was published in January 2016. His work is designed to coincide with the development and implementation of the HMCTS Reform Programme and also to look at the overall structure of civil justice. The stated intention of the CCSR is to “help ensure that the HMCTS Reform Programme designs a service which makes best use of the large capital investment proposed and provides a modern, efficient and accessible civil dispute resolution service for all”.²⁰ JUSTICE is supportive of his review and suggests that the principles behind it apply equally to all forms of dispute resolution, including tribunals.

¹⁶ HM Treasury, *Spending Review and Autumn Statement 2015*, p.69, available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479749/52229_Blue_Book_PU1865_Web_Accessible.pdf.

¹⁷ See note 3, *Interim Report*, p.42.

¹⁸ These changes are likely to have wide-reaching implications for the working practices of the legal profession, which should be taken into account throughout the reform process.

¹⁹ The terms of reference for the CCSR are available online at <https://www.judiciary.gov.uk/wp-content/uploads/2015/07/briggs-review-terms-of-reference.pdf>.

²⁰ Message from the Lord Chief Justice and the Master of the Rolls: Civil Courts Structure Review, 27th July 2015, available online at <https://www.judiciary.gov.uk/announcements/message-from-the-lord-chief-justice-and-the-master-of-the-rolls-civil-courts-structure-review/>.

1.9 JUSTICE further welcomes Lord Justice Briggs’ adoption, in adapted form,²¹ of the recommendations of an earlier JUSTICE Working Party, which proposed a new dispute resolution model for civil claims.²² That Working Party recommended the introduction of legally qualified registrars (now termed Case Officers) who would be responsible for proactively case managing disputes as well as actively resolving the majority of cases through a combination of mediation and early neutral evaluation (ENE). Judges would continue to resolve those issues which require judicial expertise. This model was designed to significantly increase access to justice for litigants in person – both those newly denied legal aid, and those who, whilst never eligible, would equally never have been able to afford a lawyer. Under the current system, if individuals are unable to obtain legal assistance and representation, they are at a significant disadvantage.

The state of our estate

1.10 The need to reconfigure the court and tribunal estate is not something new. Comprising buildings which “had been positioned for a different era of travel and communication”, the estate has long needed full-scale review.²³ Traditionally, the configuration of the court and tribunal estate has focussed on the needs of professional users, particularly the judiciary, as well as barristers, solicitors and court administrators. Rarely has there been consultation with the public, witnesses, the jurors and the defendant, or parties to proceedings, resulting in a court estate which has not been designed with their best interests in mind. In our modern world, the inadequacies of the court and tribunal estate are thrown into sharp relief.

²¹ See note 3, *Interim Report*, pp.88-94. Lord Justice Briggs recommends the creation of Case Officers (Delegated Judicial Officers). Their suggested role is broadly similar to that proposed by JUSTICE for registrars, although he did not adopt the suggestion that they carry out early neutral evaluation.

²² See note 6.

²³ The Rt. Hon. The Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales, *Judicial Leadership*, speech given at the Conference on the Paradox of Judicial Independence at the UCL Constitution Unit, 22nd June 2015, p.9, available online at <https://www.judiciary.gov.uk/wp-content/uploads/2015/06/ucl-judicial-independence-speech-june-2015.pdf>.

- 1.11 The occupation and use of the court and tribunal estate – which costs the taxpayer an estimated £500 million per annum²⁴ – has developed piecemeal over the years. There is great variation in the nature and standard of buildings across the estate, which is made up of freehold, leasehold and casual hire spaces, occupying 460 court and tribunal buildings.²⁵ The spaces range from historic, listed buildings to rented spaces in modern commercial blocks.
- 1.12 Some of the recently built or converted buildings boast modern accommodation and are finished to a high standard. However many of the older buildings are no longer fit for purpose, with some poorly designed or maintained, some facing security, health and safety and environmental issues, and some failing to comply with the Equality Act 2010. Others are trapped in a time warp, intimidating and deeply unwelcoming to court users. As many courts are located in purpose-built historic buildings, the actual courtroom space is invariably designed for one particular type of proceeding and for the needs of the time in which it was built. Fixed courtroom layout and fixed, sometimes original, built-in furniture make it difficult to use the space for other jurisdictions which may have different needs. This militates against flexible and efficient use of hearing space across the estate.
- 1.13 Indeed, the Consultation Paper describes the serious underuse of many buildings as part of the rationale for a reduced estate.²⁶ Historically, however, access to justice and the corresponding use of court buildings has ebbed and flowed according to external factors, most importantly the provision of legal aid. The current condition of the system is in stark contrast to the “overloading” of the courts which arose out of the “greatly extended legal aid” brought about by the Legal Aid and Advice Act 1949.²⁷
- 1.14 Yet the estate remains entirely configured around practices and processes designed for a different time. Traditional ways of working demanded generous quantities of building space and clerical staff. What is now needed is a court and tribunal estate that is flexible and can respond effectively over time to fluctuations in funding – including through legal aid – and technology-driven changes in working practices. Crucially, transformation of the estate should not occur simply on the basis of current public funding levels. Instead, it should be reconfigured in a way that anticipates changing needs over time.

²⁴ See note 13, p.6.

²⁵ Ibid. This is in addition to administrative and support buildings, which were inherited by HMCTS in 2011 from the merger of HM Courts Service and the Tribunals Service.

²⁶ Ibid, p.2.

²⁷ Commission under the Chairmanship of Lord Beeching, *Royal Commission on Assizes and Quarter Sessions, 1966-69* (1969), p.33 (the Beeching Report).

- 1.15 IT in the courts and tribunals has been chronically underfunded, resulting in largely unsatisfactory user experiences. The slow progression made by the justice system into the digital era is evidenced by the ongoing reliance of many jurisdictions on paper, rather than electronic files.²⁸ While certain courts have embraced the potential of technology to benefit their users, efforts have been ad hoc and often inadequately sustained. The limited technological capacity of the justice system has constrained its ability to function in an effective, efficient and accessible manner. We hope this will change with the Government’s welcome investment in IT infrastructure, underpinned by the central assumption of the HMCTS Reform Programme – strongly supported by JUSTICE – that the justice system should move to “digital by design and default”.²⁹ We agree with Lord Justice Briggs that “full and effective modernisation and reform of practice and procedure is simply unachievable without the design, provision, installation and satisfactory proving of up to date and efficient IT”.³⁰
- 1.16 The ongoing cutbacks to court and tribunal staff thrust forward another hurdle, with shrinking counter opening hours a particular concern. It is now very difficult for individuals – particularly those without a lawyer – to access assistance with progressing their case except by contacting call centres or through self-help.³¹ In our view, the importance of a customer-facing role should be the subject of greater exploration in the design of the HMCTS Reform Programme.

²⁸ Though we are pleased with the progress being made, particularly in crime, in the introduction of digital case management tools, e-Judiciary and the ongoing development of the Common Platform.

²⁹ See note 3, *Interim Report*, p.4.

³⁰ See note 3, *Interim Report*, p.38.

³¹ For example, by using the Community Legal Advice helpline (sponsored by the Legal Aid Agency) and online guides developed by the RCJ CAB and Law for Life’s Advicenow team, available online at <http://www.lawforlife.org.uk/blog/advicenow/>.

1.17 Finally, ease of access to courts and tribunals remains an issue for many users – and one that is likely to be exacerbated as more courts close. A cautious attitude should be adopted towards the claim made in the Consultation Paper that 95% of citizens would still be able to reach a court “within an hour by car” (83% for tribunals).³² Many court users are reliant on public transport, with those who are disabled, vulnerable or on lower incomes facing additional challenges. Those in rural areas will be worst affected by the closure of their local court. Although, as described in the Consultation Paper, attending court may be a “rare” occurrence,³³ the suggestion that people should therefore be willing to travel for longer does not necessarily hold true. When hearings concern elements essential to everyday life, longer journey times appear less reasonable. Further, a long journey time poses a significant disincentive to non-parties – such as witnesses and the general public – who may be less invested in the proceedings.

Our aim

1.18 The aim of this JUSTICE Working Party has been to seize the opportunity presented by the HMCTS Reform Programme, and the accompanying spirit of transformation displayed by the senior judiciary and HMCTS itself. We have broadly considered how justice is administered through the courts and tribunals and have adopted what we hope is an objective and fresh approach. Our recommendations are set out in full in the executive summary.

1.19 There are four particular themes running through our report:

- The need for the configuration of the court and tribunal estate to reflect the demands of modern times – including the role of technology, the gradual transformation of dispute resolution generally and the importance of the system being designed and operated for the user.
- The need to redefine how we conceive of court and tribunal spaces: the spaces in which judicial proceedings take place should accommodate, and adapt to, what is happening in the room.
- The need to refine our overall conception of what a court is – taking account of recent developments in technology which raise the possibility of courts and tribunals having both physical and virtual manifestations.
- The need to ensure that the court and tribunal estate is supported by a range of services which enable users to interact better with the system and allow work to be conducted much more smoothly.

³² See note 13, p.5.

³³ Ibid.

II. A FRESH APPROACH

- 2.1 The HMCTS Reform Programme presents an opportunity to consider the reconfiguration of the court and tribunal estate in a manner that is creative, ambitious and forward-looking.³⁴ Our Working Party has adopted such an outlook throughout its process, consistently questioning well-established preconceptions about what a court is. As part of this innovative approach, we ran a ‘Designing Justice Rooms’ workshop in December 2015, in collaboration with the London School of Economics.³⁵ The workshop involved practical exercises which required our Working Party, and invitees from across the legal profession, to consider important questions concerning the actual needs of users of court and tribunal rooms and supporting facilities.
- 2.2 As a result of this process, we identified a number of key factors which should drive the HMCTS Reform Programme:
- A principled approach to promoting better access to justice should guide each element of the HMCTS Reform Programme;
 - Flexibility should be built into the estate – both within permanent court and tribunal buildings and in the broader approach to spaces that can host judicial processes;
 - The user – including lay participants and members of the public – should be the focus of the HMCTS Reform Programme;
 - A recognition of the changing nature of dispute resolution and the impact this has on the spatial needs of courts and tribunals;

³⁴ This approach is in alignment with other initiatives currently underway across the justice system, many of which will have an impact on the spatial requirements of the estate. For example, in the criminal context, considerable change is underway following Sir Brian Leveson’s *Review of Efficiency in Criminal Proceedings* (2015) (the Leveson Review), available online at <https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>. This change includes the creation of the Common Platform, which will transform the criminal justice system by delivering an electronic case management system. Other projects include the new Single Justice Procedure in the magistrates’ courts; the use of alternative dispute resolution (telephone mediation) for the Small Claims Track in the County Court; and the upcoming trial of ‘online continuous hearings’ in the Social Entitlement Chamber (see note 1, The Ryder Lecture, pp.10-11, at [28]-[29]).

³⁵ With thanks to Working Party member, Professor Linda Mulcahy, and her colleagues Drs. Meredith Rossner and Emma Rowden for designing and hosting the workshop, held at the LSE in December 2015.

- The potential of technology should be maximised in order to meet user needs and to facilitate the working practices of judges, professional users and court staff;
- The approach to technology should be forward-looking, forecasting likely developments and the impact they might have on processes and spatial needs;
- The role of court staff should be developed to enable them to meet users' needs and maximise the use of flexible space;
- The importance of sustained and sustainable funding.

These are elaborated upon below.

A principled foundation

- 2.3 The aim of the HMCTS Reform Programme should be to secure the better delivery of justice in England and Wales through courts and tribunals, whether physical or remote. The justice system – and the buildings which house it – is central to our democracy and to civic life. In his 2015 Lord Williams of Mostyn Memorial Lecture, the Lord Chief Justice of England and Wales emphasised the centrality of justice to our society. Warning against the “emerging view that our judicial system is simply nothing more than the provider of an adjudication service”, Lord Thomas of Cwmgiedd described it instead as a “pillar of democracy”.³⁶
- 2.4 A cornerstone of our democracy, the justice system is fundamental to upholding the rule of law. It is the means by which the state enables parties to resolve disputes without taking the law into their own hands, upholds fairness in society, and ensures that the government is held to account. Our courts and tribunals have a central role, both practical and symbolic, in this system.

³⁶The Rt. Hon. The Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales, *The Centrality of Justice: Its Contribution to Society, and its Delivery*, The Lord Williams of Mostyn Memorial Lecture, 10th November 2015, available online at <https://www.judiciary.gov.uk/wp-content/uploads/2015/11/lord-williams-of-mostyn-lecture-nov-2015.pdf>.

2.5 Within our Working Party, we discussed the core constitutional principles – which we feel should direct the HMCTS Reform Programme – with implications for the court and tribunal estate. While these principles are well known, we consider it important that they are kept in mind as the programme is designed and implemented, and they underpin our own recommendations for reform. The justice system must be:

- Fair and accessible;
- Open and transparent;
- Effective and efficient;
- Independent and impartial; and
- Delivered at a proportionate cost to the taxpayer.

2.6 Crucially, these principles must be given practical application, not just aspirational worth. Each one of them has concrete implications for how courts and tribunals are configured. Accessibility, for example, requires ease of access to the system (which in the digital era does not necessarily mean only physical access) as well as the ability to obtain justice in the resolution of legal disputes. Further, the need for transparent justice warrants particular consideration³⁷ as we explore how best to ensure that any transfer of the judicial process online does not prevent justice from being ‘seen to be done’ – for example, by excluding the public and the press. In particular, we do not envisage any change to the principle that, leaving aside well-established exceptions, criminal proceedings must be heard in public. Nor should there be any reduction in the present levels of access to civil and family proceedings where it already exists.

2.7 A failure to give effect to these principles throughout the HMCTS Reform Programme risks undermining the value of our justice system. Conversely, if put into practice, these principles offer an opportunity to improve greatly upon the status quo.

³⁷ As do all of the protections contained in the right to a fair trial under Article 6 of the European Convention on Human Rights.

Inbuilt flexibility

- 2.8 Flexibility should be central to the reconfiguration project. The rapid development of technology in our digital society makes it shortsighted to constrain the justice system within existing parameters. The present changes to the system constitute, in our view, just the start of a process which will likely span a number of years. The court and tribunal estate must then be easily modifiable to respond to changing circumstances: any failure to mitigate the risk of obsolescence across the estate could prove both costly and detrimental.
- 2.9 Adopting a more flexible approach to the configuration of the court and tribunal estate requires a shift in thinking about courthouse design, which has become increasingly rigid in recent decades. Different types of proceedings – ranging from murder trials to employment tribunals – have different spatial needs and call for different levels of formality, security and ritual. Court design guides – originally conceived of as a collection of standards – have precipitated a standardisation of design, with the highly detailed room specifications placing too much emphasis on the production of inflexible facilities with fixed furniture.³⁸
- 2.10 Yet despite appearances, flexibility in the design of, and the choice of venues for, court and tribunal rooms is not new. There are historical precedents for this approach. For many hundreds of years, our courts sat in multi-function spaces used for a host of other civic and communal activities.³⁹ Flexible spaces of this kind were also provided for in early editions of the Magistrates Courts Design Guide, which anticipated that the layout of the court could be changed depending on the needs of the users.⁴⁰
- 2.11 Our Working Party therefore argues that what is needed is a transition towards the creation of multi-function spaces that are suitable for a host of different case types and activities. This would have the added advantage of creating a sustainable court and tribunal estate with hearing spaces that could be easily adapted as the legal system changes.

