HOUSE OF COMMONS

Justice Committee

Oral evidence: Work of the County Court, HC 414

Tuesday 7 May 2024

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Watch the meeting

Members present: Sir Robert Neill (Chair); Bambos Charalambous; Rachel Hopkins; Edward Timpson.

Questions 1 - 31

Witnesses

I: Dr Natalie Byrom, Senior Research Fellow, Faculty of Laws, UCL; Elizabeth Gallagher, Barrister, Temple Garden Chambers and Member at the Personal Injury Bar Association; Emily Giles, Housing Lawyer, The Hyde Group; and Matthew Maxwell Scott, Executive Director, The Association of Consumer Support Organisations.

Written evidence from witnesses:

Personal Injury Bar Association (WCC0029)

The Hyde Group (WCC0049)

The Association of Consumer Support Organisations (WCC0039)

Examination of witnesses

Witnesses: Dr Byrom, Elizabeth Gallagher, Emily Giles and Matthew Maxwell Scott.

Chair: Welcome to this session of the Justice Committee, and our inquiry on the work of the county court. Welcome to our witnesses, whom I will come to shortly. Some of you are familiar faces, and some are not. We just have to deal with Members' declarations of interest. I am a non-practising barrister and a former consultant to a law firm.

Edward Timpson: I am a barrister with a current practising certificate, but not undertaking any direct court work. I am a former Solicitor General, former chair of CAFCASS, former chair of the national Child Safeguarding Practice Review Panel, and my brother is chair of the Prison Reform Trust. I am also advising Ministers on family justice policy.

Bambos Charalambous: I am a non-practising solicitor.

Q1 **Chair:** Thank you very much. Welcome back to the Committee, Mr Charalambous. It is good to see you again.

Perhaps I can start off with a general thought, beginning with you, Dr Byrom. Natalie, it is good to see you. Then we will come to the rest of the panel. Do people really understand the importance and significance of the work of the county court?

Dr Byrom: Thank you so much, Chair, and thanks for asking that question. It is incredibly important, before we proceed with the discussion, to set out what is at stake. The county court is often rather dismissively referred to as the part of the justice system that deals with high-volume, low-value problems—so things like civil money claims, debt, personal injury, medical negligence, housing and antisocial behaviour. I would argue—and you will all know this from sitting in your constituency surgeries—that this description is wholly inaccurate. The issues that the county court deals with day in, day out are high-volume, high-impact problems for the economy, for public trust and confidence in the system, and, most importantly, for the people who experience them.

On the first point, at the risk of embarrassing you, Chair, you have more than once powerfully articulated the importance of the civil justice system and the county court in particular to the local and national economy. I could not put it better than you, so I shall not try to.

On the second point, as suggested by the "high-volume" descriptor, the civil justice system deals with more people than any other part of the justice system. While criminal justice attracts all the headlines, it is the experience of going to the county court that is most likely to shape people's broader perceptions of our legal system. This matters a great deal because we have a large and robust body of research to indicate that people's experience of the fairness and efficiency of justice system processes, when they encounter them, shapes their trust and confidence in the law and the legal system more broadly. I cannot stress enough

that we cannot be complacent about this. In 2024, a tracker poll published by YouGov found that less than half the population of England and Wales is confident in the judicial system.

Finally, and most importantly, the county court matters because the problems that it exists to resolve and the issues that it seeks to adjudicate on are extremely consequential for the people who experience them, affecting lives and livelihoods. I do not need to remind anyone sitting around the table that we are in the midst of a cost of living crisis. More people than ever before are struggling to make ends meet. People are living pay cheque to pay cheque. Research from the Resolution Foundation tells us that fewer than half of working-age households have three months of income saved. In quarter four of 2023 the value of the vast majority of money claims, or claims for damages—for personal injury or otherwise—were worth less than £5,000. Those amounts might seem small to some people, but for many families—arguably, for most families—they are too large to lose. There is a great body of research that indicates how financial stress contributes to problems of mental health, suicidal ideation and all those things.

Those are some indirect consequences for health and wellbeing of the issues that are dealt with by the county court, but there are also direct consequences, particularly in relation to housing. Awaab Ishak should be at school now, but the fact that he is not, and that he died in horrible circumstances just after his second birthday, is an indictment of issues with enforcement that have been described by the senior judiciary as the Achilles heel of the county court system.

Earlier this year ITN reported on the number of children injured in inadequate temporary accommodation; 55 children have died since 2019—most of them under one year old. So, yes, the county court does deal in high-volume cases, but the issues that it deals with have high impact, and the stakes, should the system continue to underperform as it does at present, could not be higher. That is why it deserves your attention, and why we are all here today.

Q2 **Chair:** Thank you, Natalie. We have your report, "Where has my justice gone?" You are, of course, a senior research fellow at the Faculty of Laws at UCL, but you published it with the Nuffield Foundation, in March.

Can I come to Matthew Maxwell Scott? You are executive director of the Association of Consumer Support Organisations. From your perspective, and that of your members as users of the system, what is your assessment? Does it get enough recognition, and what could be done to improve things so that it gets more resource, perhaps, or more attention?

