



29<sup>th</sup> February 2016

## **CJC response to the Interim Report for the CIVIL COURTS STRUCTURE REVIEW (CCSR)**

The CJC welcomes the interim report for the CCSR as a timely contribution to the public policy issue of how the civil justice system should be configured and reformed to meet the needs of its users and the society it serves.

Lord Justice Briggs is to be congratulated for having undertaken such a comprehensive piece of work in such a short timeframe. We accept that the review is running in parallel with the HMCTS reform programme, and while it will help to inform that review it is inevitable that some operational decisions will be taken ahead of the CCSR process being completed.

The CJC's ODR Advisory Group is preparing a further note on the Online Court proposals.

We have provided comments on each of the chapters in the interim report, as set out below. Lord Justice Briggs is now Vice-Chairman of the CJC but has had no input into this document.

### **Chapter 1 – Introduction**

We welcome Briggs LJ having assembled a team with greater County Court experience and an official from the HMCTS reform team, and for having adopted a consultative approach to the review.

We agree with the approach of the CCSR in terms of applying the same principles as those being followed in the HMCTS reform, but the focus on purely civil justice will serve the jurisdiction's interests in the wider process. We note the paucity of statistical data available to Briggs LJ, and hope that he can be supplied with all relevant material, even if it is not in the public domain.

The CJC strongly welcomes the emphasis on digitisation of court processes and ending the current dominance of paper-based systems with all the resource and time problems this gives rise to. We will cover this point in more detail later, in particular regarding the 'digitally excluded'.

In terms of the timing of a review, whilst civil justice has been subject to a succession of major reforms, the transformation that HMCTS reform will involve necessitates this complementary review, and other aspects e.g. enforcement are ripe for review.

## **Chapter 2 – The Current Structure**

The single County Court has served to provide a more coherent structure, but for many court users the complex relationship between levels of court and the role of the specialist courts remains a mystery. Users, and the system, rely on the courts and judiciary to navigate cases through the most appropriate channels.

As regards the County Court the optimal approach is probably the current system which does not have specialist courts as such, but does offer specialist judges and specialist lists. As Briggs LJ notes the more pressing issue is the division of work between the tracks. The pressure in recent years has been to push the small claims limit upwards, without perhaps considering the impact on the fast track. The presence of an Online Court will further complicate matters.

Briggs LJ highlights all sorts of inconsistencies in the jurisdictional limits, and this is an area which would benefit from analysis and an exploration for evidence in relation to the current system and any proposed reform.

As a general rule the structural complexities and nuances are best considered by the judiciary, legal profession and Civil Procedure Rule Committee initially and these will be best qualified to comment at this stage.

However, we hope that the successful online claims systems that operate now will provide encouragement of what can be achieved ahead of the Online Court.

We also strongly support the expansion of the small claims mediation scheme as a timely and effective means of early dispute resolution.

In terms of the contact centre, the consultation for the review provides an opportunity for court users to comment on their experience of calls being routed away from the local court handling the case.

In relation to the boundaries between the civil courts and tribunals, the CJC working group on Property Disputes has been exploring this in relation to property disputes. This will help to inform the CCSR.

The CJC is also preparing further analysis of the use of the ADR in the civil court process, and the findings will be fed into the CCSR. In principle the CJC is supportive of early neutral evaluation.

## **Chapter 3 – Work in Progress**

The CJC is heavily involved in a number of aspects following on from the implementation of the Jackson Costs Reforms, and in particular anticipates extensive work in 2016/17 on the issue of fixed recoverable costs. We will be responding to the Department of Health's consultation on fixed costs in clinical negligence cases once it is published.

The Council has made numerous consultation responses on the issue of court fees, and will continue to express concern at the aggressive programme of increases.

In relation to litigants in person the CJC's work and efforts to co-ordinate activities is acknowledged in the CCSR and will remain a priority in the Council's business plan.

We strongly back all efforts to support LiPs and to make services as accessible as possible.

#### **Chapter 4 – The HMCTS reform programme**

The CJC warmly welcomed the Government's confirmation of a substantial investment in IT and modernisation of courts and tribunals. The HMCTS reform programme has not been a particularly visible process in these early phases, other than the consultation on the Court estate (to which the CJC responded). We hope and anticipate that there will be formal consultation on significant changes in due course, accepting the four year funding window set by HM Treasury. The CCSR provides opportunities to comment, but is not the same as formal public consultation.

The CJC strongly supports the need for transparency and adherence to the principles of open justice, which will present challenges in terms of accessing hearings, but may make access to documentation too readily available without suitable controls. Appropriate safeguards will be required for court users, for example, ensuring access to a case document is via an application to the court rather than a click of a mouse.

#### **Chapter 5 - Strengths, Weaknesses, Opportunities and Threats**

This section of the interim report provides an excellent and objective analysis of the civil courts in England and Wales on the cusp of the HMCTS reform programme. It offers a context (stark in places) in which the rest of the report and the reform proposals should be assessed.