³⁸ HMCS, *Court Standards and Design Guide* (2010).

³⁹ C Graham, *Ordering Law: The Architecture and Social History of the English Law Court to 1914* (Ashgate Publishing, 2003); L Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (Routledge, 2011).

⁴⁰ See Chapter VIII for an Annex of images from early Magistrates' Courts Guides.

- 2.12 We support a shift away from a strict delineation of buildings and courtrooms on the basis of the jurisdiction – i.e. case type – heard in that space.⁴¹ On the contrary, we recognise that substantively different case types can have very similar spatial requirements. Our Working Party members have had experience of both sitting and appearing in courtrooms which are sorely mismatched with the matter at hand.
- 2.13 This flexible approach will become increasingly important as the court and tribunal estate is further ‘rationalised’. Functioning within a smaller estate will require greater elasticity in the use of space to prevent backlogs. In the future it is also conceivable that there will be greater integration of the courts and tribunals, and that the line between the magistrates’ courts and the Crown Court will not be so rigid.

International arbitration, by virtue of its consensual contractual nature, provides a great deal of flexibility. Whilst parties are generally constrained by the relevant institutional rules and applicable legislation, often such regulation supports the flexibility enjoyed by the parties. International arbitration often involves parties and tribunal members based in different jurisdictions, who have to navigate competing time zones and geographical locations. It is therefore common for documents and pleadings to be submitted electronically (via email) and for interim hearings to be conducted by telephone conference call, rather than in person. Whilst it still remains the case that final hearings most commonly take place with persons present, they are conducted in a variety of locations. These may include more traditional hearing rooms (for example at the International Dispute Resolution Centre in London), offices of law firms or hotels. Evidence via video link is also more readily utilised for both witness and expert evidence. This practice has been influenced by a number of factors, most importantly cost and proportionality.

⁴¹ Our Working Party does not seek to comment on issues relating to the deployment of judges and tribunal members across jurisdictions. We only make proposals relating to flexible space across jurisdictions. Our group is aware of the work being carried out by the Civil Justice Council in relation to property claims (where jurisdiction is split between courts and tribunals) and the pilot exercise on the flexible deployment of salaried Employment Tribunal judges to sit in the County Court (civil only matters). We accept that this is a complex issue which in several respects depends on changes to primary legislation.

Another continuously developing aspect of international arbitration is the emergency arbitration procedure, which is akin to the interim remedies which may be sought through the court system. Whilst the procedure still raises a number of legal and jurisdictional questions, Article 29 of the 2012 ICC Rules, for example, does provide for the appointment of an emergency arbitrator. Anecdotally, there is evidence of ICC emergency arbitrators making decisions within very short timeframes in disputes between two parties located in different jurisdictions – and the arbitrator situated in a third – entirely on the basis of written submissions communicated by email, together with telephone conferences.

Courts and tribunals for users

- 2.14 Putting the user at the heart of the court system is long overdue. Like the tribunals, the courts should “do all they can to render themselves understandable, unthreatening, and useful to users”.⁴² Our Working Party is committed to a broad definition of a court and tribunal user, which encompasses the diversity of user type and experience – and in particular, the presence of both professional and lay users in the modern justice system. It is important to ensure an appropriate balance between the needs of all users of courts and tribunals.
- 2.15 In this digital age, our definition of a court and tribunal user must include not only those using the physical facilities of the court, but all of the stakeholders engaged in virtual or physical court proceedings. The concept of the ‘user’ now embraces HMCTS personnel, the judiciary, and those providing support services – as well as the parties to a case, their representatives and families, witnesses, members of the public and those from supporting agencies. In many instances the needs of these users can be met, and their participation in the proceedings facilitated, by technical solutions which do not require their physical presence.

⁴² Sir Andrew Leggatt, *Tribunals for Users: One System, One Service, Report of the Review of Tribunals* (2001), Overview, at [6], available online at <http://webarchive.nationalarchives.gov.uk/+http://www.tribunals-review.org.uk/leggatthtm/leg-ov.htm>.

Evolving nature of dispute resolution

- 2.16 Particularly in the civil law context, the way in which disputes are resolved has experienced, and continues to experience, significant change. Largely due to the swift growth of alternative dispute resolution (ADR) over the past 30 years, the civil court is now the forum of last resort in the resolution of civil disputes, bringing to fruition the recommendation of Lord Woolf in his *Access to Justice* report.⁴³ The prevalence of litigants in person has been another driver for change, and even before the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the tribunal system was pioneering ways of dealing with unrepresented litigants. The criminal law context is evolving too: measures such as the police discretion to caution, the emergence of restorative justice processes, and in particular the diversion of children away from the formal criminal justice system, all illustrate broader changes across the system.
- 2.17 The proliferation of ADR has taken place in a number of contexts, including within statutory or voluntary frameworks – for example, Ombudsmen now handle various categories of dispute such as those relating to financial services or tenancy deposit schemes. The recent EU Directive on ADR will likely add impetus to consumer ADR, strengthening the trend towards mediation and consumer arbitration.⁴⁴ Businesses are increasingly creating their own procedures for resolving disputes outside of the formal court structure, as seen with eBay and PayPal,⁴⁵ whilst consumer complaint resolution website *Resolver* encapsulates many of these ADR trends.⁴⁶ The interactive processes pioneered by these online private systems have now developed to the point where they offer real lessons for the traditional court-based dispute resolution process, and provide a useful indication of the way in which the Online Court might develop.
- 2.18 A key feature of many of these developments is that disputes are resolved for the most part without an oral hearing. Our Working Party recognises this as part of a general trajectory towards determinations in civil dispute resolution being made on the basis of documentation (‘papers’), not oral evidence. This is a development which if continued – as is likely – will materially impact upon the spatial requirements of court and tribunal buildings.

⁴³ See note 3, *Interim Report*, p.14, at [2.22]. See also Lord Woolf, *Access to Justice – Final Report* (1996), Overview, at [9], available online at <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/civil/final/contents.htm>.

⁴⁴ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>.

⁴⁵ See, for example, note 2 at pp.11-16.

⁴⁶ It should be noted that the JUSTICE Working Party received assistance from *Resolver* for this project.

Technology

- 2.19 Technology now drives the everyday lives of individuals and businesses. It is time for this to be reflected in our courts and tribunals. Users should be able to interact with the system using the tools and technology they utilise in other aspects of their lives, with inbuilt support for non-digital users.⁴⁷ The increasing availability and accessibility of technical products and services present a real opportunity to integrate technology into our justice system.
- 2.20 HMCTS is already committed to the ‘digital by default and design’ agenda, made possible by the generous allocation of funding for achieving digital transformation. Our Working Party does not seek to make the case for a digital programme: we see this as a welcome inevitability. Nor do we ignore the fact that Government digitisation projects have traditionally encountered substantial challenges. However, we express our optimism that the challenges to implementation can be mitigated through appropriately designed systems and software, and seek to explore the potential of the digital by default agenda for the court and tribunal estate.
- 2.21 This potential is enormous. It is anticipated that in due course, it will result in significant savings to the public purse.⁴⁸ Of far greater importance are the improvements in access to justice that will result from this programme. For ordinary people the justice system is currently considered distant, daunting and costly.⁴⁹ Properly designed, a digital by default system will be more intuitive and provide access for emerging generations of court and tribunal users – for example, by allowing them to engage with the justice system through an app or online platform.⁵⁰

⁴⁷ See note 1, The Ryder Lecture, p.6, at [18].

⁴⁸ See note 3, *Interim Report*, p.6, at [1.14].

⁴⁹ Ipsos MORI, conducting interviews with 508 legal professionals, found that “88% of legal professionals agreed that ‘The court process is intimidating to the general public’”, see Hodge Jones & Allen, *Innovation in Law Report 2014*, p.16, available online at <http://www.hja.net/wp-content/uploads/hja-innovation-in-law-report-2014.pdf>. This tallies with the findings of a recent report, based on interviews with professional and lay court users, that the Crown Court experience has “many distressing, stressful and perplexing aspects” for court users, which “extend far beyond...readily definable vulnerabilities”, see J Jacobson, G Hunter & A Kirby on behalf of the Criminal Justice Alliance, *Structured Mayhem: Personal Experiences of the Crown Court* (2015), pp.3 and 5, available online at <http://criminaljusticealliance.org/wp-content/uploads/2015/11/Structured-Mayhem1.pdf>.

⁵⁰ Online applications like this already exist: the ‘Self Evident’ app was created with the intention of making it easier for members of the public to report crime, thereby contributing to a reduction in local crime levels through increased detection. Developed in 2013 by social enterprise Just Evidence and, more recently, with input from the Mayor of London and the Sussex PCC, the app allows users to report incidences of crime by sending reports, including statements and evidence such as video footage and photographs, to the relevant police force, which will respond by email or phone. Users can track the progress of their reports by logging on to their Just Evidence accounts. Reports can also be shared with third parties, such as insurance companies, or the IPCC. See <https://www.justevidence.org/about.php>.

The Traffic Penalty Tribunal (TPT) provides a compelling example of the use of digital case management systems. TPT deals with appeals against penalty charge notices issued by local authorities in England and Wales for minor traffic contraventions, including parking offences. It also deals with the significant number of appeals arising from failure to pay the Dartford Crossing charge. There are 30 part-time adjudicators, deciding approximately 25,000 appeals per year.

In pursuing its objectives – Accessibility, Proportionality, Velocity and Finality – TPT has always been at the forefront of reform, embracing new technology and methods of working. It developed its first digital case management system in 2006, although this was only accessible to adjudicators. In 2007 TPT introduced telephone hearings enabling appellants and council officers to participate in conference calls led by the adjudicator.

In 2013, TPT decided to develop an online appeal portal system that was also accessible by the parties. Having trialed a prototype system, the feedback and experiences of all users were reflected in the recently launched, improved portal. This enables the parties to upload evidence, including videos and voice files, and allows messaging between the adjudicators, administrators and parties. It allows adjudicators to engage with the parties throughout a case, encouraging them to focus on the issues and produce relevant evidence. All participants see the same evidence screen, displayed clearly with simple navigation and a facility to add comments to individual items of evidence.

The adjudicators upload their decisions, which are displayed onscreen, with easy reference to key evidence such as photographs. The system records when the decision has been viewed by the parties, and if it has not been viewed after two days it is printed out and sent by post, though this has seldom been necessary.

The respondent authorities manage their appeals through a bespoke dashboard that enables them to upload evidence quickly and easily, reply to messages from the adjudicator, and comment on the appeal. This has already resulted in local authorities saving around £200 per case in time, printing and postage.

With no paper or data inputting, the TPT's 14 administrative staff have virtually no clerical tasks, and now focus on customer service. That said, telephone enquiries have reduced by 30% due to the effective explanation of the process on a succession of pages on the TPT website through which appellants must pass before embarking on their appeal.

A recent appellant provided the following feedback after using the new system: "Thank you very much for your help. You do sound like the most customer-focussed court staff I have encountered in a long career involved with proceedings in many courts at many levels in many jurisdictions".

It is not surprising that feedback from both appellants and authorities has been positive – 75% of cases are closed within 21 days, with 5% resolved on the day the appeal is submitted. This quick turnaround results in greater acceptance of adverse decisions, thereby increasing finality.⁵¹

2.22 The use of technology-driven working methods is already being explored within the justice system. The Social Entitlement Chamber of the First-Tier Tribunal will soon trial a digital online portal case management system, similar to that used by the TPT.⁵² The Social Entitlement Chamber is the largest jurisdiction in England and Wales and it is anticipated that the portal trial will lead to a considerable reduction in face-to-face hearings, with a consequent decrease in the number of hearing rooms required. If this approach succeeds in the Social Entitlement Chamber, we expect that there will be significant opportunities to extend it to other tribunals and civil disputes. A key driver for the Working Party's recommendations is the shift from simply providing hearing rooms to ensuring that there is sufficient support to enable everyone involved in judicial proceedings (including parties and witnesses as well as lawyers, judges and staff) to engage in digital processes.

⁵¹ The Working Party is grateful to its member, Chief Adjudicator at the TPT Caroline Sheppard, for this information.

⁵² See note 1, The Ryder Lecture, pp.9-10, at [28]-[29].

2.23 The introduction of cloud-based case management and online processes will result in:

- Elimination of paper case files, their storage and transportation;
- Reduction in clerical support functions;
- Diversion of significant numbers of cases to the Online Court;
- Savings in postage and courier costs;
- Significant efficiencies in judicial time; and
- Reduction in the need for courtroom hearings.

2.24 Savings will not be confined to HMCTS, but will also be achieved for external court users, with:

- Information and advice online, including videos, about how to proceed, or what to expect, at a hearing;
- Reduced waiting time because documents will have been uploaded in advance into the case file;
- Pre-hearing case management which deals up-front with peripheral or irrelevant issues, thereby shortening trial time; and
- Representatives managing their caseload efficiently and quickly, watching the proceedings in real time when they need to do so.

2.25 Just as with the reforms to court and tribunal buildings, it is essential that all users are consulted about the design of new technological systems. This is a fundamental element of ‘agile’ software development and service design, which is now the preferred model of software provision. Further, it is critical that enhanced IT provision in the courts and tribunals is accompanied by adequate support and training for personnel, so that users can receive sufficient support for trouble-shooting and resolving difficulties, thereby maximising the capabilities of the new resources.

2.26 Delivery of new IT systems need not be an extended process. As the TPT case study shows, technological transformation and the introduction of new systems can be delivered in a relatively short period of time. The TPT approach could be piloted quickly, and at relatively low cost, in a suitable jurisdiction, enabling an assessment of its impact, on both services and finances. A pilot would allow the assumptions in this report to be tested, in preparation for the scheme’s ultimate roll-out across HMCTS.

2.27 Another core element of the agile approach is a willingness to build products quickly and replace them often. There is much to be learned from this approach, both in software development and in the use of technical equipment, across the court and tribunal estate. All too often, systems are developed or equipment is installed which is almost immediately out-of-date. The use of agile IT systems and software, developed in a sustainable manner which anticipates rapid technological developments, is an important safeguard against the implementation challenges which confront any large-scale digitisation project.⁵³

Revisiting the role of staff

2.28 HMCTS ought to revisit the approach taken to court and tribunal staff. Throughout our Working Party's evidence-gathering process, the importance of human resources to the efficient, effective and accessible operation of the courts and tribunals was mentioned repeatedly by members of the judiciary, those in legal practice and representatives of the advice sector. Cutbacks have led to a reduction in the amount of information and assistance provided by staff in the courts and tribunals. This has worked to the detriment not only of vulnerable, unrepresented court users, but also to the support available to users more broadly, including the judiciary and professionals. A flexible and dynamic court and tribunal estate can only operate effectively if it is appropriately staffed, including allocating staff to roles which provide them with responsibility and job satisfaction.

2.29 This subject is dealt with in detail in Chapter V.

⁵³This has been achieved in the case of the Common Platform, which will be used to deliver an electronic case system, replacing the existing IT systems of HMCTS and the CPS. It is not a commercial product and can therefore be constantly updated to ensure it serves the needs of the criminal justice system.