Matthew Maxwell Scott: Thank you, to you, Chair, and the Committee, for holding this inquiry. It is incredibly important. As Natalie has said, civil justice is a part of the justice system that gets very little attention in public policy and media terms, and all the rest of it; but to consumers—to our fellow citizens—it is the most likely place for them to access the legal system and the courts.

Last year there were 1.7 million civil court claims. That is below the peak, which was about 2.1 million in 2006. In comparison, receipts in the magistrates courts, where the vast majority of criminal cases are heard, were at 1.37 million in 2023. So there is a significant difference. The civil courts are where justice should be happening. The problem—and this is why the inquiry is being held—is that it is taking a very long time for cases to come before a judge.

Compared with 2019, it takes 24.7 weeks longer for a fast-track or multi-track claim to reach trial. That is half a year—an additional half a year in five years. Clearly, the pandemic has had an impact, but we need to remember that, during the pandemic, claims numbers fell precipitously. We are seeing far longer delays in a system with far fewer claims in it. That suggests administrative failure on a monumental scale.

My members represent consumers in the civil justice system, generally as claimants but sometimes as defendants.

Chair: Can you give me a sense of what sort of organisations they are?

Matthew Maxwell Scott: Absolutely. We have law firms, legal expenses insurers, charities, road safety bodies, medical report organisations, rehab firms: all the different people that you might use if you were making or, perhaps, defending a claim—for example, personal injury or monetary claims. If in doubt, they are normally lawyers, but not all of them are, by any means.

As a consumer, you can operate as a litigant in person. You can throw yourself on the mercy of the courts. Perhaps some of the encouragement for doing that is to blame for some of the problems we have now, because, understandably, people struggle with legal systems. My members are the sorts of people who will support you through the process and help you to make the claim. Obviously, they need claims to be successful to have a viable business. If claims do not come to court, ultimately they are not being paid for their work, which means that they will not invest in the system. They will not invest in training, IT and all the rest of it, because they cannot guarantee that they will have a successful business at the end of it. That means that people's access to justice suffers, because they cannot get the support that they need to go through the system.

So there are some significant problems. I am sure that my colleagues here will bring attention to them. There are huge delays in a system that is receiving a far lower volume of cases than it once did.

Chair: I am going to come to Elizabeth Gallagher, next. You are representing the Personal Injury Bar Association. I know you are in practice, in chambers, yourself.

Elizabeth Gallagher: That is right.

Q3 **Chair:** Is there anything from your perspective as a personal injury specialist?

Elizabeth Gallagher: Yes, members of PIBA, as we call ourselves, represent both claimants and defendants in personal injury matters, so we are able to assist in understanding the significance and impact of problems with the civil justice system from both perspectives. In a personal injury context, claimants would be individuals, for the most part, and defendants may be individuals, companies or local authorities, but, generally, behind all those people or bodies is an insurance company. We can also assist with the business and commercial impact of the lack of funding and resourcing—the fact that, really, the civil justice system just does not function effectively.

These are moments of great personal significance for the individuals involved. Again, in a personal injury context we are talking about people who have suffered injuries. Maybe those injuries are short-lived, but they can be extremely significant, with a life-changing impact. In cases where an injury has resulted in death our members may even be representing bereaved families. The stakes are really high, for everyone who is involved in the civil justice system. As barristers, we are really at the coalface in terms of how things are playing out on the ground, and we see a system that does not work effectively.

Q4 **Chair:** Thank you. Emily Giles, you are a housing lawyer with the Hyde Group—so that is housing issues and possession matters.

Emily Giles: Yes. As a large provider, Hyde is a member of the G15, which represents 15 of the largest housing associations. Prior to working in housing associations, I worked in a local authority. The experience that our particular association suffers at the moment will mirror what is felt in the other organisations.

There is a fact that is missed, which goes back to the point about the high impact: we have to use the civil courts for effective tenancy management. A lot of that stems from antisocial behaviour. It can involve possession proceedings and injunction proceedings. As to the impact when there are delays in litigating those kinds of cases, there are severe consequences for our residents, estates and communities. I am sure that members of the panel, in their constituency business, will have been approached by persons who were feeling unhappy with the way a matter was being dealt with.

Very often, we will have been progressing a matter and engaging with the relevant statutory support agencies. We will obviously look to the maxim that litigation should always be seen as the last resort. We progress to the point where we have to bring a claim in court; but suddenly brakes are slammed on and we are unable to progress matters in an effective and just way. That can be difficult to manage in terms of our communities. There are also situations where we are increasingly worried that a really serious incident could occur, because we are trying to mitigate awful and often serious criminal and unlawful behaviour, which may be related to organised crime and things like that. We are prevented from protecting people and managing our stock effectively.

Another point is that a function of a social housing provider is to house people. We will have nomination agreements with local authorities. Massive delays to our ability to take possession action and recover our property—regardless of the type of tenancy breach or rent arrears—mean that the charity loses a lot of income. Income will be lost in increased rent arrears and in use and occupation charges, and because we often take a pragmatic approach and do not pursue our legal costs against defendants. If they are vulnerable persons we are not going to see that money back, and it is not cost-effective for us to go down the route of pursuing that money. As a charity we see increases in our costs and expenditure, which obviously puts huge pressure on the resources that we are trying to provide in a housing crisis.