Reviews are commissioned to address problems, and it is therefore welcome to find one that extols the strengths of a system and how best these can be preserved and indeed developed.

That said, no punches are pulled at the weaknesses, and the commentary on access to justice is searing. The CJC has long sought to improve the position of litigants in person in a complex and expensive environment, and that is a major theme here. The status of civil justice in comparison with other jurisdictions is probed, and the passages on enforcement reflect user concerns.

The section on opportunities offers some solutions to address weaknesses in the system, and digitisation of processes offers the greatest prospect for reforms that improve the service to users as well as address the defects.

The section on threats offers helpful words of caution given the scale of reforms proposed and their reliance on efficient technology. The cultural changes are at least as important, the fact that – unlike a transport route – the service cannot be taken out of use while repairs are being undertaken. This leads to a hope that the four year window for Treasury funding will not be closed before the effects and benefits begin to bed in.

#### **Chapter 6 – The Online Court**

The model proposed in the interim report is essentially the three stage process advocated in the Susskind CJC working group report which we have previously

advocated. We reaffirm our view that the Online Court should have a separate set of rules and run in harness with the main court structure.

The review provides an opportunity for a more considered look at issues such as whether categories of case can and should be exempted from the Online Court, and whether it should be compulsory for other categories of case. These issues are likely to be controversial. The arguments on all sides will need to be aired and then analysed. The CJC has always recommended piloting of what is a radical shift in mainstream dispute resolution.

### **Chapter 7 – Case Officers**

The CJC is always supportive of initiatives to improve the efficiency of the civil justice system, but we support the broad approach advocated in the review of the judiciary determining the scope of the functions of officials, and there being activities reserved for judges. Furthermore we support the suggestion that for some functions it will be essential that case officers are legally qualified.

In any event training and supervision of case officers, and the ability for parties to have decisions reviewed by judges needs to be an integral part of processes.

### **Chapter 8 – Number of Courts and Deployment of Judges**

In comparison with some of the other areas covered in the interim report the issues raised in this chapter appear less pressing for many users of the civil justice system. Clearly the structure of the courts and deployment of judges play an important role, but the existing structure offers great flexibility – it does not inhibit the creation of new specialist courts (as in planning or intellectual property) and cases find their most appropriate level and home.

### **Chapter 9 – Rights and Routes of Appeal**

The CJC is aware of the work taking place to relieve the significant and increased pressures on the Court of Appeal. This work is taking place in parallel with the CCSR, and we are alive to the points made in paragraphs 9.33-9.35 on the danger of adding to the pressures on the already heavily loaded High Court and County Court, especially given the limited Civil Circuit Judge resource. We hope that one of the effects of the review will be to promote the needs of the civil jurisdiction with the provision of increased resources.

### **Chapter 10 – Enforcement of Judgments and Orders**

An effective enforcement system underpins an effective civil justice system, and in an increasingly competitive dispute resolution system, enforcement is what marks the courts out from some other options. The interim report reflects on decades of tinkering with the enforcement process and concludes that a more fundamental reform is required.

The proposal of a unified system is in many respects attractive in terms of delivering a more streamlined and efficient system. As Briggs LJ comments, there has not been wider consultation on this, and it is imperative that the views of all sides are obtained,

particularly the creditor industry and agencies who advise debtors. Nor will the second phase of the review offer adequate consultation, although it will enable an early forum for a debate of the issues. It should, however, significantly inform policy makers ahead of formal reform proposals and consultation.

### **Chapter 11 – Boundaries**

This is an area of great topicality, and of direct interest to the CJC with the current working party on property disputes. That work is highlighting issues about the most appropriate court or tribunal process for resolving particular types of disputes and the interlocking nature of problems parties can face both on claimant and defendant sides.

It seems to the CJC that the guiding principle for this work should be the interests of the users – they will be less concerned with the court or tribunal that resolves their dispute, and more with whether it does so fairly, professionally and with the least possible cost or delay.

The CJC is also in the process of setting up a working group to examine some of the issues around ADR and its role in relationship to the work of the courts. The group's thoughts and findings will be fed into the CCSR.

### **Chapter 12 – Next steps**

The short timescale for the review underlines that it will be of great value, generating debate and consideration of major issues in the civil courts. It will offer the first rather than last word for how these are to be addressed. Much of the work is in any event being worked on in the HMCTS programme, although greater transparency would be welcomed in respect of that work.

Consultation on the CCSR is not the same as a properly constituted Government consultation on a formal set of detailed policy proposals on these important issues.

That said, some of the CCSR's work concerns matters that can be taken forward – for example by HMCTS operationally or by the judiciary in terms of deployment and jurisdictional boundaries.

The CJC will do all it can to assist or facilitate the review, and stands ready to do so in whatever way Briggs LJ requests. To reiterate, the guiding principle needs to be serving the interests of the user and in harmony with the administration of justice.