Adequate funding

- 2.30** There must be a commitment to providing adequate funding – not just for the development and implementation of technology in the courts and tribunals, but also for:
- The strategic location of the estate;
 - The design of flexible spaces within the estate; and
 - The provision of skilled and appropriately trained court staff to make the most of these resources.
- 2.31** The benefits of modern IT can only be enjoyed if the systems in place are sufficiently advanced and supported by up-to-date hardware and appropriate training. The returns on investment in technology are significant, despite high initial costs. Our Working Party therefore welcomes the commitment to funding made in the Spending Review and Autumn Statement 2015. We also recognise the potential for funding arising from the decision to close 86 court and tribunal buildings (if sold at a commercial rate), announced in February 2016.
- 2.32** Funding must not only be adequate but also stable. Fluctuations in funding will result in the adverse consequences outlined at paragraph 1.14, above. Progress should be steady and funding should be allocated wisely, taking into account the likely exigencies of the future and the need to keep IT systems up-to-date.
- 2.33** With these principles in mind, we consider that the recommendations we make in the next chapters of this report will deliver effective access to justice both now and into the future.

III. A NEW MODEL – JUSTICE SPACES

*This is about recognising the way that we live in a digital society and responding accordingly. With modern methods, effective use of IT, we ought to be creating – recreating – local justice. This will be a justice system where many sizes fits all; not one size for all. A much simpler system of justice, with the judiciary at its heart, citizens empowered to access it, using innovation and digital tools to resolve these cases quickly, authoritatively and efficiently.*⁵⁴

- 3.1 The effective and efficient operation of the court and tribunal estate is undermined by its current configuration. The estate and the processes it houses are organised around a traditional adversarial dispute resolution system, which relies heavily on legal representation for its effective operation. Successive funding cuts have attacked valuable elements of this traditional court service, exposing vulnerabilities within the system. As we have already noted, the fundamentals of this system are on the verge of dramatic change. Our Working Party proposes a fresh vision, capable of occupying a smaller court and tribunal estate, designed around the needs of the modern court user and supported by the strength of technology. This report does not imagine a redesign of the court and tribunal estate from scratch. Rather, our proposals explore how to improve upon the existing estate once digital documentation frees up the physical space currently used for handling and storing papers.⁵⁵
- 3.2 Our Working Party’s vision, detailed in the following chapters, is built around the creation of ‘justice spaces’ within the existing estate. These spaces respond to the needs of the matters dealt within them, and include both physical and virtual venues. In our view, the introduction of justice spaces will allow the court and tribunal estate to be flexible and adaptive, by taking into account the impact of a shrinking court and tribunal estate and the potential of technical developments.

⁵⁴ See note 1, The Ryder Lecture, p.7, at [21].

⁵⁵ However, our Working Party is supportive of the exploration of, and investment in, ‘courts of the future’ which may look beyond the limitations of the current estate.

The starting point

- 3.3 Flexibility is central to the success of the justice spaces model. The inflexibility embedded in the court and tribunal estate exacerbates the problem, identified in the Consultation Paper,⁵⁶ of unused or underused hearing spaces. As processes are integrated, and the workload from closing courts and tribunals centralised in remaining buildings, there is a unique opportunity to reconfigure spaces to optimise flexibility and workability.⁵⁷
- 3.4 An important first step in the ‘further rationalisation of the estate’ is an examination of the significant proportion of the workload of the courts and tribunals that could be successfully dealt with, at least in part, online and through processes such as proactive case management,⁵⁸ diversion⁵⁹ and alternative dispute resolution.⁶⁰ The resultant reduction in the number of cases requiring a hearing will have implications for the number of hearing rooms required across the estate and the (potential) need for an increase in alternative spaces.
- 3.5 An example of this is the introduction of Case Officers, as outlined in paragraph 1.9, above. When introduced, this model will reduce the number of civil hearings taking place. While Case Officers will not require as much or the same type of space currently occupied by the judiciary, they will require alternative spaces in which to carry out their function. JUSTICE departs from Lord Justice Briggs in that we do not support the location of Case Officers in ‘business centres’ outside of court and tribunal buildings.⁶¹ In our view, it is important that Case Officers are co-located with judges to enable proper supervision and informal discussion. Furthermore, Case Officers will require spaces for meeting face-to-face with litigants, for which the logical location is within court and tribunal buildings. As such, Case Officers will need office space – open plan is appropriate – and meeting rooms.

⁵⁶ See note 13, p.5, where Shailesh Vara MP notes that in 2014, “over a third of all courts and tribunals were empty for more than fifty per cent of their available hearing time”.

⁵⁷ See note 3, *Interim Report*, p.44, where Lord Justice Briggs notes that HMCTS’ “underlying policy objective of refocusing the court estate upon a smaller number of larger hearing centres is likely to remain a driver” behind further rationalisation of the estate, at [4.18].

⁵⁸ This process can be carried out both online and by phone.

⁵⁹ I.e. the diversion of work which does not need to be in the court and tribunal system at all. Such issues would benefit from being dealt with in a more user-focussed way; inspiration for this model could be drawn from tenancy deposit schemes and the TPT.

⁶⁰ As discussed in Chapter II.

⁶¹ See note 3, *Interim Report*, pp.93-94, where Lord Justice Briggs proposes that Case Officers would work from ‘business centres’, separately located from ‘hearing centres’, at [7.34].

- 3.6 We propose that flexibility should require the space in which a case is heard to adapt to the particular dispute resolution process taking place and the needs of its users, rather than the other way round. This can be achieved by clustering dispute types, irrespective of jurisdiction, as the starting point.⁶² By engaging in this process, our Working Party has been able to identify various room types which underpin our vision of justice spaces.
- 3.7 Organising justice spaces in this manner means that we can clearly see those categories of case which are suitable for resolution in a range of different locations, those which will require a purpose-built facility, and those that fall somewhere along that spectrum. The location of justice spaces is dealt with in detail in Chapter IV.
- 3.8 Implementation of justice spaces requires a move away from the over-standardisation of the court and tribunal estate. As the *Court Standards and Design Guide* has developed, spatial requirements have become more rigid, and furniture more fixed, in ways that make the flexibility we suggest impossible.⁶³ Whilst some standardisation will remain necessary to ensure that due process standards are met and quality is maintained, overly rigid design standards should not be allowed to undermine the optimal configuration of the court and tribunal estate.
- 3.9 Organising spaces in a manner which can accommodate dispute resolution in general – rather than specific categories of case in particular – opens up the court and tribunal estate to a wider range of uses, including private hearings. As an additional source of revenue, HMCTS could rent out rooms to non-HMCTS tribunals such as police appeal tribunals or professional conduct committee hearings, or as spaces for arbitration and mediation. Anecdotally, our Working Party has been told by arbitrators and members of regulatory bodies, amongst others, that it is often difficult to find a space suitable for their needs. As an alternative to hiring out hotel rooms and other private conference spaces, the court and tribunal estate could play host, with the additional revenue supporting the provision of high-quality services by HMCTS.

⁶² For example, despite substantive legal and other differences, tribunal hearings involving special educational needs, low-level civil claims, juvenile criminal matters and mediated disputes all have very similar spatial requirements.

⁶³ See note 38. The Guide is intended as comprehensive guidance for designing court buildings, covering site selection, analysis and layout, forms and massing, planning, architecture and selection of architects. It contains sections dealing with various types of courts: magistrates', Crown, County; as well as the judiciary and magistrates; the jury; custody; advocates; non-HMCS staff; catering; public spaces; office design; court offices; tribunals; probate; office support services; common facilities; storage areas; car parks; sustainable development; electrical; alarms and information and communications technology; air; water; acoustics; furniture and furnishings; finishes and materials; provision for disabled people; fire safety; security, locks and key mastering; libraries; signs; specific design features; health and safety; and existing buildings.

- 3.10 We are conscious that not all of the current estate is suitable for reconfiguration in line with the justice spaces model. In the inevitable next round of court and tribunal closures it would be appropriate for the least adaptable buildings to be disposed of first. Our Working Party also emphasises that it may be necessary to invest in some new purpose-built facilities as the HMCTS Reform Programme is rolled out.
- 3.11 Our Working Party also suggests that further consideration could be given to courts and tribunals sitting outside traditional weekday working hours. Particularly in the context of tribunals, it may prove more convenient for the user and the tribunal judges, many of whom hold other positions, to have evening sittings. Proper consideration would need to be given to the practicalities of such a development, and additional support and funding would need to be provided to ensure that the system is not overburdened.⁶⁴

Categories of justice space

- 3.12 Our Working Party suggests that the majority of cases can be grouped according to particular characteristics. These characteristics include, but are not limited to:
- The level of security risk;
 - The need for formality and/or solemnity;
 - The degree of public participation;⁶⁵
 - The degree of segregation of parties required; and
 - The extent to which the participants accede to the judicial process.

⁶⁴ Earlier pilots of flexible court sittings in the magistrates' courts were of mixed success, see: C Baksi, *Flexible Courts Pilots Fall Flat*, *The Law Society Gazette*, 26th November 2013, available online at <http://www.lawgazette.co.uk/practice/flexible-courts-pilots-fall-flat/5038951.fullarticle>.

⁶⁵ Our Working Party notes that while we have used the degree of public participation as a guiding factor in the design of justice spaces, this is not a suggestion that justice spaces do not always require some space for the general public. The principle of open justice dictates that where members of the public wish to attend an open hearing, they should be able to do so.

3.13 Through consideration of these characteristics, our Working Party has broadly identified three categories of justice space which cover the majority of disputes on the spectrum of case types. There is of course a small number of outliers,⁶⁶ but these can be easily accommodated through simple modifications and should not determine the nature of the justice space in the majority of cases:

- **Simple justice space:** this space is characterised as less formal and highly flexible;
- **Standard justice space:** this space is characterised as semi-formal and flexible; and
- **Formal justice space:** this space is characterised as formal and semi-flexible.

Simple justice space

3.14 This space maximises flexibility by being multi-purpose and less formal, reinforcing the idea of proportionate justice as noted by the Lord Chancellor and Secretary of State for Justice in his speech at the Legatum Institute in June 2015.⁶⁷

3.15 Generally, hearings which are suitable for simple justice spaces:

- Are low risk;
- Do not require much formality;
- Have a limited amount of public participation;
- Involve willing or consensual participants; and
- Require a low degree of segregation of parties.

⁶⁶ For example, while juvenile criminal trials may be suited to a less formal, flexible space, there is potential for disruptive behaviour by the defendants and their supporters. Similarly, while fraud trials do not require high-security provisions, they do need to be conducted in a sufficiently solemn and formal manner which reflects the severity of penalty attached to the crime.

⁶⁷ The Rt. Hon. Michael Gove MP, *What does a one nation justice policy look like?*, 23rd June 2015, available online at <https://www.gov.uk/government/speeches/what-does-a-one-nation-justice-policy-look-like>.

Examples of suitable cases are low value money claims and cases dealt with by tribunals such as the Social Entitlement Chamber and the Property Chamber. These cases are procedurally straightforward and often do not involve legal representation (though lawyers could be accommodated in a flexible space). Although in exceptional cases security might be a risk, it is generally unlikely to be an issue. Further, very few individuals need to be involved and therefore minimal space and facilities are required.⁶⁸

- 3.16 The simple justice space is the least complicated and therefore the most flexible in its layout. It could also be a range of sizes. The majority of the current workload of the courts and tribunals, including much of the day-to-day work of the magistrates' courts, could be accommodated within the simple justice space.
- 3.17 We propose the use of modular furniture, which can facilitate the intelligent configuration of space according to the needs of each hearing. A simple justice space could, for instance, be set up with a separate table for the adjudicators, with the Coat of Arms behind it, and modular furniture arranged in rows or other configurations for the parties. Alternatively, it could be arranged as a central table around which all the parties sit. Display of the Coat of Arms is a legal requirement but it need not be a permanent feature and could be either hung from, or projected onto, the wall as required.
- 3.18 Modular furniture is essential to achieving flexibility. Tables and chairs should be foldable, and where appropriate, lockable. By using modular and foldable furniture, simple justice spaces can be configured to accommodate extra seating for the public or the press if required. Modular furniture can easily be stored behind panels inside the court or tribunal rooms. Clever storage solutions will be central to the success of flexible room layout.

⁶⁸ Indeed, most low-level claims are heard in chambers anyway within the jurisdiction of the Small Claims Court.

The use of modular courtroom furniture is prevalent in the United States. In 1999, Arnold Reception Desks Inc. (ARD)⁶⁹ “introduced a collection of free-standing, modular courtroom furniture that is unique in its durability, convenience and flexibility”.⁷⁰ In 2000, ARD won a US General Services Administration⁷¹ contract to cover its modular courtroom furniture.⁷²

Many parts of the US have “a multi-purpose room that serves as courtroom, commission chamber, and hearing room.”⁷³ The ARD brochure provides photographs of real courtrooms the company has furnished, showing that there is substantial individual choice in terms of layout and furnishings. ARD can also provide “modified” courtroom modules. It provides the example of the US District Court for the Southern District of NY, which sits in a leased building: “the courtroom and its contents can be moved and reinstalled in a new location. Even the wall panelling can be easily relocated.”⁷⁴

Standard justice space

- 3.19 The standard justice space maintains a high degree of flexibility whilst incorporating greater solemnity and security as required.
- 3.20 Hearings which are amenable to this space are those in which:
- The level of risk is moderate, or cannot be conclusively assessed;
 - Some formality or solemnity is desirable due to the nature of the case;
 - There is moderate public participation; and
 - The participants may not have consented to proceedings, or may otherwise need a degree of segregation.

⁶⁹ <http://www.ardesk.com/>.

⁷⁰ Arnold Reception Desks Inc., *Brochure of Courtroom Furniture* (Brochure), p.2, available online at http://www.ardesk.com/Digital%20Literature/ARD_Court/Modular%20Courtroom%20Catalog.pdf [accessed 14 April 2016].

⁷¹ <http://www.gsa.gov/portal/category/100000>.

⁷² Brochure, p.15.

⁷³ Brochure, p.10.

⁷⁴ Brochure, p.13.

- 3.21 Certain family cases might be suitable for determination in a standard justice space – an application for a child arrangements order, for example. Whilst parties can be volatile and security may be a concern, the issues being dealt with are highly sensitive. The level of formality must therefore strike a balance between the need for security and solemnity, and the need to avoid alienating or intimidating vulnerable parties. Another category of case which may be suitable for this space is a coroner’s inquest. This space would be suitable for cases in which some permanent features are valuable, or where extensive technological equipment is required. A raised bench for the judge(s) may be necessary, but does not need to be a permanent feature. There must be sufficient space for advocates, social workers and others to work effectively, which must be adequately demarcated to ensure that confidentiality is maintained.
- 3.22 The standard justice space could in principle be configured in a similar manner, and using similar furniture, to the simple justice space. In our view, there are simple adaptations which could be applied to reinforce the solemnity and authority of the court – such as the use of appropriately raised seating for the judge or panel, the use of lockable furniture to mitigate security concerns and the use of larger rooms with appropriate storage for lengthier, complex cases. A number of doors may be necessary to serve as escape routes and thereby function as important security measures.⁷⁵ Some security staff will be required either at the entrances or in the room for some of the case types using this space.

Formal justice space

- 3.23 The final space proposed is the formal justice space. The proportion of cases requiring this formal and semi-flexible space is limited. This space will be suitable for cases where there is:
- A high security risk;
 - The need for a high degree of formality;
 - A considerable amount of public interest;
 - The need for high levels of segregation (including where parties are in custody); or
 - Involvement of non-consenting parties.

⁷⁵ For a detailed discussion on security see Chapter V, at [5.27]-[5.31].