Q5 **Chair:** Thanks. You all set out, in your written submissions, some of the details and statistics of what you see. This may seem a bit left field, but someone has raised it with us. The county courts were set up in 1846. Does the name "county court" help or not? I am not sure I can think of a better one, but does it cause a bit of confusion as to what on earth it is?

Elizabeth Gallagher: I would not say it causes confusion. I do not think it necessarily explains what the court does, but on behalf of practitioners I would probably say we would rather see real change than superficial name change.

Q6 **Chair:** It does not make much difference, does it? It has to be called something, at the end of the day.

To go back to the point about delays, which you have all referred to, I know, as a London MP, that all the statistics seem to show a particular problem in London and the south-east; and is that the case in some other big urban areas, or not? Can you identify other parts?

Matthew Maxwell Scott: There is some quite good data in the evidence that shows a postcode lottery. There is bound to be an element of patchiness, but it is quite extensive. London and the south-east are very bad, and some are less bad, but it is that patchiness and the notion of local fiefdoms controlled by the judiciary that seem to produce very different outcomes. Some of the national firms that do cases nationally have good data on that. It is an issue, definitely.

Q7 **Chair:** The geographic distinctions, if you like, were abolished a while ago, weren't they? It is a unified county court. You can issue anywhere, but there seem to be very great variations in how long it takes. Natalie, what is your evidence on that?

Dr Byrom: Comparing regional performance and court-by-court performance is really difficult, because of the way the statistics are currently presented. Concerns have been raised in some quarters that the data on delays is misleading. I do not consider it misleading but I do consider it incomplete. To give full disclosure, I currently chair the data working group for the Civil Justice Council, although I am speaking in my personal capacity today. One point that has been raised, which I think has merit, is that we lack the data to understand the composition of cases that

are dealt with by the county courts across different court centres. This makes it really difficult to compare performance between courts.

We also lack good data to understand the workload of the judiciary and court staff. To give one example, in 2020 there was a need to understand the split between civil and family work by district judges working in the county court, as there was an understandable desire to prioritise people involved in care proceedings and children matters, but the civil judiciary had concerns about the impact on delays on the civil side. At the time, it was found that what comprises a judicial sitting day was not recorded consistently. The notion of a sitting day is in fact recorded differently across different jurisdictions.

I believe, and I am sure that if you put the question to them HMCTS and the MOJ would be happy to confirm, that they are finally introducing guidance on standardised time recording, but it is fair to ask why that has taken four years. It is fairly basic. Without the data, it is impossible to understand and address the drivers of delay and manage resources effectively. It is the equivalent of trying to run a hospital without knowing what operations your surgeons are performing, or whether you have enough capacity to meet the demand for different kinds of treatment. We would not accept this in the private sector or in any other public service, and we should not continue to accept it for our courts.

The other issue that is often raised—and a line is included about it in the civil justice quarterly statistics—is that the figures on delays are inaccurate, because they do not take into account the issue of settlement. I understand why there is concern about this, but I am more concerned that we know so little about why people settle, or the amounts they settle for. There is all the difference in the world between cases that settle because both parties have been supported to understand the merits of their case, and have made an informed compromise, and cases that settle because delays have meant that one party—usually the weaker or more vulnerable one—has run out of resources and cannot afford to wait any longer, or is simply so brutalised and confused by the system that they just give up. The former is one possible outcome arising from an effective civil justice system. The latter is a symptom of a system that is at best failing and at worst abusive to some of the most vulnerable people, who rely on it to do better.

In talking about delays, a lot is obscured by the fact that, despite the amount that has been spent on digitising the courts and the investment in data, we have such poor data to help us robustly understand what is happening across the justice system.

Q8 **Chair:** When the MOJ gave evidence they suggested that claims that go to full trial—and the distinction has been made by the Master of the Rolls and others about cases that settle—have "many user-driven factors that will determine timeliness", that "HMCTS has no control over". Can anybody tell me what that means—the "many user-driven factors"?

Matthew Maxwell Scott: It means nothing whatsoever.

Elizabeth Gallagher: No, I do not know whether there was an intention to suggest that somehow people intentionally drag things out between themselves. That is certainly not my experience. My experience is that people want resolution.

If I could pick up on the point about settlement and delay, one of the significant experiences of our members would be that parties settle because they have been waiting too long for their cases to be resolved. They turn up at court. They are in a block list. They are told by their barristers, "You're probably not going to get heard today." They cannot afford to take another day off work, but they also cannot cope with the emotional impact of the uncertainty of that. It is very stressful for lay people to go to court, even on matters that are, objectively, not of great significance. They really do matter to the people involved, and the mental health impact of not getting your case resolved is significant.

Q9 **Chair:** Thanks. Emily, we have heard evidence from Matthew and others about regional variations. Is there anything you want to say on that?

Emily Giles: Our geographical area is quite significant. We go as high as Peterborough, and out to Kent, and down as far as Southampton. One of the major issues for us is when trials are vacated literally the day before, because of lack of judiciary. That has happened three times in Plymouth, recently. We also see significant delays within the courts in London and the south-east.

