**INSTITUTE OF EMPLOYMENT RIGHTS PCS briefing**

**Access to justice**

PCS welcomes the opportunity to address the IER Conference on 24th January 2017.

Whilst the Conference will primarily be concerned about any impact on employees and their rights and entitlements, the current changes in Justice provision and access to, should be seen in the wider context of Government Cuts and its Austerity Programme.

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A combination of court closures, cuts to legal aid, the introduction of employment tribunal fees, increases in civil fees and loss of staff have massively removed access to justice.

In his 2015 annual report, the former Lord Chief Justice, Sir John Thomas, warned: “Our justice system has become unaffordable to most. In consequence there has been a considerable increase in litigants in person for whom our current court system is not really designed.”

The proposals put forward in the Transforming Justice paper in September 2016, are predicated on a political choice to cut costs, rather than on improving access to justice. The fact that this was a joint statement issued by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, appears to undermine the fundamental constitutional principle of the separation of powers.

HMCTS plans to introduce changes by 2020 which will result in major job losses due to the closure of many of the existing courts, the lessening of judicial oversight, an over-reliance on digital solutions and a shift from local justice delivery to just five or six contact centres.

As part of the budget cuts to the Ministry of Justice, the budget for Her Majesty’s Courts and Tribunals Service (HMCTS) has been cut by £157m (16 per cent) between 2010–11 and 2015–16, and for the Crown Prosecution Service (CPS) the cut has been £129m (21 per cent) in the same period.

These budget cuts have led to cuts to staffing. At HMCTS staffing has been cut

by 22 per cent during this period, and by 25 per cent at the CPS.

Transforming Justice will see 200 court and hearing centre closures and the loss of 7,000 posts. A significant number of posts will be shifted to multi-jurisdictional contact centres. As stated by the Lord Chief Justice the technology will drive the changes and Civil Courts will take over all aspects of Civil Law including Tribunal Work.

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Restrictions to access to civil legal aid since the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) came into effect, has led to a rise in people attempting to represent themselves in court. In [a survey of staff](https://www.tuc.org.uk/sites/default/files/Justice_Denied_Report.pdf) carried out by the TUC last year, 87 per cent of respondents, stated that the increase in litigants in person has had a detrimental impact on the ability of family and civil courts to deliver justice fairly, effectively and efficiently.

There has been a consistent decrease in the number of applications for legal aid received and granted when the applicant is a victim of domestic violence when comparing pre- and post-LASPO periods. TUC analysis shows that between 2011–12 and 2015–16 applications for legal aid relating to domestic violence decreased by 16 per cent, and applications granted fell by 17 per cent. Many victims of domestic violence who have been refused or are ineligible to apply for legal aid have faced cross examination by the perpetrator in the family court. Courts have been used as a means of further the abuse.

It is worrying then that a Government review into the impacts of LASPO has not yet been forthcoming and it is only recently that the issue regarding cross examination has been acknowledged by the government. PCS have been raising this issue since the changes were proposed.

Most recently the matter of Civil Court cross examination of victims of violence has been raised in the HoC. The Government has promised to come back with changes to regulations by Easter. But this is an issue due to the cut backs in LA and will worsen I our view as proper legal representation is taken out of the Justice System.

**Court closures**

The decision in February 2016 to close 86 courts and tribunals in England and Wales represents a serious threat to people’s right to access to local justice.

Since that announcement was made the government has refused to rule out further closures and has consulted on closing two further Magistrates’ Courts at Hammersmith and Camberwell Green. Another court threatened with being downgraded is Telford Magistrates’ Court, which is currently the only court which deals with criminal cases in the Shropshire, could see all administration and background work moved to the West Midlands.

In total the latest round of closures represents just under 20% of courts and tribunals and comes on top of the previous court estate rationalisation programme which resulted in the closure of over a third of the then existing magistrates' and county courts.

HMCTS pointed to the underuse of particular courts as a reason for taking the decision to close them. However, this conveniently ignores the fact that policies like cuts to legal aid and increased court fees are removing people’s right to local access to justice. Courts being underused is often down to a shortage of staff and Judges rather than hearings. This government has deliberately driven down court usage through the centralisation of work and the removal of local access.

The more recent proposal to close Hammersmith Magistrates’ Court in London proves how cost savings are being put before access to justice issues when considering estate reductions. The rationale offered earlier by HMCTS for closing Feltham Magistrates’ Court was that there was capacity for Hammersmith Magistrates’ Court, described by HMCTS as a “modern purpose-built courthouse” to absorb its work. There is no rationale to close a modern and purpose built courthouse unless it is to realise assets.

Of the 86 courts and tribunals announced for closure in February, we were assured that at least eight of these would not go ahead until suitable alternative local provision has been established.

The alternative provision being put forward so far is largely reliant on unproven, untested methods of digital technology.

PCS welcomes a commitment to supporting victims and witnesses, but it appears that solutions being considered in relation to the provision of alternative provision are ignoring the needs of defence witnesses and defendants. The defendant is usually the main witness for the defence. The principle of equality of arms appears to have been forgotten.

As stated Transforming Justice will see more hearing centres close and users are pushed to digital solutions.

**Virtual courts**

PCS is calling for improvements to technology to be developed in collaboration with staff and fully tested before being rolled out across court services.

However, the government is pressing ahead with closures at a time when a recent TUC study found that only 4% of court staff agree that IT in courts works effectively. That survey took place at a time that ensured its results could reflect new technology already introduced.

Camberwell Green Magistrates’ Court was one of the first courthouses in the country to pilot the virtual court and consequently it has recently received a substantial amount of investment in terms of digital technology. This court is now proposed for closure.