Suitable examples include serious crime, certain immigration and asylum proceedings and serious family matters. Murder, terrorism and sex offence trials are clearly occasions on which the full authority of the state needs to be felt in order to reinforce the seriousness of the offences in question. The greatest degree of formality is required as each offence carries a heavy sentence. Such cases are more likely to attract a lay audience and the media, requiring a suitable space for them to sit in whilst also ensuring sufficient segregation of the people in the room.

- 3.24** Our research indicates that a disproportionate number of hearing rooms are designed with these considerations in mind, wasting space and money. This is particularly true of rooms designed to host criminal proceedings. The cases requiring this space constitute the highest common denominator. Consequently, the number of these hearing rooms should be reduced and centralised as the HMCTS Reform Programme proceeds.
- 3.25** The formal justice space requires that furniture and fixtures be less flexible than in the other two spaces. However, there is no justification for spaces and fixtures being as rigid as at present. For instance, while it may be necessary for furniture to be affixed to the floor, there is no reason why this cannot be achieved through lockable, rather than fixed, furniture. In each of these spaces, sightlines should form a key consideration in deciding layout and fittings. It is important that the judge can always see everyone in the room, particularly in criminal and family cases where the dynamic between those involved may be critical. The clear delineation of space between the parties – and in criminal cases the location of the defendant’s ‘place’ – does not need to be permanently fixed, but can be accommodated through a range of configurations. The same principle applies to the location of the jury.
- 3.26** The issue of segregation of parties and circulation routes is most relevant to this space, given the nature of the proceedings that are to take place in it. Separate routes are important in Crown Court trials⁷⁶ and other trials requiring high-end security. For this reason we expect that the formal space will need to be located in a purpose-built building. However, circulation routes are not necessary for many other types of hearing and it would be wise for HMCTS to revisit questions of when they are necessary and whether every court needs to incorporate them.
- 3.27** By restructuring spaces in the way discussed in this chapter, court and tribunal buildings can be utilised to best effect. Making spaces adaptable to any hearing type avoids the rigid limitations of a court estate designed only to address the most serious cases, thereby enabling the swifter administration of justice.

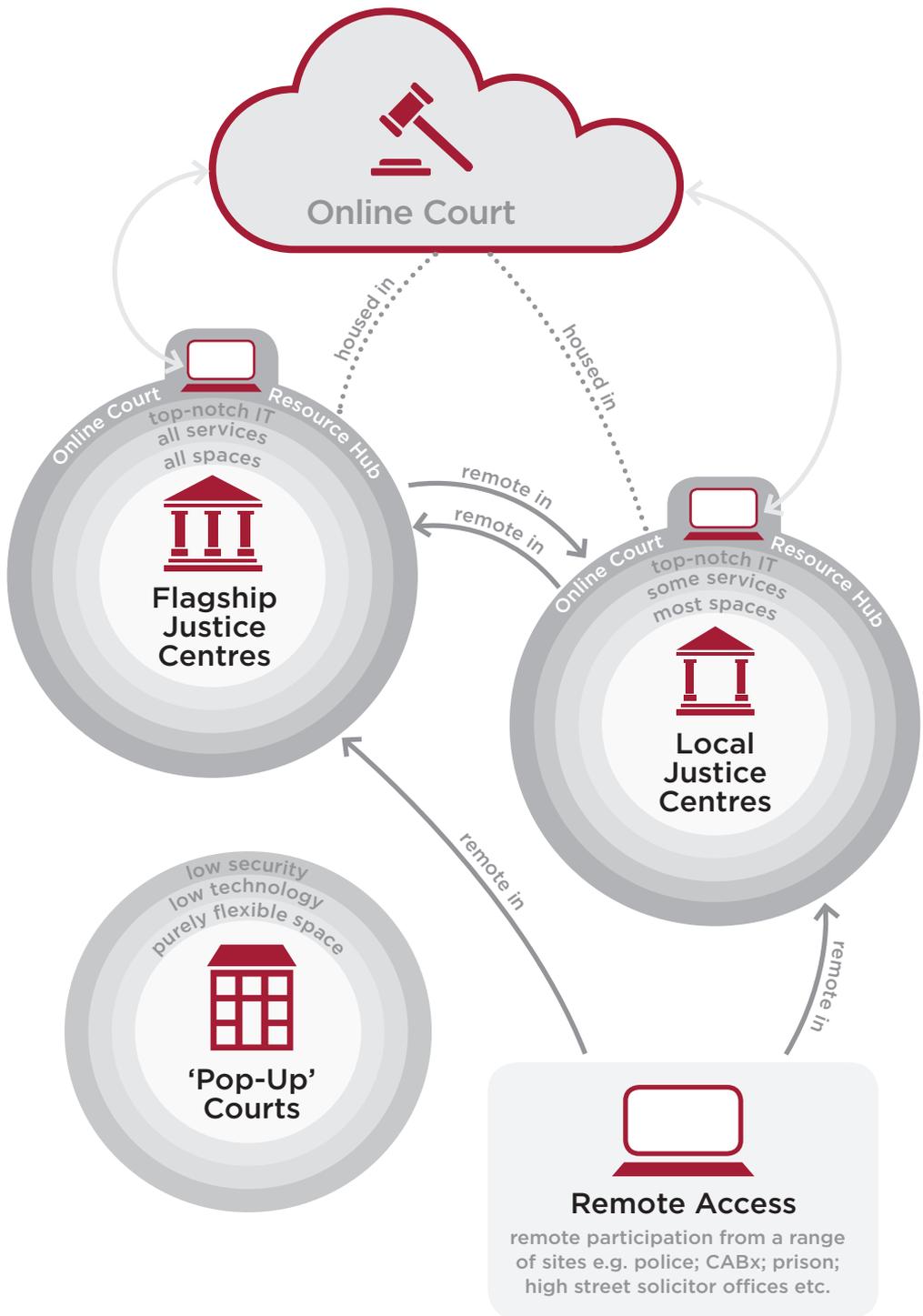
⁷⁶ Due to concerns over perceptions of collusion when, for example, the jury and judge use the same circulation routes.

Usage	Flexibility	Formality/ Solemnity	Risk/Security	Space and facility requirements
Justice Space: Simple				
Most of the current workload of the courts and tribunals.	<u>Highly flexible</u> : modular, foldable furniture, lockable where needed.	<u>Less formal</u> : where coat of arms displayed, either hung or projected.	<u>Low</u> : limited amount of public participation; willing/consensual parties requiring a low degree of segregation.	Minimal space requirements. Very few individuals need be involved. Clever storage solutions for modular furniture.
Justice Space: Standard				
Cases where it is valuable to have more permanent features e.g. a raised judges' bench, or where extensive technological equipment is needed.	<u>Flexible</u> : a similar configuration in principle to the simple justice space, with some adaptations e.g. a raised bench for the judge/panel, lockable furniture.	<u>Semi-formal</u> : e.g. raised bench	<u>Moderate/ cannot be conclusively assessed</u> : moderate public participation; parties may not consent or may otherwise require a degree of segregation. Some security staff.	There must be sufficient space for advocates, social workers, etc., that is adequately demarcated for confidentiality. Larger courtrooms with appropriate storage for lengthier, complex cases.
Justice Space: Formal				
A limited number of cases e.g. very serious crime.	<u>Semi-flexible</u> : lockable furniture with option to fix to floor. Sightlines must be a consideration in layout/fittings.	<u>Formal</u> : the full authority of the state must be felt to reinforce the seriousness of the case.	<u>High</u> : high levels of segregation of parties required for non-consenting parties (including custody). Cases may attract a high level of public and media interest. Separate entrances for the parties.	Needs to be located in a purpose-built building, with space for public and media and for sufficient segregation of people in the courtroom. Need for a defendant's 'place' and a jury in criminal cases.

IV. A RESPONSIVE ESTATE

- 4.1 Our Working Party agrees fully with Lord Justice Ryder, Senior President of Tribunals, when he says that the justice system should be “many sizes fits all; not one size for all”.⁷⁷ The justice system should be responsive to the needs of those it serves, and this includes the way in which the courts and tribunals are provided. As the court closure programme goes ahead, many towns across England and Wales will see their courthouse cease functioning. To militate against disproportionate damage to access to justice, it is crucial that adequate alternative provision is made.
- 4.2 As already noted, access to justice need not necessarily involve physical access to a particular building. With the dawn of the digital era, access to the justice system is possible through technology similar to that used by most people as part of their everyday lives.
- 4.3 With this in mind, our Working Party has designed a model for the composition of the court and tribunal estate which is made up of a number of responsive, flexible parts. In sum, our Working Party envisages a court and tribunal estate comprising:
- Flagship Justice Centres;
 - Local Justice Centres;
 - ‘Pop-up’ courts;
 - Remote access justice facilities; and
 - Digital justice spaces.

⁷⁷ See note 1, The Ryder Lecture, p.7 at [21].



Flagship Justice Centres

- 4.4 Flagship Justice Centres should represent the full majesty of the justice system and should be buildings of which citizens can be proud. Flagship Justice Centres should be present in all major urban centres. They should contain the full complement of services which may be required to support attendance at a court or tribunal. As the estate reduces in size, it will become even more important that larger justice centres are of the highest quality. Flagship Justice Centres should include advanced technological support, both in terms of equipment and personnel.
- 4.5 Flagship Justice Centres should contain all of the justice spaces described in Chapter III, with a range of larger and smaller rooms. The majority of the rooms should be flexible, simple justice spaces. There should be adequate provision of standard and formal justice spaces. This arrangement will facilitate a variety of working practices, accommodating formal criminal trials as well as less formal low-level civil and tribunal proceedings, and non-traditional proceedings such as ADR. The security provided in the Flagship Justice Centre should reflect its use for serious crime and family cases. Whilst JUSTICE does not agree that all high-security criminal hearing rooms should necessarily contain a dock,⁷⁸ a number of rooms in these centres should be adequately equipped for high-security cases.
- 4.6 In addition to a large number of justice spaces, Flagship Justice Centres should contain all necessary ancillary services (discussed in detail in Chapter V). These justice centres should serve as resource and support centres to litigants, particularly those who are self-represented. Space should be allocated within the justice centre for services like the Personal Support Unit (PSU)⁷⁹ and duty solicitor schemes.

⁷⁸ See note 7.

⁷⁹ The Personal Support Unit helps litigants in person, their friends and families, witnesses, victims and inexperienced court users. It is a volunteer-run organisation. See <https://www.thepsu.org/about-us/>.

Local Justice Centres

- 4.7 Local Justice Centres should be diverse in terms of size, composition and the range of services provided. There should be a Local Justice Centre in every major town centre. While many of these justice centres will be smaller in size than the Flagship Justice Centres, they should nonetheless contain as many services as is feasible within a smaller building. Local Justice Centres should be primarily made up of simple and standard justice spaces, with the potential for formal spaces within larger buildings. This would involve a shift away from the status quo, under which the majority of courtrooms are formal justice spaces. As argued above, this is not necessary.
- 4.8 Technology should enhance the processes of these courts and there will be a particular need for the increased provision of remote access equipment – both inside court and tribunal rooms and in spaces used for private remote communication between litigants and their advocates. The provision of PSUs in smaller justice centres should be encouraged and supported, with duty solicitor schemes and resource services operating as necessary.
- 4.9 The justice system is central to civic life, and we believe that this should be reflected in the location of court and tribunal buildings. We believe that courts and tribunals need to be visible, and do not support the idea that justice centres should be located on the outskirts of urban centres, unless so doing improves access to justice. Accessibility should be the paramount consideration in deciding where to locate a justice centre. This applies equally to Flagship and Local Justice Centres.

‘Pop-up’ courts

- 4.10 Our Working Party endorses the strengthening of local justice as a mechanism for improving access to justice. Since the publication of the Consultation Paper in July 2015, there has been much discussion around the use of civic buildings for judicial procedures, as well as talk of ‘town hall justice’ and ‘pop-up’ courts. The Working Party views the use of ‘pop-up’ courts as a logical remedy to the closure of court and tribunal buildings across the country, though we expect that for the most part they will only be necessary in the most rural areas. There is real potential for their expanded use, in particular for civil matters.

- 4.11 As we have seen, the three types of justice space will accommodate different categories of dispute according to their characteristics and needs, rather than jurisdiction. The benefit of this approach is that the type of justice space, and the matters for which it is used, will dictate the building which can house it. Applying this model, it is clear that the requirements of the formal justice space make it inappropriate for location in a ‘pop-up’ court, both for practical and financial reasons. Conversely, the modest requirements and flexible set-up of the simple justice space enable it to be accommodated within ‘pop-up’ courts in a range of venues. Individual circumstances will dictate whether the standard justice space can be hosted outside of a purpose-built building.
- 4.12 The Working Party envisages three main categories of ‘pop-up’ court:
1. The existing peripatetic system, often seen within the tribunal system, of judges travelling throughout the country for hearings;⁸⁰
 2. A court or tribunal concerned with everyday legal matters, which can ‘pop-up’ in towns on a rotating basis according to demand (for example, once per week, per month, per quarter, etc.); and
 3. An ad hoc local court designed to reinforce local justice, dealing with matters of particular concern to a given community – for example, a High Court planning appeal. Inspiration has been drawn from inquiries for this suggestion.⁸¹
- 4.13 Suitable hosts for ‘pop-up’ courts may include local council or other civic buildings; libraries or community centres; schools or universities; and conference venues and other private accommodation. The case types suitable for a ‘pop-up’ model are unlikely to require high-security measures or complex equipment.

⁸⁰ See, for example, the Health, Education and Social Care Chamber of the First-Tier Tribunal, which is largely peripatetic, including in mental health where hearings regularly take place in secure psychiatric facilities.

⁸¹ There is precedent for ‘pop-up’ hearings in the form of public inquiries, which are traditionally held in or as near as possible to the area most closely connected to the subject-matter of the inquiry. For example, in the case of the Harold Shipman Inquiry, the public hearings took place at the Town Hall in Manchester and proceedings were projected via CCTV to the public library in Hyde, where Dr. Shipman had lived, so that the town’s inhabitants could watch without inconvenience (see the ‘Opening Statement’ given by Dame Janet Smith DBE, Chairman, at a Public Meeting in Manchester Town Hall, 10th May 2001, available online at <http://webarchive.nationalarchives.gov.uk/20090808154959/http://www.the-shipman-inquiry.org.uk/openingstatement.asp>). Similarly, the latest Inquiry into the Hillsborough disaster began on 31st March 2014 in a purpose-built courtroom on a trading estate in Warrington in Cheshire (see BBC News, *Hillsborough Inquest: A unique court on a trading estate*, 31st March 2014, available online at <http://www.bbc.co.uk/news/uk-26820715>).