You rightly pointed out that the county court is a national court. When you bring a claim you go on to the HMCTS website, and there is a function called "court finder". You put in the postcode for your party or property and, rather than getting one result, often you get several results. Someone who is litigating against a social tenant will think, "We would like the nearest court to where that person lives, because they are on limited means and need to be able to get to the hearing." They will send the papers to that nearest court, because it is in the dropdown list. A few days later, the papers are sent back: "This is the wrong jurisdiction. Can you please sent it to another court?" There is no point in going back to them and saying, "You could have issued this and transferred it over." To be honest, if they did that, we would probably lose the papers in transit, anyway.

Q10 **Chair:** Does that happen much—losing the papers?

Emily Giles: It does happen a lot, yes. That is the reality, especially for our defendants, in our matters, and our witnesses. I have mentioned antisocial behaviour cases, and Elizabeth has touched on that as well. Witnesses are asked to keep coming back, and things are not progressed. They go part-heard.

The worst example I had was a case issued in Chichester. We turned up for the first hearing and were told that no judiciary were available and it would be moved to Worthing. With the logistics of moving everyone to Worthing, it was not going to happen on the same day, so the matter was adjourned. We all turned up at Worthing and were told that no judiciary

were available and it was going to be heard at Brighton instead. Our client office was having to deal with some very distressed neighbours who had agreed to come forward and give evidence. That case is still ongoing litigation, 18 months down the line, and we are trying to resolve the matter. That is the impact of the delays on us.

Chair: Okay. I will bring in Mr Charalambous quickly, and then Mr Timpson.

Q11 **Bambos Charalambous:** It is just about the staffing. I suspect that the reason for problems in the south-east is that there is a high turnover of staff in the Courts Service, and some are not very experienced. There is also a huge reliance on temporary staff to do the work. I wondered what your thoughts were on the impact of that.

Also, we have heard about digitisation of the issuing of claims online, now, but I am not sure that the back office stuff has caught up. Judges still use case management systems that are 30 years old, and they still have to transcribe orders by hand. I wondered what you thought about that as a cause of delay. I was shocked at how long it takes for some orders to be issued. It is astonishing.

Emily Giles: As I mentioned, before I came into housing associations I worked in a local authority, which meant that I worked in one court for over 10 years. This is going back 13 years now. During that time, you got to know the court staff incredibly well—the ushers, the listing clerk and other staff. All those people—very skilled, valuable and experienced people—have started to disappear to a significant extent. They are being replaced by agency staff because there is not the remuneration or morale to keep people in place. That becomes very frustrating when you are trying to progress matters and get things done.

The writer, lawyer and commentator David Allen Green wrote a piece recently about the paper system, and the way things are moved around the courts, being like something from a Heath Robinson drawing—or, worse, something from "Wallace & Gromit". I would suggest another example: if you have ever seen the Indiana Jones film, "Raiders of the Lost Ark", there is a bit at the end where the Ark has been put into a crate and you see someone wheeling it into a storage facility; then the camera pans back and it gets bigger and bigger. That is what I think the court filing system is like. That is the impression we get. There are mountains of paperwork among which are our pleadings, our applications, our trial bundles, and our witness statements, which very often are missing when we turn up at court to proceed with the hearings.

Bambos Charalambous: It is still paper-based in the back office.

Emily Giles: Yes.

Chair: Perhaps, Emily, when you get a chance after the hearing, you might be able to find some statistics about how often you find papers going missing in transit.

Emily Giles: I think it is probably most hearings.

Chair: Are you serious?

Emily Giles: Yes. We take duplicates with us, now, to avoid that. It is standard.

Chair: Does that fit in with your experience as a practitioner?

Elizabeth Gallagher: As well as being a barrister, I sit as a deputy district judge, and on a normal sitting day there will be at least one file where papers are missing. It will be more than that; it will be several files. It is a routine occurrence. The knock-on consequence of that is that, as the judge may make orders based on the paperwork in front of them, an order may be effectively wrong, because there is not full information. The party on the receiving end of that order then has to make an application to have it set aside, and pay a fee for the privilege of doing so. That requires another hearing slot in front of a judge, so someone can undo what has gone wrong. That is all because the paperwork was not there to begin with.

Chair: A couple of quick ones, and then I will move on to Mr Timpson.

Matthew Maxwell Scott: I do think this is a problem of an analogue system in a digital age. I am sure that one of the recommendations we would all make would be a faster progress towards digitalisation, and getting away from the vast Indiana Jones-style piles of paper would be a very good thing, as well as a value-for-money thing and an environmental thing. One of my members said the other day that with the new portals and so forth you can issue very quickly; it takes five minutes. But, on average, the letter telling you that the issuing has happened takes five months to arrive, and arrives on paper.

As to the postcode lottery, I have some statistics about the average time taken to hear cases. At Dartford it is 829 days—the worst; and Blackpool is the best, at 79 days, but even that does not sound very good to me. I think part of the problem—I will be careful what I say—may be that judges, though expert in the law, may not necessarily be the people best placed to manage the courts and the staff. HMCTS may need a different approach in future to using its resource. Indeed, could more junior resource be used for some things that take away from the time of learned judges? There must be a better way and outcome than what we have.

Elizabeth Gallagher: I think a significant factor in the delay in the system is one that has nothing to do with inexperienced court staff. It is a simple fact that there are not enough judges to hear the cases. That is why everything is pulled for lack of judicial availability. It is a euphemism for, "We do not have enough judges sitting to hear the number of cases that need to be disposed of." That is the issue, because there are administrative parts of the system that staff can deal with, but, ultimately, there are matters for the judiciary, and a judge needs to look over the file. If there are not enough judges—which there are not—even when those judges are appointed, they are not given the opportunity to sit, and therefore capacity is lacking.