Court staff report regular technical problems with links whether to vulnerable witness rooms, prisons or to police stations. All technology needs to be robustly tested and objectively evaluated in terms not only of its reliability but the impact it has on the quality of evidence that is given and how that evidence is perceived before any decisions are made to further remove access to local and face to face justice. Independent scientific evidence demonstrates the importance of body language in terms of communicating. Body language can be key in determining the credibility of a person's evidence.

Anyone remanded in custody has few opportunities to attend court in person. With the reduction in publicly funded representation people who may not be able to express themselves well are already trying to deal with their future liberty or family issues over a video link. Accessing copies of papers in any format over a link is already difficult.

Giving evidence by video link and conference call can create barriers that do not exist with face to face communication. Unreliable technical equipment compounds the difficulties that such individuals already face and reduces rather than increases access to justice. There is an inherent risk in any form of telephone or online hearing of ensuring that the person responding is the party to the proceedings and that they are not subject to undue inappropriate influence.

It is not uncommon in criminal proceedings for the Crown Prosecution Service to make an application for a witness to give evidence by video link at the court only for that witness to indicate that they would prefer to give their evidence in the court room to ensure that they give their evidence in the best way they can. Ensuring that the quality of evidence received is high should be a paramount consideration to avoid miscarriages of justice.

PCS is concerned that the term 'digital by default' is being interpreted as digital without exception. Products being designed for use by our members are not being designed with any consideration of how disabled staff can use them. We are concerned that there is no reference in the statement to ensuring that staff and the judiciary can work safely in courts, hearing centres and other venues being considered for the determination of proceedings. The majority of the court rooms within our estate do not meet basic standards for safe computer based working.

PCS is opposed to the principle of conviction online. The convicting of an individual is a judicial act and cannot be delegated to a computer which is unable to recognise if a plea is equivocal or to reflect mitigation in terms of sentence. The ramifications of having a fixed penalty and/or a conviction can be far reaching even in relation to non-imprisonable offences.

PCS do not accept that steps are being taken to ensure cases are being heard close to where they have been committed. Changes to listing patterns and centralisation have in many cases seen cases removed from the locality in which they are alleged to have taken place. This can reduce public confidence in the rule of law.

**Access to justice being denied for the “just about managing”**

When addressing the nation for the first time as Prime Minister from the steps of Downing Street, Theresa May claimed her government would be for the “just about managing” and would not be “driven, not by the interests of the privileged few”. In reality this government’s policies are increasingly pricing out the very people, she claims to represent, out of our justice system.

LASPO reforms saw an inevitable decrease in people being able to access help and/or representation. Although the government set up a mandatory telephone gateway for legal help for debt (as well as special educational needs and discrimination), FoI data indicates that there has been a 99 per cent drop in cases since 2011–12. This drop in cases does not represent a drop in need at a time when there are now more than a million families with a household income of £30,000 in extreme debt.

Since employment tribunal fees up to £1,200 were introduced in July 2013, the number of claims have dramatically reduced. Overall cases have fallen by 70 per cent with the number of race discrimination hearings down by 50 per cent. The number of sex discrimination cases has also fallen dramatically.

PCS remains opposed to the existence of the fees and we are concerned that they have been set at too high a level. Level 1 cases, for example unlawful deductions and non-payment of wages, have an issue fee of £160 and a hearing fee of £230. Claims are often for amounts below the fees set so this is leaving many people having to concede valid claims. This can be a particular issue concerning unpaid wage and holiday pay claims as many of these fall short of the fees charged. There was an 85% drop in such claims in the year after the fees were introduced.

Combined fees of £1,200 for higher value claims, such as unfair dismissal and discrimination cases, are also significant sums when compared to the potential awards. In 2014/15 the median award for an unfair dismissal case was £6,995 and for a race case it was £8,025. People seeking to bring these types of cases are often out of work so are unlikely to be able to afford the fees.

The government appears reluctant to share the findings of its own review into the impact of the charges, with its publication woefully overdue.

The latest attack on workers’ access to justice are hidden in the government’s proposals to clampdown on perceived fraud in whiplash claims. The proposals include a baseless **500%** increase to the small claims limit for all personal injury claims, whether they occur on the road, in the workplace, or anywhere else.

If all claims up to £5,000 (the small claims limit currently stands at £1,000) were to be heard through the small claims route as proposed, then the injured worker would have to choose between not taking a claim, taking a claim without representation, or employing a solicitor in the knowledge that the costs would leave them with very little or may even exceed any compensation they get.

If the proposals are allowed to go ahead, they will make it much more difficult for workers to get the money they are entitled to when their employer’s negligence injures them or makes them ill.The proposal to increase the small claims limit will only serve to further line the pockets of already highly profitable insurers and their grossly overpaid chief executives. Meanwhile, nearly one million people injured, not just on the roads but anywhere, including at work, will lose their right to free or affordable, independent legal advice.

The government’s own impact assessment states that the NHS would incur a cost of around £9m per annum, while insurers will be gifted £200m per year, assuming the insurers pass on 85% of what they save in reduced premiums for motorists. So while our overstretched health service would take a hit it can hardly afford, insurance companies and their highly paid executives will receive a significant windfall.

Once again the profits of the privileged few will be put before the ability of the many to get access to justice when they need it most.

**Conclusion**

Included with this paper is a copy of the Summary of the consultation of the future ararngements for managing ET and EATs and the PCS Response to the Transforming Justice consultation paper. It is without doubt the biggest change in the way Justice is administered in 150 years. In our view the consultation has been inadequate and HMCTS are proceeding to make the changes required via a number of projects.

As stated over 7000 posts will be cut and 200 locations will close. Without doubt there will be compulsory redundancies.