- 4.14 Holding courts and tribunals away from fixed locations must not be allowed to compromise the principle of open justice. The public must still have access to courts even when working on an ad hoc basis. This may be addressed through greater investment in listing systems, improving the predictability of hearing dates, and the ready accessibility of the chosen accommodation. Care should be taken to ensure hearings are publicised sufficiently ahead of time.
- 4.15 Our Working Party was pleased to hear of a successful one-day ‘pop-up’ court pilot in Aberystwyth, Wales, which took place in February 2016. The Old College, Aberystwyth, was used as a venue for certain civil and family hearings, which were heard by a District Judge. The judiciary, professional users, parties and staff all provided feedback. There are a number of areas that require further testing, including the use of technology and provision of WiFi access, as well as judicial security measures. A further pilot is being planned for magistrates’ court buildings.⁸²
- 4.16 Critical to the success of a ‘pop-up’ system is that it is not over-complicated. If ‘pop-up’ courts can be nimble and light then they will be able to move around and adapt to different environments. If they become institutionalised they will be unable to serve their purpose. In most cases, all that will be required for a ‘pop-up’ court is the judge and his or her materials, the parties, a suitably arranged room with modular furniture and a good WiFi connection. It may be appropriate for the judge to be accompanied by his or her clerk or another member of staff. The Traffic Penalty Tribunal’s use of retired police officers as ushers and security guards is just one example of how security concerns could be managed.
- 4.17 In other circumstances, it might be necessary for the physical court to be peripatetic. A ‘court in a box’ could feature key elements which could be readily transported and assembled on site. Inspiration for this is drawn from the BBC’s travelling *Question Time* set, though the court ‘set’ would be less elaborate.⁸³

⁸² The Working Party is grateful to HMCTS for this information.

⁸³ The set for *Question Time* is much more complicated than a court or tribunal room, but the possibilities for peripatetic functionality can be seen in this video demonstrating the construction of the *Question Time* set at the Bramall Music Building in Birmingham, available online at <https://www.youtube.com/watch?v=LnTfG5zDuRA>.

Remote access justice facilities

- 4.18 In an increasingly digital society and with a shrinking court and tribunal estate, the Working Party considers it necessary and inevitable that a significant increase in remote participation in the courts and tribunals will result. All of the stakeholders whose views were canvassed by our Working Party expressed broad support for greater virtual access to the justice system. From a practical perspective, remote participation facilitates flexibility over when and where hearings take place. From an access to justice perspective, it can enable individuals who would otherwise find it difficult to travel to a court or tribunal to ‘beam in’ from a location convenient to them.
- 4.19 At present, remote participation can connect the remote participant to the court or tribunal where a physical hearing is taking place. It can also enable participants located in different courts and tribunals to engage with one another. It is foreseeable that in the not-so-distant future, hearings could be conducted entirely remotely, without any of the participants actually being situated in a court or tribunal room.
- 4.20 There are several precedents for the use of remote access in England and Wales:
- Following the closure of Barry Magistrates’ Court in 2011, Cadoxton House in Barry was used to provide a live link to the Cardiff and Vale Magistrates’ Court to enable witnesses to give evidence locally.⁸⁴
 - It is usual for children and vulnerable witnesses in criminal cases to pre-record their evidence in chief and appear via video link for cross-examination.
 - Victims of rape or sexual assault can provide evidence in court remotely from a number of Sexual Assault Referral Centres, for example St Mary’s Sexual Assault Referral Centre, Manchester and The Ferns, Ipswich.

⁸⁴ Ministry of Justice, *Response to the proposal on the future of Neath Magistrates’ Court* (2014), p.20, available online at <https://consult.justice.gov.uk/digital-communications/future-of-neath-magistrates-court/results/neath-consultation-response.pdf>.

- Kent Police have made provision for the giving of evidence by vulnerable witnesses via video link. The Victim Suite at the police station in Fort Hill, Margate, facilitates “victims who feel too distressed or frightened to speak in open court” to link into magistrates’ courts and Crown Courts to give evidence.⁸⁵ At the time of opening, it was the fourth live link suite to be opened in the country, including one at Bluewater shopping centre.⁸⁶
- Bail applications and bail reviews are conducted via video link from prisons as standard, and increasingly from police stations where police detention is extended.

4.21 We propose a model of remote participation which extends the current position. This proposal is predicated on the improvement of the technology and facilities needed to support remote access. At present, the manner in which remote participation is integrated into the courts and tribunals falls far short of the technological possibilities. Video conferencing tools used in the private sector are already of a considerably higher quality than those utilised by the courts and tribunals.

4.22 HMCTS should draw inspiration from private sector use of remote technologies. For example, HMCTS could look at the possibility of people participating in certain aspects of a court or tribunal hearing via their household television. Even though at an historic low, television ownership still stands at close to 94% of all households in the United Kingdom.⁸⁷ Smartphones are another obvious area for exploration, with ownership levels at 66% of households last year.⁸⁸ The use of telephone hearings could also be explored as an area for expansion.⁸⁹

4.23 Identity verification may be a concern where there is no authorised party confirming the remote participant’s identity or ensuring that they are not being coerced. Remote hearings also pose challenges for non-verbal communication, interaction between parties, and the effective use of interpreters. The gravity of these concerns will largely depend on the gravity of the case and the nature of proceedings.

⁸⁵ M Chiorando, *Ann Barnes opens police remote evidence service*, Kent News, 30th January 2015, available online at http://www.kentnews.co.uk/news/ann_barnes_opens_police_remote_evidence_service_1_3937497.

⁸⁶ Ministry of Justice, *More justice dispensed via video*, 3rd January 2013, available online at <https://www.gov.uk/government/news/more-justice-dispensed-via-video>.

⁸⁷ N Hellen, *Viewers switch on to loophole in BBC licence fee*, *The Sunday Times*, 23rd June 2015, available online at http://www.thesundaytimes.co.uk/sto/news/uk_news/Society/article1574591.ece?CMP=OTH-gnws-standard-2015_06_28.

⁸⁸ Ofcom, *The Communications Market Report* (2015), p.1, available online at http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR_UK_2015.pdf.

⁸⁹ Telephone hearings in civil proceedings were introduced in 1999 as part of the Civil Justice Reforms following Lord Woolf’s Review of the civil justice system in England and Wales, see <https://www.justice.gov.uk/courts/telephone-hearings>.

- 4.24 In any event, telephone hearings already lack visual confirmation of identity but this does not prevent them from taking place. We have concluded that in cases which are not driven by witness evidence (for example interlocutory hearings) it should be possible to use remote participation with less stringent verification standards.⁹⁰ Where a participant is giving evidence or the subject matter is more serious, it may be necessary for an additional layer of verification and security to be applied. In the below section on ‘Accredited Spaces’ we suggest one such approach. Due to concerns over effective participation, we do not think it is appropriate for a defendant to appear in his or her own trial through video link.
- 4.25 It is important that quality personnel, facilities, equipment and internet connection are assured at *both ends* of the remote process. Shoddy video links with poor connection at one end result in delays and inefficiencies, not to mention frustration and distress for parties. HMCTS needs to ensure that the video link service is of the same quality in the court or tribunal room as it is in the remote location. This will apply irrespective of the type of space used and necessarily encompasses remote access from prisons and other secure institutions.
- 4.26 Court processes must be adjusted to accommodate video technologies, so that to the greatest extent possible it feels as though the remote participant were in the room. This will be equally important for the remote participant, who should be given an appropriate view of the room (rather than, for example, a close up on any one physically present participant). Except during ‘in camera’ proceedings, the participants should be visible and audible to members of the public and press too. The image and sound should be of a high quality. Further, there must be good communication systems available so that remote clients can instruct, or conference privately with, their advocates. There must be facilities to record the remote interactions for the purpose of transcripts. The remote participant should be provided with the evidence or court bundle where necessary.
- 4.27 Finally, as the use of remote access becomes more prevalent, it will become increasingly important that new rituals are built into the process.⁹¹ Participating in a court or tribunal hearing is a serious matter and the majesty of justice should still be displayed even if the individuals participating are not seated in a courtroom.

⁹⁰ Indeed, intelligent verification tools already exist, which could be utilised in this context – see, for example, the Government’s GOV.UK Verify system, which allows people to prove who they are online in order to use services such as viewing driving licences and filling in tax forms, see <https://www.gov.uk/government/publications/introducing-govuk-verify/introducing-govuk-verify>.

⁹¹ For further discussion, see E Rowden, *Distributed Courts and Legitimacy: What do we Lose When we Lose the Courthouse?*, in *Law, Culture and the Humanities* (2015), pp.1-19.

Accredited spaces

- 4.28 We propose the establishment of a network of local hearing venues, accredited to conduct remote hearings (accredited spaces).⁹² These spaces could be used to facilitate remote participation in circumstances where verification of identity is required, or where a case involves a vulnerable participant, the giving of evidence, the need for formality or the administration of the oath or affirmation. Preferred hosts for such spaces would include firms of solicitors and advice agencies. Other hosts could include local council offices (where the council is not a party to proceedings), libraries or community centres, schools or post offices. An appropriate individual at the accredited venue would need training on how to deal with the remote participant, including on how to explain the process, verify identities and administer the oath or affirmation.
- 4.29 In order to be accredited, hosts would be required to possess and operate video conferencing equipment compatible with the (hopefully uniform) equipment used across the HMCTS estate, as well as provide a room suitable for the conduct of proceedings. The space must also have a good and secure WiFi connection. The hosting organisation would be required to nominate at least one employee with knowledge of how to operate the equipment, including some level of trouble-shooting ability. The simpler the required video conferencing system, the easier it might be to attract suitable organisations. However, the reliability of the system would be crucial.
- 4.30 It should be assumed that the accredited host would require payment for its participation. Such payment might take the form of a yearly contract or a sessional fee. It may also be necessary to provide the host with the required video conferencing equipment. The capital cost might reasonably be met from sums made available for IT. In relation to running costs, no doubt consideration would be given to charging a remote hearing fee which would become part of the costs of the action. It may well be that the payment to the host would be relatively modest, particularly if demand for the service is limited. Law firms might be willing to offer this service as part of their pro bono or corporate responsibility commitments.
- 4.31 A hearing at an accredited venue might be listed there at the court's own initiative or at the request of a party with the agreement of the court. Consideration would have to be given to the co-ordination of listing between the court and the accredited hosts. It is important that the use of remote participation be assessed on a case-by-case basis.

⁹² A similar suggestion was made by the Magistrates Association in its response to the Criminal Procedure Rules Committee's *Proposal to make new rules about the use of live links and telephone conferences for the conduct of hearings* (2016), p.3.

Proceeding with caution

- 4.32 Uncritical and widespread implementation of remote access to the courts and tribunals may have negative as well as positive consequences. While the use of remote technology has enormous potential to improve ease of access and access to justice, equally it has the potential to make the user feel uncomfortable or alienated, or to undermine the justice process.⁹³ We encourage HMCTS to consider the extensive research and academic commentary on the subject, particularly in the sphere of criminal justice.⁹⁴ A major Australian study, entitled *Gateways to justice: design and operational guidelines for remote participation in court proceedings*, found that:

*The way in which video link technology is implemented has a real impact on service delivery, and therefore justice outcomes; how video links are used, their design and operation, matters.*⁹⁵

- 4.33 The use of remote access participation involves the inherent loss of a participant's sense of connection to the hearing space; those not physically present in the court or tribunal room are therefore not fully aware of the space in which they are appearing. This can of course be a good thing, particularly for vulnerable witnesses for whom the remote room can be a 'safe place' which serves a 'shielding' function.⁹⁶

⁹³The execution of a 2009 'Virtual Court' pilot in the United Kingdom provides examples of potential shortfalls. The pilot was widely criticised, with issues ranging from the behaviour of participants to charges that the practice was procedurally unjust, see E Rowden, *Architecture and Justice: Judicial Meaning in the Public Realm*, ed. Jonathan Simon et al (Ashgate Publishing, 2013), p.101.

⁹⁴See, for example: E Rowden et al, *Gateways to justice: design and operational guidelines for remote participation in court buildings* (2013), available online at http://www.uws.edu.au/_data/assets/pdf_file/0019/471223/Gateways_to_Justice_Guidelines.pdf; M Terry et al for the Ministry of Justice, *Virtual Court pilot Outcome evaluation* (2010), available online at <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/virtual-courts.pdf>; E Rowden, *The Remote Witness Facility for vulnerable and child witnesses: new perspectives on an emerging spatial typology*, in P Brancos (Ed.), *Sociologia dos Espaços da Justiça: Diálogos Interdisciplinares*, (CES/Almedina, 2013). See also note 91, E Rowden.

⁹⁵Ibid, E Rowden et al, *Gateways to justice*, p.10.

⁹⁶See note 94, E Rowden, *The Remote Witness Facility*, p.12.

- 4.34 The nature of the space from which remote access takes place is critical. The quality of the environment of the remote space has an impact on those in the courtroom and on the participant themselves.⁹⁷ In the Australian study, many of the remote spaces considered were described as “unhealthy” spaces which did not promote “wellbeing”. They were generally “small, bland and anonymous in character” with a lack of “access to natural light and views”.⁹⁸ The study provides a series of easily achievable recommendations to ensure that the room itself, the areas surrounding it and the process of attending a remote space are all of an acceptable quality.⁹⁹
- 4.35 The principle of open justice must also be kept in mind when considering an increase in remote participation. Digitised processes constitute a sea change in how openness and transparency in the justice system are upheld. Our Working Party is of the view that technology can in fact increase public participation in the justice system, and allow justice to ‘cast a wider net’. For example, the move to a paperless system means that more documents will be available in soft copy and can therefore be published online. However digitisation does of course pose challenges to open justice, for example in cases where all the parties are participating in a hearing remotely, including the judge. Here, however, we would suggest that a live stream, whether visual or audio, could provide openness for the general public and press. If there is concern over the appropriateness of public engagement with this process, the stream could be broadcast from or to a designated and controlled location – such as a room in a court or tribunal building.
- 4.36 Overall, remote access to the courts and tribunals presents a unique opportunity to bring participants together in a manner that is as flexible as it is fair. The risks mentioned above must be taken seriously lest the introduction of extended remote access undermines rather than benefits the system. However, our Working Party is confident that none of these issues is insurmountable if approached in a straightforward and pragmatic fashion.

⁹⁷ See note 95.

⁹⁸ See note 95, p9.

⁹⁹ Recommendations cover areas such as: the journey to court, ambience, waiting area, artificial lighting, natural light and views.

Digital Justice Spaces

- 4.37 Fundamental to the HMCTS Reform Programme is the digitisation of the whole process of the courts. Our Working Party welcomes and endorses Lord Justice Briggs' Interim Report and the Online Court it proposes. The Online Court is in line with the proposals of the Civil Justice Council Advisory Group on Online Dispute Resolution (ODR)'s report, which JUSTICE's report *Delivering Justice in an Age of Austerity* adopted. In this report, we have presupposed that the Online Court will proceed much as Lord Justice Briggs outlines in his report.¹⁰⁰
- 4.38 While Lord Justice Briggs' terms of reference restrict his deliberations to lower value civil matters, our Working Party believes that, if successful, the Online Court could be used for matters exceeding the initial £25,000 cap and in a wide range of jurisdictions. We see no reason for the Online Court to be limited to one exclusive jurisdiction if it could be utilised across the system, albeit in appropriately adapted forms. A great number of the cases going through the justice system are straightforward and arguably do not require a court hearing at all.
- 4.39 The Working Party suggests that the resolution of disputes in a fair and timely manner is the most important consideration. Currently, the system assumes that everyone needs to be brought together for a physical hearing, even when this does not best serve the interests of anyone involved. Technology and alternative methods of dispute resolution, if used properly, can offer a quality of justice currently inaccessible to large portions of society.
- 4.40 Our Working Party is firm in its view that the Online Court should be located within the court estate structure. We have already explained our view that Case Officers should be located within the courts and our reasons here are similar. Despite the Online Court being broken into three tiers, we do not consider it wise to segregate those tiers into different locations. As Lord Justice Briggs notes, the separation of judges "in hearing centres from case handling, management and listing in business centres plainly risks disrupting that level of human co-operation, teamwork and common purpose, with consequences which cannot be easily measured in advance".¹⁰¹ It is crucial to the success of the Online Court that learning is shared between Case Officers and judges, and that Case Officers have access to judicial expertise for the development of best practice. It is also of value that there is a collegiate atmosphere between these tiers of the Online Court, given the likely frequency of communication between them.