Chair: Natalie, is there anything you want to say on that?

Dr Byrom: It is a source of considerable frustration to me, and, no doubt, to Members, that we are now eight years on from the publication of the vision for the courts "Transforming our justice system". We have spent over £1 billion in that time. Only 24 of the 44 projects that were meant to be in scope as part of the HMCTS digital reform programme have been marked as complete, but we do not have enough information from the Courts Service even to be able to assess what "complete" means—whether those projects have delivered fully against their original scope—because HMCTS has not recorded things fully.

That is a catastrophically huge amount of money, when we think of all the other things that we know about the justice system, and the resourcing that it needs. I am afraid to say—perhaps we will come on to this later—that the county court has borne the brunt of the failure of the reform programme to deliver on its promise. A lot of what you will have seen and what is observed here is because of the fact that we are dealing with systems that are far from being end-to-end digitised. We are dealing with off-ramps and on-ramps, and back into paper, which creates huge inefficiencies for people.

Q12 **Edward Timpson:** Can I delve a bit deeper into the functionality of the county court? We heard a very good example of why adjournments may take place, but they seem to be fairly endemic across the county court system. For example, between November 2022 and March 2023, according to a London chambers that did some research that you may be aware of, 372 cases—multi-track, fast-track and small claims—were vacated three days or fewer before the trial; and, in fact, for 296 it was just the day before.

You have already touched on judicial capacity and papers not being in order. What are the main other reasons for adjournments happening at the last minute and what do you think can be done about it, to try to reduce them in the future? Elizabeth, you might be a good person to start.

Elizabeth Gallagher: This may well be my chambers. I cannot remember. We did contribute some data. It is possible that a hearing could be cancelled at the last minute because the parties have settled, everybody is happy and that is the end of it; it could be because one of the witnesses is indisposed at the last moment, and nothing can be done about that. Other than those sorts of reasons, in my experience and that of members of my Bar association, it is usually because of judicial unavailability when the court will over-list in expectation that not every case will go ahead. What happens is that the cases stand up and there is not enough time in the day for the judge to hear all of the matters in front of them.

Edward Timpson: This was what you referred to earlier as block listing.

Elizabeth Gallagher: Yes. Some courts, despite over-listing, will still make you go to court. To give you an example, Bedford county court

routinely lists 10 or 12 fast-track trials in front of two district judges. A fast-track trial is usually at least half a day, often a day, of court time.

Edward Timpson: Would they all be listed at 10 o'clock?

Elizabeth Gallagher: Yes. Everybody turns up. If you have ever been to Bedford county court, there are about three conference rooms. I have sat on the stairs multiple times at Bedford county court because there was nowhere else to sit. If things are cancelled, in a way that is frustrating but at least it does not involve all the parties and lawyers trekking to court and waiting around all day. That is when you get the situation where people settle, usually at under value, because they do not want to have to go through that again. In my experience, these late adjournments, which then have a knock-on impact in terms of litigation costs as well, are due mostly to the failings of the court system.

To give an idea of what the cost impact of that would be, from the perspective of the parties, by that point their lawyers are already engaged. They owe their lawyers money, even if the case is cancelled the day before. If you are an insurance company, for example, and your personal injury road traffic accident matter is pulled the day before, you will still have to pay your lawyer out of your own pocket. If you are a claimant, so a real person, you will usually be subject to a no win no fee agreement with your lawyer. It may be that you go to trial eventually and lose and, therefore, do not have to pay your lawyer, but the nature of the fixed-cost system that we have in place to deal with lower-value personal injury matters means that historically—this rule is now being changed—even if you win and are successful, you will recover only one fee for your lawyer. Even though your lawyer had been engaged twice, let us say, first when your case was cancelled and, secondly, when it eventually was heard and you would owe them twice, from the other side you would be getting only one fee to cover those expenses. There is a knock-on impact and complete lack of accountability from the justice system side of things; there is a disregard and expectation that this is just what you have to put up with if you choose to bring a claim in the civil courts.

Q13 **Edward Timpson:** Are there any listing strategies that you have seen in some courts that tackle this in a more constructive way—for instance, listing cases much earlier to try to filter out unmeritorious claims that may otherwise end up in the system for far too long, or ways of using the judicial capacity much more effectively and efficiently? Are there things we should be looking at from a positive perspective that would demonstrate that you can bear down on some of the pressure on the county court?

Dr Byrom: It goes back to my basic point that we lack the data to do a proper time and motion study, and understand how we might improve the way cases are listed. Until we have that and are able to understand how long it takes for judges to hear a given type of case, with different characteristics, it is very difficult to run the system as a system. I could make some suggestions to you about things we might do, but they would

not be based on anything other than instinct, which makes it no better than what we are doing at the moment.

Elizabeth Gallagher: I think that is fair.