¹⁰⁰JUSTICE has submitted a response to Lord Justice Briggs' Interim Report separately. This report does not deal with the details of his proposals.

¹⁰¹ See note 3, *Interim Report*, p.70 at [5.118].

- 4.41 The civil courts and the Online Court are not the only areas in which digital justice spaces are emerging. We have already cited the upcoming trial of a digital portal for the Social Entitlement Chamber of the First-Tier Tribunal. Our Working Party predicts that this step is just the beginning for the tribunals: we expect to see a system of continuous online hearings for at least part of that chamber’s work in the coming years.¹⁰²
- 4.42 New digital justice spaces will emerge from this transition away from face-to-face hearings towards an increasingly online system. The implications of this for both user and system must be properly analysed and accommodated as new working methods are designed and executed. Working in a digital space will make certain processes easier for the user, whilst others will become more difficult. Our Working Party is confident that none of the challenges posed will prove insuperable but the project must be approached with these considerations in mind.
- 4.43 In particular, conceptualising digitised court processes as ‘spaces’ should inform how the Online Court and other similar online platforms are positioned within the court and tribunal estate. The needs of these spaces will be different, with greater call for open-plan and welcoming working environments, and less need for hearing rooms and judicial spaces.

¹⁰² For e.g. the Social Security and Child Support Tribunal.

Singapore provides one of the best illustrations of technology being introduced into a court system with a considerable amount of success.

As part of initiatives to facilitate the litigation process and improve case management, Singapore set up five technology courts in 2006 that are equipped with audio-visual systems (e.g. video/DVD players, projection facilities), computers, and video conferencing solutions for communicating with local and overseas parties.¹⁰³ These facilities are also available for use in other courts via a service known as the Mobile Info-Tech Trolley.¹⁰⁴ Since 2005, the Digital Transcription System (DTS) – a transcription service with digital audio recording – has been used for all criminal proceedings and civil actions commenced by writ. Today, DTS also extends to a range of other hearings, including appeals to judges in chambers and the assessment of damages before registrars.¹⁰⁵

The success of these technological solutions within the Singapore justice system has allowed newly created jurisdictions – such as the Singapore International Commercial Court, launched in January 2015 to create a new platform for international commercial disputes – to take full advantage of the potential of technology.¹⁰⁶

On 11th January 2016, Chief Justice Sundaresh Menon unveiled further plans for future-proofing the Singapore justice system. Having formed a ‘Court of the Future Taskforce’ in 2015, the judiciary seeks to anticipate the future needs of court users and develop strategies to meet such needs with technology. The Taskforce envisages the possible use of artificial intelligence and natural language technology to enhance the accessibility of information and obviate the need for physical attendance in court. The Taskforce’s final report and recommendations are expected to be published this year.¹⁰⁷

¹⁰³ Supreme Court of Singapore, *Technology Courts Booking*, at <http://www.supremecourt.gov.sg/services/court-services/technology-courts-booking> [accessed 15 February 2016].

¹⁰⁴ Supreme Court of Singapore, *Mobile Infocomm Technology Facilities* (“MIT Facilities”), available online at <http://www.supremecourt.gov.sg/services/court-services/mobile-info-tech-trolley-booking> [accessed 15 February 2016].

¹⁰⁵ Supreme Court of Singapore, *Digital Transcription Services*, available online at <http://www.supremecourt.gov.sg/services/court-services/supreme-court-transcription-services> [accessed 15 February 2016].

¹⁰⁶ Singapore International Commercial Court, *Use of Technology at the SICC*, available online at <http://www.sicc.gov.sg/Services.aspx?id=51> [accessed 15 February 2016].

¹⁰⁷ Supreme Court of Singapore, Chief Justice Sundaresh Menon, *Response at the Opening of The Legal Year 2016*, available online at <http://www.supremecourt.gov.sg/news/speeches/chief-justice-sundaresh-menon--response-at-the-opening-of-the-legal-year-2016> [accessed 25 February 2016].

V. OPERATION IN PRACTICE

Advice and assistance

- 5.1 To ensure that litigants (especially those who are self-represented) can navigate the system, it is essential that advice and assistance is built into the HMCTS Reform Programme. The reconfiguration of court and tribunal buildings provides an opportunity to designate appropriate space for support services. We suggest that, subject to the PSU’s funding and resources, a PSU would be provided as standard in all Flagship Justice Centres and larger Local Justice Centres. On days it is required, there should be a duty solicitor scheme in as many buildings as possible. These services may be supplemented by pro bono volunteer schemes for law students and junior (and perhaps retired) lawyers who would provide well-supervised assistance. The assistance provided to litigants through these services reduces the amount of judicial time spent dealing with issues easily handled by others.
- 5.2 The existing Litigants in Person Support Strategy¹⁰⁸ provides a firm foundation for the development of more extensive services in courts or accessible via web or telephone-enabled links from smaller Local Justice Centres and Resource Hubs. In particular, the Advicenow website provides a steadily developing bank of resources to help both litigants in person and their pro bono and volunteer advisers.¹⁰⁹
- 5.3 These support services require physical space in which to operate in order to provide effective assistance. Provision should be made for private consultation rooms, as already exist in some courts with duty solicitor schemes. Soundproof compact cubicles or flexible pods would maximise the potential for useful engagement with support services. Consultation rooms should be designed with the security needs of the advisers in mind, with features including use of glass doors and panic buttons, and clear escape routes.¹¹⁰
- 5.4 In smaller Local Justice Centres, ‘pop-up’ courts and remote access justice facilities, it may not be possible to provide advice services on site. In such cases, provision should be made for litigants to access these services via telephone or video link.
- 5.5 We advocate continued support for more localised services. For example, Local Citizens Advice Bureaux offer advice from over 3,500 locations including high street venues, community centres, doctors’ surgeries and prisons.¹¹¹

¹⁰⁸ <http://www.lipsupportstrategy.org.uk>.

¹⁰⁹ <http://www.advicenow.org.uk/>.

¹¹⁰ This came through strongly during a meeting we held with representatives from the Personal Support Unit, Law Works, the RCJ Advice Bureau and Law for Life.

¹¹¹ <https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/>.

Resource Hubs

- 5.6 A considerable proportion of the population of England and Wales is now computer and smartphone literate,¹¹² and this proportion is sure to increase as time goes on. However, there will remain a segment of the population which struggles to adapt to digitised processes.¹¹³ It is paramount that the needs of this segment are provided for, lest the introduction of the Online Court and other digitisation projects obstructs access to the court system.
- 5.7 Our Working Party therefore proposes the creation of Resource Hubs in Flagship and Local Justice Centres. If the court and tribunal estate is to be centralised, as indicated in Lord Justice Briggs' Interim Report,¹¹⁴ then resources should be put into those centres to ensure that they are centres of excellence. These Resource Hubs could also be located in other venues where deemed appropriate, including third party spaces, and should offer remote assistance either online or by phone.
- 5.8 Resource Hubs in justice centres should occupy a designated space, and be equipped with a number of computer and telephone stations, as well as hardcopy pamphlets and guides. Resource Hubs should be staffed by empathetic, knowledgeable individuals who can assist users to navigate online systems, fill in certain forms, and answer general questions pertaining to the Online Court. Resource Hubs would not provide legal advice – the aim of Resource Hubs is to assist litigants to help themselves in a supportive environment.

¹¹² In 2015, over three quarters of adults in Great Britain used the internet every day, or almost every day (78%) and a similar proportion (74%) accessed the internet 'on the go' (away from home or work), see Office for National Statistics, *Internet Access – Households and Individuals: 2015*, section 2, available online at <http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2015-08-06>.

¹¹³ "The poorest and most vulnerable members of society find it most difficult to access advice services and have a particular need for face-to-face services as they often lack the skills and ability to present their problems and deal with telephone and web-enabled services", see Civil Justice Council, *Access to Justice for Litigants in Person (or self-represented litigants)* (2011), p.60, at [164], available online at <https://www.judiciary.gov.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf>. See also, for example: Legal Services Research Centre, "*Young People and Civil Justice*": *Findings from the 2004 English and Welsh Civil and Social Justice Survey*; C Denvir, N Balmer and P Pleasence, *Surfing the web – recreation or resource? Exploring how young people in the UK use the internet as an advice portal for problems with a legal dimension*, *Interacting with Computers* 23 (2011), pp.96-104, at [96]; L Trinder et al on behalf of the Ministry of Justice, *Litigants in Person in Private Family Law Cases* (2014), pp.105-106, available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380479/litigants-in-person-in-private-family-law-cases.pdf.

¹¹⁴ See note 3, *Interim Report*, p.36, at [3.36].

5.9 We do not take a position on who should be responsible for running these Resource Hubs. It may be appropriate for the service to be tendered to an organisation with expertise in this area, for example from the advice sector. Our Working Party expects that this proposal would form part of the “Assisted Digital” provision discussed by Lord Justice Briggs in his Interim Report.¹¹⁵

Court-based self-help centres in California have proved immensely successful. They exist to provide information and education, but not legal advice, to unrepresented litigants. Members of staff also work with the court to provide effective management of those litigants’ cases.¹¹⁶ Since 1st January 2008, court-based self-help centres have been a core function of the California courts,¹¹⁷ and guidelines for their operation have been adopted (under Rule 10.960 California Rules of Court).¹¹⁸ They are located in or near to the courthouse.¹¹⁹ Following a state-wide expansion project in 2007, there are now self-help centres attached to the central court in each of the 58 counties in California.¹²⁰ As at May 2015, self-help centres, in collaboration with the family law facilitators,¹²¹ were helping over 1.2 million people each year.

Staff are licensed ‘attorney facilitators’¹²² augmented by university students trained and supplied by Justice Corps, a state-backed organisation partnered by University College San Diego.¹²³

¹¹⁵ See note 3, *Interim Report*, pp.85-86, at [6.54]-[6.59].

¹¹⁶ B Hough, *Self-Represented Litigants in Family Law: The Response of California’s Courts*, The Circuit (2010), available online at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1051&context=clrcircuit>.

¹¹⁷ Per California Rules of Court, rule 10.960.

¹¹⁸ Judicial Council of California, *Fact Sheet: Programs for Self-Represented Litigants* (2015), available online at: <http://www.courts.ca.gov/documents/proper.pdf>.

¹¹⁹ *Ibid.*

¹²⁰ Deborah J. Chase, *Pro Se Justice and Unified Family Courts*, 37 Fam. L. Q. (2003-4) 403, 412-3. See also <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>.

¹²¹ Many self-help centres are combined with the family law facilitator programmes that also run from courts in California, see note 118.

¹²² Administrative Office of the Courts, *California Self-Help Centres: Report to the California Legislature* (2007), pp.13-14, available online at http://www.courts.ca.gov/documents/rpt_leg_self_help.pdf.

¹²³ <http://www.courts.ca.gov/justicecorps.htm>.

Feedback from centre users, and members of the judiciary with experience of hearing cases involving unrepresented litigants who have made use of the centres, is overwhelmingly positive.¹²⁴ One potential limitation that has been identified, however, is that the usefulness of the centres is contingent on the systems that operate around them: the most successful programmes are “those where courts have collaborated with a number of bar groups and community organisations to address the legal needs of their communities”.¹²⁵ Their effectiveness is therefore dependent on the existence of well-developed and well-funded pro bono services. In fact, part of the function of self-help centres is to unite qualifying candidates with pro bono or legal aid attorneys.¹²⁶

Back office space

- 5.10 There is a general trajectory away from the current dependency on paper files across the courts and tribunals.¹²⁷ This transition will have a profound impact on the back office and storage space currently required to process paper documents, freeing up space for other core facilities. This provides the potential for reconfiguration of the existing estate as we suggest in this report.
- 5.11 As the system transitions away from paper and towards digital documents, new spatial needs for IT systems and technical support will emerge. As we made clear in Chapter II, the introduction of technology into the courts and tribunals must be paired with sufficient training and IT support. This must include IT support in person, not simply through a helpline. The provision of well-trained and highly skilled HMCTS staff within the courts and tribunals will be essential to the smooth and successful operation of a smaller court and tribunal estate. The people filling these roles will still require a physical space from which to operate, which we suggest could be provided through flexible, open-plan office space.

¹²⁴ See note 116. See also Judicial Council of California, *California's Child Support Commissioner System: An Evaluation of the First Two Years of the Program* (2000), pp.73-4, available online at <http://www.courts.ca.gov/documents/cscr2000.pdf>.

¹²⁵ See note 122, p.14.

¹²⁶ See, for example, Self Help Center information for the Superior Court of California in the County of Stanislaus, available online at <http://www.stanct.org/self-help-center>.

¹²⁷ This is the view expressed by both Lord Justice Briggs in his *Interim Report* and the Leveson Review.

Judges' space

- 5.12** A notable proportion of the court and tribunal estate is occupied by judicial accommodation. As the HMCTS Reform Programme is designed, judicial space must be considered along with the rest of the estate, and should be subject to the same degree of flexibility. Historically, judicial requirements have been highly prioritised in the configuration of the estate. There needs to be a switch in the paradigm. As the work of the courts and tribunals changes, the ways in which the judiciary functions will have to adapt accordingly.
- 5.13** One approach to judicial space favours the creation of judicial 'hubs'. Such hubs would contain high-quality shared facilities in a central lounge-type space with an informal, social area as well as quiet working areas (designated for 'box work', which we expect will be digitised). This space could contain library material, computer facilities, refreshments and other amenities.
- 5.14** There are potentially significant benefits to a move towards more communal judicial working practices, for example:
- Fostering a more collegiate and supportive atmosphere;
 - Lessening the sense of isolation felt by some judges; and
 - Offering a more spacious and better quality working environment.
- 5.15** In addition to this central hub, there would need to be modestly sized, self-contained booths or offices which would be used for reading and research, drafting rulings, decisions and reserved judgments, conducting telephone hearings, etc. These should be private and soundproofed.¹²⁸ Our Working Party does not envisage that each judge would have her or his own designated space.
- 5.16** Our Working Party is cognisant of the differing needs of permanent and peripatetic judges. Judges with leadership, liaison or mentoring responsibilities – such as resident judges, designated family and civil judges, and presiding judges – need places outside of the courtroom itself for administrative purposes such as meetings with local and regional HMCTS staff, colleagues and representatives of organisations concerned with the justice system. For these judges, each will probably still need his or her own room.¹²⁹

¹²⁸ Dealing with confidential material isn't conclusive for the need for wholly private spaces, as illustrated by the ability of the Criminal Cases Review Commission and the Parole Board to handle similarly sensitive material in an open-plan environment.

¹²⁹ Additionally, the Working Party supports a move away from individual bathroom and robing facilities for judges. Whilst it is proper for judges to share private judicial bathrooms, we do not think there is justification for each judge having individual facilities. This is unheard of in other areas, for example in private legal practice and in certain court buildings such as the Royal Courts of Justice.