Matthew Maxwell Scott: A lot of what we have heard, put very eloquently, reflects what an imbalance there is in the system between claimants and defendants and the unattractiveness to a claimant in going to court: the delays, the cancellations and all the rest of it. It does make them much more prone to taking perhaps lower settlement offers. We have to ask: does the current, very poor system benefit anyone? Yes, it does in effect benefit defendants. Because we also operate in a lot of these cases in a fixed-fee environment, there are two benefits for defendants, so there is an inequality of arms here that should be of considerable concern.

Q14 **Edward Timpson:** Is there anything within the Civil Procedure Rules that could help both with that type of situation, where claimants feel that there is in-built bias through delays within the system, and, more generally, around timeliness? There are guidelines, but it seems that in many cases— for instance, 30 weeks between a case management conference and trial— it simply never happens on a regular basis. Is there more that can be done in that respect?

Elizabeth Gallagher: In some cases, where claims are really over the time limit, they are given priority. That is important and helpful, although by that point they have already had to wait far too long. I would agree that those time limits are not adhered to; they do not even seem to be an ambition. I see cases routinely taking much longer than that.

Emily Giles: In terms of my area of work, we have a specific practice direction and pre-action protocol for possession claims brought by social landlords. It is part 55 for possession claims. A lot of the timeframes within that are not adhered to and it makes it very difficult for us. We used to be able, in circumstances where, say, properties had been taken over by trespassers or unauthorised occupants—something very separate from squatters—to bring a case. In my experience, you could get a case before a judge and get possession and recover that property within four to six weeks; now we are talking about four to six months. You look to the practice direction to give you guidance and when it falls very short it will form part of a formal complaint, but it will not necessarily have any effect.

Q15 **Edward Timpson:** One of the changes that the Government are bringing in is around mediation and expansion of the civil mediation service to try to reduce delays in the county court and get earlier settlement of small claims, particularly those under £10,000. Will that have any impact? If so, what is that impact—positive or negative?

Matthew Maxwell Scott: Mediation and other forms of alternative dispute resolution have to be part of the solution here. There are areas of law—lower-value financial claims and also some family matters—where the Government are mandating mediation. They are anticipating a very

large increase in the size of the mediation market, which we all hope they are capable of doing. There was a very good piece in *The Times* last week advising people on how they might become a mediator. It is something you might want to consider in case things go wrong later this year. It has to be part of the solution but it is not the only part.

We have seen in the past that some defendant organisations—insurers and others—are sceptical about mediation because they see it as a layer of cost, not necessarily a way of reaching actual resolution. There are models that could address that, but they will not necessarily work. In family, which is not what we are here to discuss today, if you are bringing together a couple who have made it very clear they no longer wish to be in the same room together, mandating that they do that might not add anything much. Therefore, it has to be part of the solution, but only part of it.

Elizabeth Gallagher: In a personal injury context, as PI lawyers we are quite good at settling claims when they can be settled and we do so without the need for a third party. Some claims just legitimately cannot be settled because there is a triable issue. There is no compromise or fudge that is palatable to the parties and they are entitled to bring that dispute to court. So, in a PI context, if something is getting to trial, generally that is because it cannot be settled and needs to be resolved by a judge.

Wearing my other hat when I do sit as a judge, I can see that mediation may be beneficial in other areas of law where there is scope for compromise, particularly where individuals are unrepresented—so they are litigants in person—and they do not have that external perspective of a lawyer to say, "Come on, can you see the wood for the trees?" I think that bringing in a third party can be beneficial.

Matthew Maxwell Scott: I give you one example of mediation. When the Government introduced the official injury claim portal for lower-value road traffic accidents, their original proposal was to have mediation or arbitration as part of that and to have an ADR function within it. They abandoned that because they felt there was not market capacity, yet just a short period later they are saying that there is market capacity for all the things that we have mentioned. I think they did miss a trick there and we would ask them to reconsider that. So far they have not said that they will, but it is a good opportunity to prime the market.

Dr Byrom: Can we return to Lord Justice Briggs's proposals in 2015? As part of those proposals, the idea was that we would introduce an element of early mutual evaluation which would support litigants in person. The idea was that we would have a solution to explore to help people understand what issues were at stake in their claim. Lord Justice Briggs is on record as saying that that was the main part of his recommendations; it was the one part of his recommendations that would have expanded access to justice.

Nine years on, we have not had an official statement from the Government saying they will abandon this, but we have seen in the changes detected and in changes of tone in judicial speeches and communications made by HMCTS that it appears they are rowing back from their commitment to deliver this. This is one of the big problems, is it not? Where is the accountability for the things promised that have not yet been delivered?

Q16 **Bambos Charalambous:** To go back to access to justice—this is particularly for Elizabeth but also for the whole panel—can you tell us a little more about the impact that you think the delays in the courts have had on access to justice both for defendants and claimants? What are your views on the delays causing an impact on access to justice?

Elizabeth Gallagher: As I have already said, there is an issue with people settling at under value because they cannot cope with the process any more. Those are individuals settling their claims at under value, but it also works the other way. Commercial entities—for example, insurance companies—may just think they will cut their losses and pay something, maybe when the merits of the case are not so good. Yes, there is a resolution, but it is not a satisfactory one, and it is not really justice because it is not about what is right on the facts. Very often, it feels as though people are having their arm twisted up their back.

Matthew Maxwell Scott: On the point about market confidence and the availability of professional representatives, we will see a shrinking of the availability of lawyers, or lawyers choosing to do other areas and not going into lower-value civil work because they simply cannot make a living out of it. Therefore, people will have to abandon their claims all together, despite them being very meritorious, appear as litigants in person or use lower-quality professional support which might not have the same outcome that it should, leading to under-settlement and possibly further clogging and friction in the court system, which is not something judges want to see.

Q17 **Bambos Charalambous:** I want to ask about value for money. We have seen fees increase year on year, some quite substantially. Do you think that the money raised through court fees bears any relation to value for money for the Courts Service?

Elizabeth Gallagher: No.

Emily Giles: This forms part of how we do our case management in my team. If you bring a claim, you sit there and wait to get a notice of issue and then a notice of hearing. Obviously, we experience delays and do not get those. Very often, how we can determine whether the claim has hit the court and been dealt with is by looking at the invoice we receive for our PBA accounts. Those are the accounts we set up for direct debits so that the fees are taken. This is not an exaggeration. Usually, the fee is taken out of our account at least one to two days after those papers have been filed at court. We then wait months before we get those notices of issue and notices of hearing. If you are lucky, they might actually quote

the claim number, so we know that a claim is now on foot and we can proceed with it, but if you were paying, say, £355 for a possession claim, you would expect, if you were paying that amount of money for any other service, to get quite a prompt response to that, not to wait months and months for it.

Bambos Charalambous: Is that an issue with the CNBC, or is it more about HMCTS? Is it more about the issuing of papers, or is it further down the line?

Emily Giles: I do not know how individual courts are funded and whether they have budgets and things, but it almost feels as though they have to keep the money coming in so they can financially resource themselves in terms of recruitment staff, paying staff, etc. It seems that we are putting in the money but not necessarily reflecting what we require in terms of our output. That is what it looks like from where we are sitting.

Matthew Maxwell Scott: A parliamentary question was tabled recently about whether the increase in civil court fees would go into the civil court system. It is a masterful bit of waffle, so you might want to see what was said there. The straightforward answer is: no, it is not. The understanding of HMCTS officials—you may well wish to ask them this—is that the money is going into the criminal courts.

Elizabeth Gallagher: The concern of PIBA is whether our personal injury cases are funding other areas of the justice system—for example, the criminal justice system.

Chair: They are quite open about it, are they not?

Elizabeth Gallagher: Yes. We have tried to make those inquiries via freedom of information requests and we have not been able to get an answer.

Q18 **Bambos Charalambous:** If things do not go right, you complain to HMCTS. Is that right?

Elizabeth Gallagher: That gets you nowhere. My solicitors tell me frequently that there is no point in trying to complain to HMCTS when, for example, additional costs have been incurred because of administrative errors in the court office, because they do not get their money back. Indeed, particularly where there is an issue about listing, that being a judicial function, the court office passes the buck to the judges and the judges say that it is nothing to do with them. The issue is that there is no accountability. No one seems to take responsibility for the fact that the system does not work.

Emily Giles: I refer to one of my colleagues. The common theme from where we are sitting is antisocial behaviour. We have got to the point where we have an order and we want to enforce it. It is antisocial behaviour; the person perpetrating it is continuing to cause a problem, so we want to enforce it. We want to instruct bailiffs, get our warrant of possession and go down that route. Six months ago the warrant request was filed at the court. She has had absolutely no response to any chasing

emails and two formal letters of complaint—absolutely nothing. It is a rolling tumbleweed response to it.

Bambos Charalambous: How long was it before form N325, or whichever the form was, was submitted?

Emily Giles: Basically, as soon as we were able to begin enforcement of the order. I do not know the details of the particular case, but if it was a 14-day possession order, she would have put in that warrant request the day after, and still nothing. It is something to which I refer in the submission I made.

To give another example, we had an incident with a tenant who had various issues, including substance misuse. We got our order. We had sent off for the warrant. I had been given notice of issue of the warrant. Then we received reports from neighbours that this chap was having an episode and was pouring petrol around the communal areas and on himself, threatening to set fire to himself. Obviously, that triggered a major incident. You contact the relevant bailiff office and say, "A very serious incident has happened. Please can we expedite this?" The answer is, "No, we can't; we do not have availability for four months."

The warrant fee was £130; it has gone up to £143. In that instance we need to do something about this, so we make the decision to seek permission from the High Court to enforce it. So you have the cost of the application fee and you have to hope that the judicial boxwork will pick that up quickly. Your covering letter will have big, bold letters saying, "This really requires a judge's urgent attention."

You get your permission to transfer it to the High Court. You then instruct one of the High Court enforcement companies to deal with it. For a charity and social housing provider, you are imposing an additional cost of over £1,000 to enforce an order that we should just be able to do normally. We had to take that decision because we wanted to protect the individual and the wider community. We now almost have to factor in that we will be spending that additional money because the resources are not there for those enforcement measures. The real worry is that we cannot enforce those orders once we have them.

Elizabeth Gallagher: That is not a one-off; that is a routine problem that I have heard crops up repeatedly when it comes to enforcement. The delays with county court bailiffs are untenable, so I would agree and echo that.

Bambos Charalambous: Is that a shortage of bailiffs, or is it just that the applications are in a mountain of paper somewhere?