Intelligent design

5.17 The UK differs from many other jurisdictions in having a centralised design guide for courts. The *Court Standards and Design Guide* is now one of the most sophisticated and highly developed examples of its kind in the world. However, design guides are a relatively recent development, prompted by the centralisation of Crown Court design in the 1970s and the later assumption of central control for the design of the magistrates' courts. The UK design guide has a number of particular characteristics:

- An historic focus on Crown Courts means that security concerns that are not relevant to a large number of hearings have become central to government thinking. It is critical that the court design of the future should be driven by the needs of participants in the majority of cases, and not the significant security risks posed by a small minority of cases.
- Today, the guide represents a technocratic rather than a 'performative' brief, which focusses on the detail of finishes, locks and air conditioning. These matters are important, and specifications of this kind do lead to economies of scale, but there is a danger that form no longer follows function. In particular there needs to be a new focus on the performative elements of the guide in which emphasis is placed on the fair trial principles that should inform design.
- A related issue is that while professional users of the courts have been incorporated into court design, lay users are very rarely consulted. Consequently, some courts may function well for the professionals who use them on a day-to-day basis, but do not reflect the needs of those victims, witnesses, defendants, supporters and members of the public who play a vital role in the legal system but visit courtrooms and tribunals less often than others. Recent research on the link between design and due process suggests that a failure to place lay users at the heart of court design can alienate and marginalise them in ways that are not conducive to their effective participation in hearings.¹³⁰

5.18 As the Reform Programme progresses, HMCTS needs to revisit the design guide. Changing times and a changing justice system make the guide obstructive to the transformation required for the court and tribunal estate.

¹³⁰ See note 39, L Mulcahy. See also L Mulcahy, *Architects of Justice: the politics of court house design*, Social and Legal Studies, Vol. 16(3) (2007), pp.383-403.

HMCTS staff

- 5.19 If the court and tribunal system is to operate effectively and efficiently within a smaller physical footprint, the role of HMCTS staff within those spaces must increase. Cutting back on staff numbers is an obvious way to trim the budget, but we suggest that it has an adverse impact on the smooth operation of the system.¹³¹ We have taken evidence from a wide range of court users who have consistently highlighted the negative impact on the system of a reduced staff cohort. This reduction has also lowered morale amongst the staff themselves. Staff should be provided with roles and working conditions that increase job satisfaction.
- 5.20 The need for the enhancement of the court and tribunal service by its staff will grow as the HMCTS Reform Programme is implemented. The transition to a paperless system and an increased reliance on technology may mean that fewer employees are needed in some areas. However, the more intensive use of the estate and the introduction of systems like the Online Court will require adequate human support.¹³² We would hope that existing HMCTS staff would be redeployed within the court and tribunal estate to facilitate the potentially transformative effect of digitised case management and dispute resolution processes.
- 5.21 We have already discussed the importance of proper IT support in courts and tribunals. The Working Party emphasises the need to invest in well-trained and highly skilled IT support personnel who will provide assistance in person.
- 5.22 Overall, there should be a shift towards a more customer-focussed approach to staffing. This particularly applies to front-facing staff, including ushers and security personnel. Court users should be treated as clients who are being provided with a service, and that service should be delivered in a friendly and approachable manner. The reduced number of court staff impacts upon the ability of those remaining to achieve this aim. The presence of diversely skilled, trained and empathetic court staff is imperative to the efficient, effective and accessible operation of the court and tribunal estate.

¹³¹ There was a total reduction of 3,744 full-time equivalent posts by HMCTS in the Spending Review period 2010-15, the yearly pay bill reducing by £131 million at March 2015, see HMCTS, *Annual Report and Accounts: 2014-15*, p.32, available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433948/hmcts-annual-report-accounts-2014-15.pdf.

¹³² Confirming plans to cut 400 jobs in 2014, a HMCTS spokesperson said: “We are building a justice system which is simpler, swifter and more efficient. By using modern technology to reduce paperwork, we will be able to better meet the needs of those who use our services now and in the future”, see J Hyde, *HMCTS reveals plans to cut 400 court jobs*, *The Law Society Gazette*, 22nd June 2015, available online at <http://www.lawgazette.co.uk/news/hmcts-reveals-plans-to-cut-400-court-jobs/5049543.fullarticle>.

5.23 The Working Party proposes the exploration of a ‘concierge’ service in justice centres.¹³³ Navigating court and tribunal buildings is a daunting task, even for professional users. Upon entering a building, the user should be able to speak with someone who can sign-post appropriately, and explain basic processes.

Hearing Coordinator

- 5.24** At the core of our proposals is flexibility. The court and tribunal estate must become more flexible in order to provide the standard of service required of it. Flexibility implies movement and versatility, and will require that justice spaces can be reorganised in a simple and efficient manner. For this to be achieved, we propose the introduction of a ‘Hearing Coordinator’ to be responsible for ensuring that this is achieved.
- 5.25** A Hearing Coordinator would oversee the configuration of the court and tribunal building, ensuring that justice spaces are arranged to maximise the spatial potential of the building. The individual fulfilling this role should be specially trained and highly skilled. The skillset required is similar to that of a conference organiser, or someone who works in the hotel industry. She or he would be responsible for overseeing the use of the whole building at any given time, and for ensuring that each room is configured so as to both maximise overall efficiency, and provide the right facilities for each individual case.
- 5.26** There is of course much crossover between this role and that of the Listing Officer. In smaller Local Justice Centres, we envisage that the roles of Hearing Coordinator and Listing Officer would be rolled into one. It is critical to the success of this proposal that Listing Officers be provided with adequate training for their new responsibilities. In larger Local Justice Centres and Flagship Justice Centres it is likely that these roles would remain distinct, with the Hearing Coordinator serving as an assistant to the Listing Officer, with exclusive responsibility for spatial arrangements. In order to maximise the efficiency of both roles, there should be limited overlap between the tasks assigned to each. We envisage that the Listing Officer would evaluate the time and resource requirements of a hearing and then pass the matter over to the Hearing Coordinator, who would be responsible for ensuring that the correct spatial configuration and technical equipment were in place.

¹³³ A similar service is provided in NHS hospitals and could be used as a model.

Security

- 5.27 Often, hearing rooms are designed for the least likely eventualities – through, for example, the provision of space for large public attendance, or the adoption of high-security measures.¹³⁴ There is currently a presumption in favour of the highest specification of security in all rooms for all matters – as exemplified by the presence of the secure dock in the majority of criminal courtrooms. We suggest that justice spaces should instead be designed to accommodate the type of case actually taking place within them, with pragmatic consideration of security and other issues.
- 5.28 Security clearly is, and should remain, a concern in the courts and tribunals, particularly for cases in which violent outbursts are likely or where emotions may run high. We therefore propose that there be a two-door minimum for all justice spaces, providing an escape route for the judge and the other people in the room. For high-security matters, it may be necessary to have as many as four doors. The provision of security staff and mobile panic buttons for judges will also be primary considerations. Further to these measures, our Working Party proposes that HMCTS explores the relationship between safety and security and how security measures affect participation in the justice system.¹³⁵

¹³⁴ In the event that a case suddenly attracts considerable public attention, consideration could be given to offering video transmission to another room in the court building.

¹³⁵ Research into these issues in the Australian context is discussed in A Wallace et al, *Reconceptualising Security Strategies for Courts: Developing a Typology for Safer Court Environments*, International Journal for Court Administration, Vol. 5 No. 2 (2013).

- 5.29 A key consideration for the increased flexibility of formal spaces is the use of the dock in criminal trials.¹³⁶ JUSTICE has recommended the abolition of the dock in criminal trials in England and Wales. *In the Dock: Reassessing the use of the dock in criminal trials* raises concerns in relation to the protections afforded by Article 6 of the European Convention of Human Rights, and recommends a presumption that all defendants sit in the well of the court, behind or close to their advocate.¹³⁷ The implementation of these proposals would free up space in criminal courtrooms, thereby enabling greater flexibility. While JUSTICE would argue that it is never acceptable to place defendants in a secure dock, it is acknowledged that some cases require stringent security measures. However these cases are rare and we suggest that the proportion of courtrooms capable of providing such security measures – including security personnel and the use of discrete constraints – should pragmatically reflect the proportion of cases which demand them. Our Working Party notes that the dock is not the only structural security measure to have an impact on flexible configuration; the jury room, segregation routes and the route from the cells all have an impact on how buildings are designed.
- 5.30 Our Working Party is conscious of the unpredictable risk levels associated with family law matters, due to their highly emotive nature. We suggest that whilst high levels of security and formality are not appropriate for many family matters, special consideration must be given to this category of case when deciding upon security measures.
- 5.31 In the age of digitisation, cyber-security is also an increasingly important consideration. As digitised processes are rolled out, and more matters are dealt with online or remotely, it is crucial that appropriate cyber-security is provided. For many years, digital technologies have been relied upon by the private sector, including for the transfer of confidential legal material. Our Working Party is confident that cyber-security should not be a major concern if the connections and services used are secure, and of the standard expected in other areas.

¹³⁶ For discussion see L Mulcahy, *Putting the Defendant in Their Place: Why Do We Still Use the Dock in Criminal Proceedings?*, *British Journal of Criminology* 53(6) (2013), pp.1139-1156.

¹³⁷ See note 7, Recommendation 1, p.34.

Environment

- 5.32** The quality of temperature, ventilation control and lighting has the capacity to make a significant difference to the experience of all court and tribunal users, and to enable all participants to maintain concentration and active engagement. In addition, decent ergonomic seating would make an appreciable, and much appreciated, difference. In many traditional courtrooms, little has changed since Lord Beeching, in his Commission recommendations, complained of seating that allowed “numbness to spread from bottom to top”.¹³⁸
- 5.33** It is important that court and tribunal buildings also provide practical services to support users. Attending court in any capacity is a stressful experience which should not be made more difficult by poor services. Desirable services include:
- Cafés and casual seating spaces;
 - Consultation and other meeting rooms;
 - Prayer rooms and other quiet spaces;
 - Child-friendly spaces and childcare where in demand;
 - Separate spaces for parties and vulnerable witnesses; and
 - Secure lockers for personal belongings such as coats, umbrellas and bags.

Funding may not extend to providing all of these services in smaller justice centres. However, we feel strongly that as work becomes more centralised in larger centres, HMCTS should do its utmost to make such provision in all Flagship Justice Centres. That being said, not all customer service facilities have to be provided by HMCTS. Some may be outsourced to the private sector. Hospitals and other public services often have cafés or shops run by private providers, and this model could easily be more widely applied to the court and tribunal estate.

- 5.34** It is incumbent upon HMCTS to ensure that all of its buildings and services comply with the Equality Act 2010. All users should be accommodated, ensuring proper access to justice.

¹³⁸ See note 27, Beeching Report, p.128, at [403].

Securing the future

- 5.35** Throughout this report we have stressed that the HMCTS Reform Programme needs to look beyond the short term towards the needs of the future – that is, some decades from now – to achieve the new and improved facilities we envisage for the reconfigured estate. Sale receipts from the disposal of unwanted buildings are unlikely to fund any new-build programme in its entirety. HMCTS must identify those locations in England and Wales, whether urban or rural, where the new specifications of justice spaces and associated services are to be provided, so that any community infrastructure requirements can be incorporated by the relevant local planning authorities into the strategic planning for their areas, and set out in their Local Plans. Once the need for new justice spaces has been identified in the Development Plan it can be included in the Community Infrastructure Levy (CIL) charging schedule, and so attract contributions towards its provision from the CIL charges on new developments, supplemented as appropriate through obligations in Section 106 Agreements.¹³⁹
- 5.36** Furthermore, new uses can be introduced into former court buildings – particularly those which are listed as being of special architectural or historic interest, where demolition and redevelopment of the site may not be an option. Conversion to commercial use as restaurants, shops, or residential accommodation would ensure their preservation and generate funds towards re-provision of the court estate. Successful examples of the re-use of court buildings include the Courthouse Hotel, formerly the Great Marlborough Street Magistrates’ Court (a Grade II listed building),¹⁴⁰ and Jamie’s Italian Cheltenham, which occupies a former County Court.¹⁴¹ Both retain many original features. Another is the Victorian public library in Alderley Edge in Cheshire, where the developer provided, on a different site, a modern purpose-built library incorporating up-to-date technical infrastructure and facilities.

¹³⁹ Section 106 of the Town and Country Planning Act 1990 as amended.

¹⁴⁰ <http://www.courthouse-hotel.com/history-en.html>.

¹⁴¹ <https://www.jamieoliver.com/italian/restaurants/cheltenham/>.

Expert advisory panel

- 5.37 We propose the establishment of an expert advisory panel to guide the design and implementation of the HMCTS Reform Programme. The insights of professionals from the hotel industry (for customer service), the technology industry, architects and interior designers, among others, are invaluable to the optimal execution of the programme. A holistic perspective on how best to deliver justice through the court and tribunal estate is essential to the success of this project.
- 5.38 Our Working Party was pleased to learn that HMCTS is planning to set up a group of a similar nature.

VI. CONCLUSION

- 6.1 This report is our initial contribution to the discussion on the reconfiguration of the court and tribunal estate in England and Wales. Throughout its deliberations, our Working Party has viewed its work as part of an emerging and ongoing conversation. Our primary aim has been to present a principled approach to the transformation of the court and tribunal estate and to suggest new ideas for tackling this challenging task.
- 6.2 We acknowledge that this report does not touch on every topic in this vast area. The impact of courts' and tribunals' configuration and design, where they are located, and how users access them is far-reaching, with implications across the justice system. We reiterate the caution expressed in the Introduction to this report: without an ambitious, sustainable and user-focussed vision for this project, we risk further undermining access to justice through the closure of courts and tribunals across the country.
- 6.3 Our approach has been that, in essence, a court is what a court does. As the work of the courts and tribunals changes over time, so must the buildings and infrastructure that support them. By interrogating the assumptions that underpin the current configuration of courts and tribunals, we have been able to identify a number of factors which should guide the adaption of the estate for the 21st century. These include the evolving nature of dispute resolution as more than a uniformly adversarial process; the importance of the greatly expanded and improved use of IT, both inside physical court and tribunal buildings and through new working methods such as remote participation and the Online Court; the imperative of putting users at the heart of court and tribunal design and configuration; and the need for the whole enterprise to be fashioned in a sustainable way.
- 6.4 Having identified the essential principles which should underpin reform, we have made recommendations for giving them effect in the reconfigured court and tribunal estate. Flexibility must be the foundation of any approach to reconfiguration, given the need for the estate to adapt to changing working practices, technology and funding. The justice spaces model offers a solution to the rigidity that currently constrains the estate. It also ensures proportionate justice, with appropriate levels of formality for each case type.

- 6.5 We propose taking a holistic view of the overall estate, one which utilises technology and reengages with local justice, and so achieves greater access to justice – both in terms of the physical accessibility of the estate, and access to the justice system itself.
- 6.6 We urge the judiciary, HMCTS and the Ministry of Justice, the Government and the broader legal profession to give serious consideration to our recommendations. Our proposals offer the seeds of change that could grow into a real transformation of the way in which we administer justice through the courts and tribunals in England and Wales. Decision makers ought to capitalise on what is truly a once-in-a-generation opportunity to make our courts and tribunals work better for the people they serve.

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Alexandra Marks

May 2016

VIII. ANNEX

Image from early magistrates guides

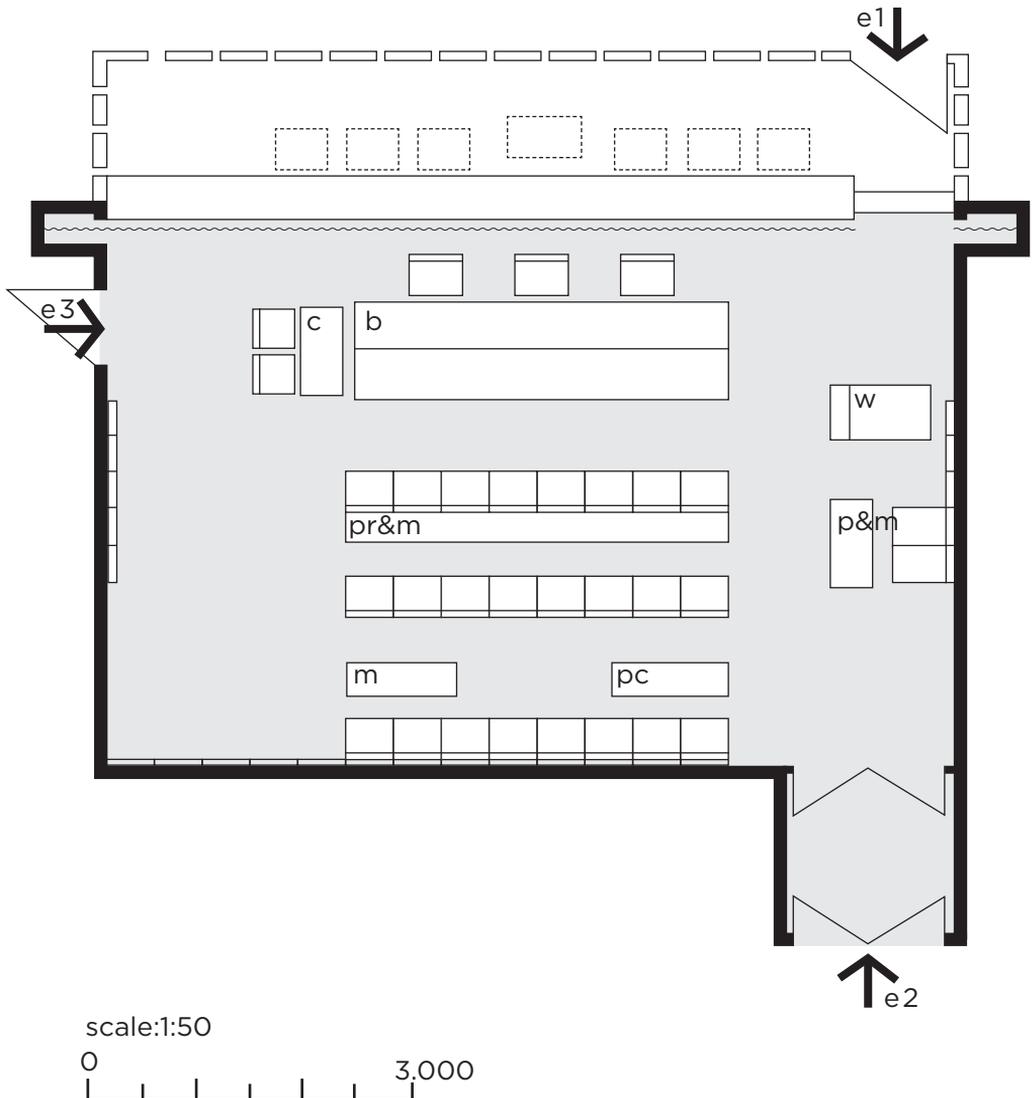


Fig. 1: Multipurpose court showing a typical arrangement for juvenile cases.
Design Study No 2: Magistrates Courts Working Party Report, (GLC, 1969), p.74.

VIII. ANNEX

Image from early magistrates guides

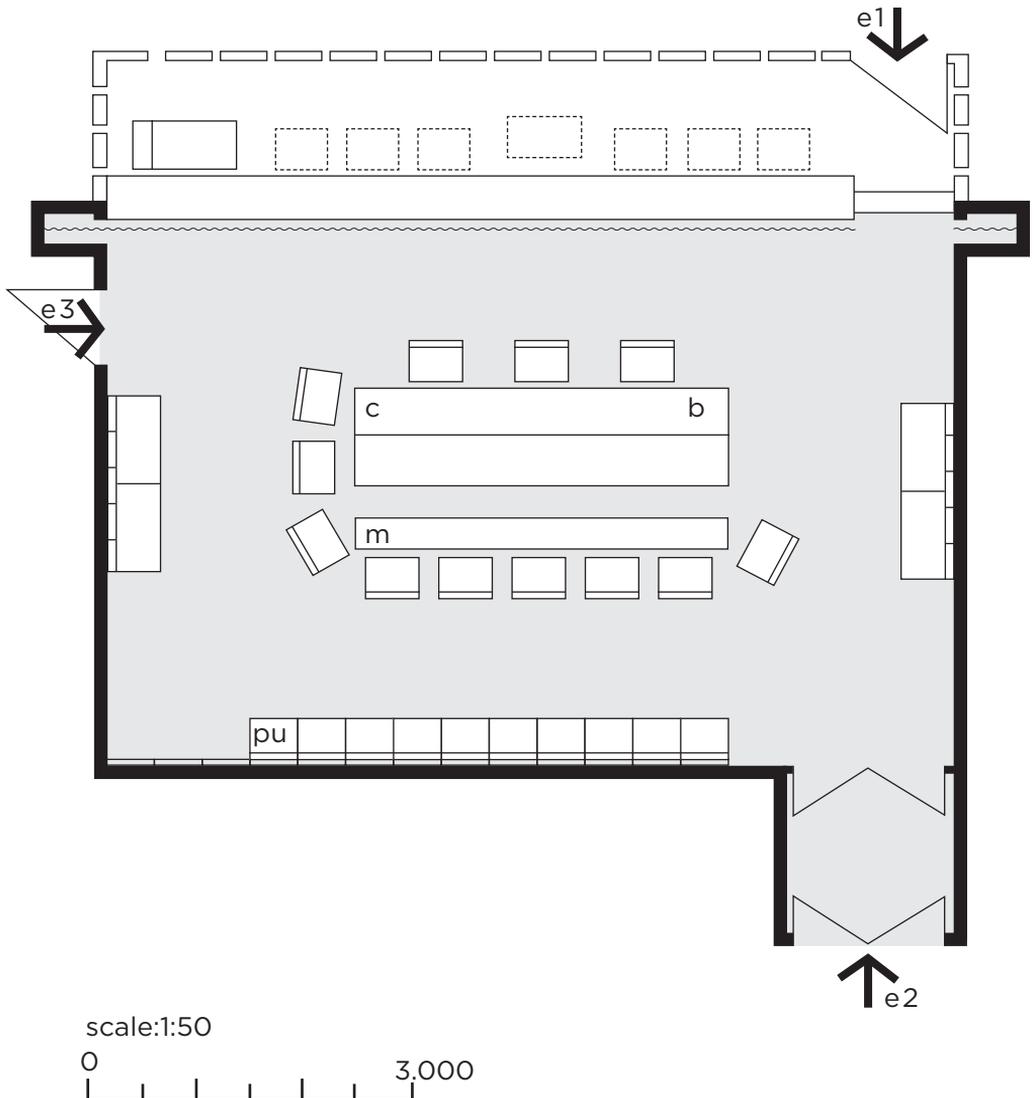


Fig.2: Multipurpose court showing an arrangement for matrimonial cases.
Design Study No 2: Magistrates Courts Working Party Report, (GLC, 1969), p.75.

VIII. ANNEX

Image from early magistrates guides

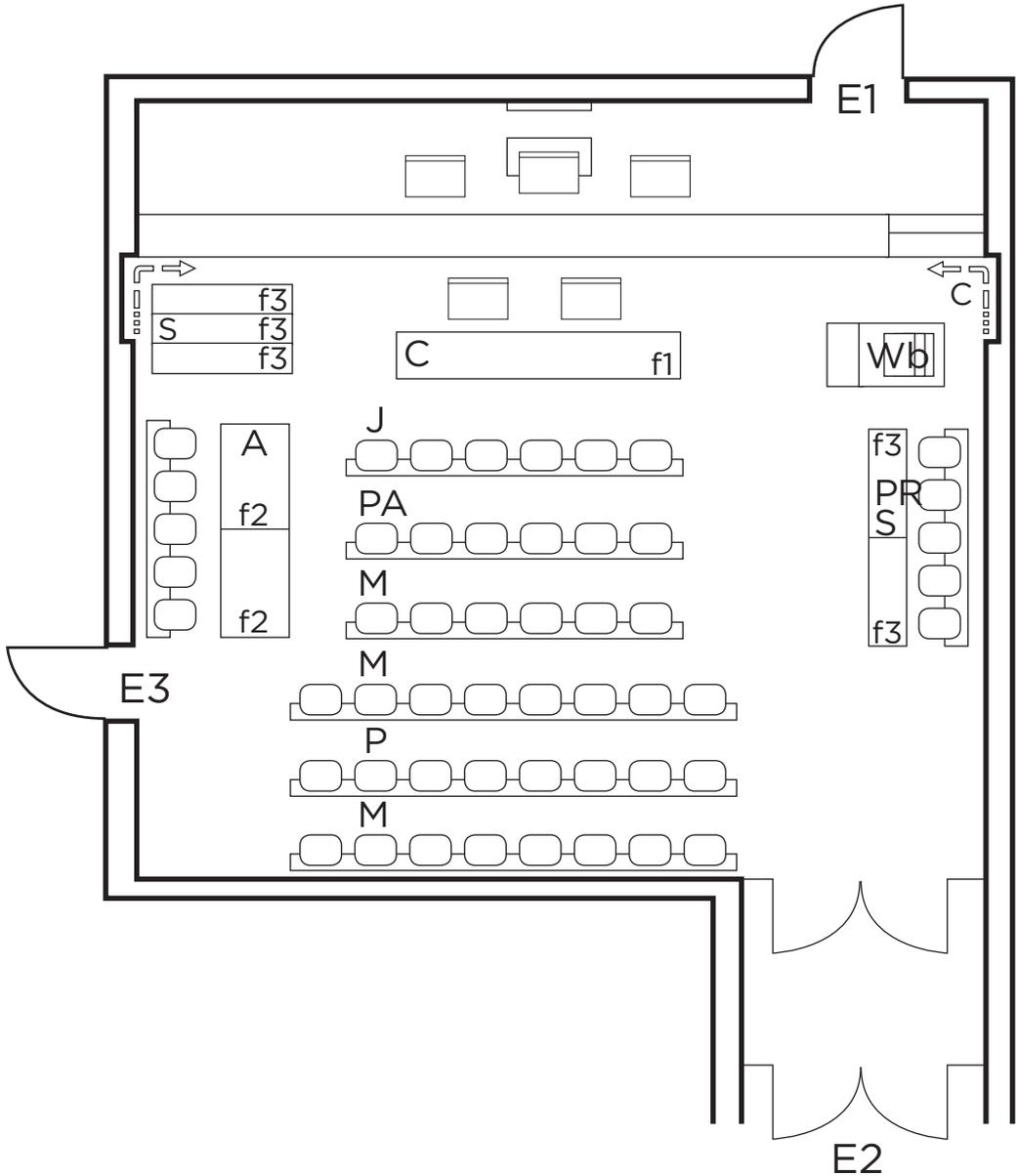


Fig. 3: Informal Court, Youth peak use, Type C2 (Layout B).
Magistrates Courts Design Guide 1991, (Home Office, 1991), p.131.

VIII. ANNEX

Image from early magistrates guides

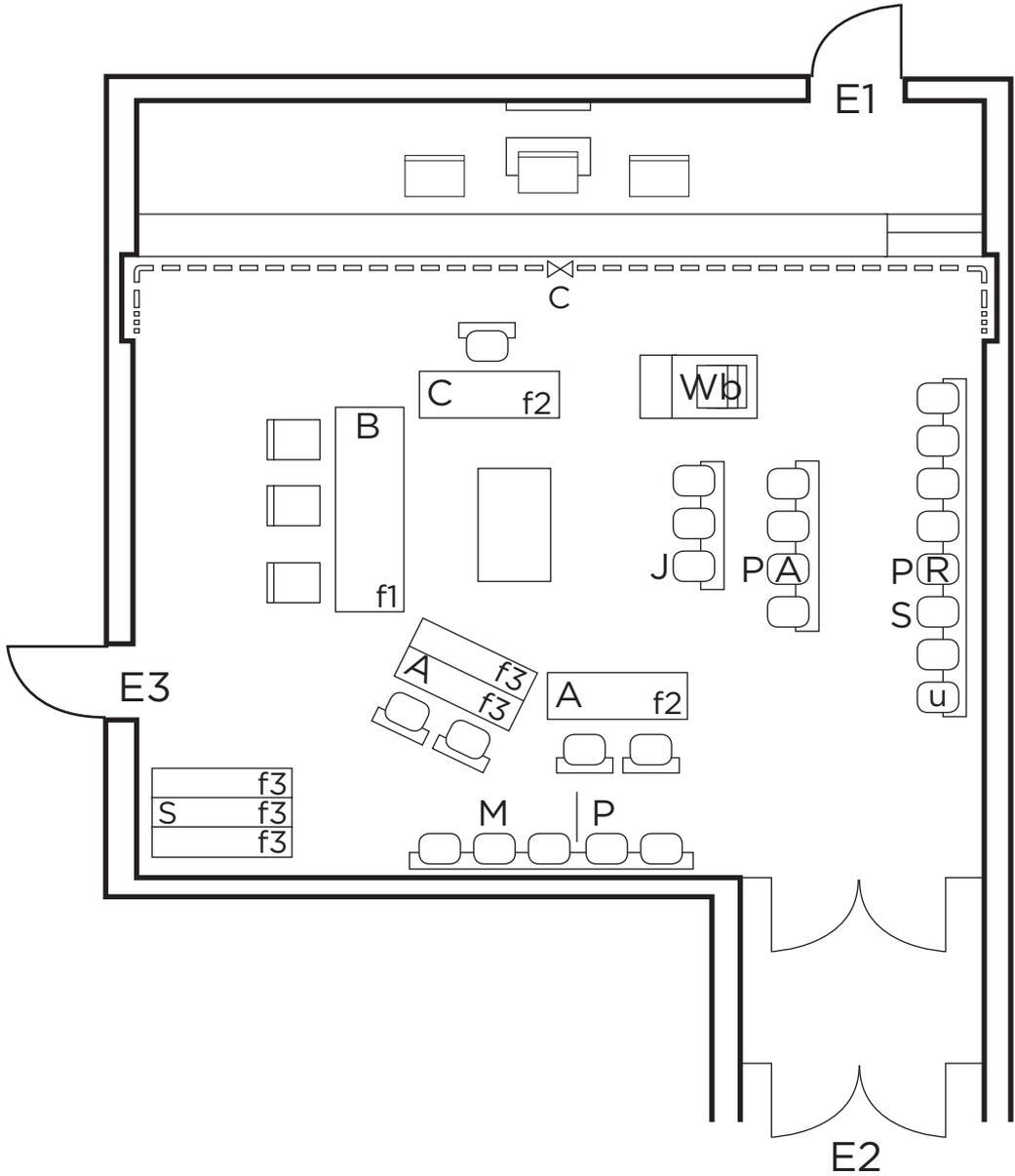


Fig. 4: Informal court, Youth - low numbers, Type C4.
Magistrates Courts Design Guide 1991, (Home Office, 1991), p.133.



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