Emily Giles: I think it is both. Things get caught in the paperwork, and it is also a shortage of bailiffs. There was also a bit of a shift coming out of covid; there were health and safety concerns. It is interesting that sometimes county court bailiffs literally at the point of eviction will suddenly say they will stand down; they will not enforce the warrant. We have to be there; we will be there with a locksmith and relevant officer.

Often, we will be there with police officers, and the bailiff will suddenly turn round and say, "I have a health and safety issue with us", and they will pull back. High Court sheriffs do not seem to have that issue, but county court bailiffs do. That may be a conversation for another day.

Q19 **Rachel Hopkins:** Fundamentally, the sense I am getting is that since the report back in 2015 about enforcement—my question will probe this a little further—it has not improved at all.

Emily Giles: No.

Dr Byrom: I think it is worth the Committee looking at this again. Essentially, you have the report which describes enforcement as the Achilles' heel of the county court. As part of the reform programme, plans to introduce significant reforms to the whole process were proposed. I believe that in 2018 a two-year contract to deliver reforms to civil enforcement worth nearly £10 million was awarded to Solirius Consulting. That was meant to do a whole range of things, not least including improvement of information available to bailiffs and court staff, giving the Courts and Tribunals Service visibility of previous interactions with claimants and defendants and relevant information from other Government Departments to help them decide on next steps.

The whole aim was to transform the service, but by 2019 the Courts and Tribunals Service announced that it was suspending it as part of the plan to try to remove £58 million from the cost of the court reform programme overall. Although there has been a blog from the chief exec of HMCTS saying, "We are still planning on doing something with enforcement," it is not quite clear what that something might be. It is a source of real frustration, because what is the point of battling your way through all the other stages of the process to get this order if you cannot have it enforced? What is it we are saying to people?

Q20 **Rachel Hopkins:** Reflecting on some of the staffing in the county court, which we touched on earlier, and the potential to increase the number of salaried district judges—and I appreciate, Ms Gallagher, that you referred to yourself as being a deputy district judge, does the county court rely too much on deputy district judges?

Elizabeth Gallagher: My experience as a deputy is that the courts could rely on us even more were it not for the financial constraints placed upon us. In the period between Christmas and April, we were all itching to sit but were not offered sitting days because there was no money. It is not really diagnosing the problem to say that the issue is part-time or fee-paid judges not being available. The issue is: is the money there to pay us in the first place? There are advantages in having judges who are also in practice in terms of having that finger on the pulse and understanding the issues, and that is slightly different.

Chair: You are not going to sell that to any full-time judges.

Dr Byrom: I am absolutely sure that is right. I am sympathetic to what the Lady Chief Justice has said. She regards the ideal split as 80:20, but,

when you look at the judicial attitude survey published in 2022, it is the salaried district judges who are the least happy with their working conditions; they are the least well supported and feel under the greatest strain. In those circumstances it is hard to say, "Come and have this great career." The reality is that for lots of people within the system that is not their experience in doing their work. They are extremely committed to what they are being asked to do.

It was quite interesting to look at the data from the digital attitudes survey: 48% reported needing daily or weekly IT support, the highest of all judges; 40% said that the support that did exist was poor or non-existent; 68% disagreed that the digital working that had been introduced was more efficient for them in doing hearings; and 59% disagreed that it had been beneficial for their work period. When you look at things like that, all of which contribute to job satisfaction, how are we meant to resolve this problem, even if we pour more money into it?

Q21 **Rachel Hopkins:** Are there any other thoughts on the 80:20 split?

Matthew Maxwell Scott: I was going to say something about judicial recruitment. In an exchange of letters with Lord Bellamy—I write a lot of letters to him; I am not sure how much he appreciates it, but you can ask him—he said, "We are increasing capacity through judicial recruitment and are running recruitment campaigns to ensure vacancies are filled across the district and circuit bench." It is troubling that they have to campaign to fill judicial roles. You would think that would be a highly desirable role, but it is obviously not the case. I think morale is at a low ebb; I hear that again and again, not just from judges but all the staff.

It is not helped by the facilities in which they have to work. If people go to court and see it is shabby, none of the chairs match and there are not enough rooms in which to discuss matters with your lawyers, it is bad enough if you go there for a day or two, but what if you work there? These are serious problems, and it would be worth asking Lord Bellamy how he thinks his campaign is going.

Elizabeth Gallagher: I agree 100%. The county courts are falling down, quite literally. At Romford county court the ceiling in the waiting room fell down. In order to deal with a situation like this, the court staff's answer to this problem was to block off that part of the waiting room, but when you had to walk through it to get to the courtroom you were told to run. That is just one example of a civil justice system that is literally crumbling. That sets the tone and reflects what is going on in terms of the resourcing and functioning of the system.

Emily Giles: Something I picked up was that deputy district judges do not have access to CaseMan. Is that correct?

Elizabeth Gallagher: Yes. That is also an issue in terms of how you can help fee-paid judges to be more efficient. One way would be to give us the same kind of access to systems that full-timers have.

Q22 **Rachel Hopkins:** You pre-empted my next question on the state of the

estate and the impact on safety as much as morale. I get the sense that it has a negative impact. Does anyone want to add any further comments based on their experience?

Matthew Maxwell Scott: One thing to point out is on the £1.4 billion, or whatever the latest number is, for the modernisation programme. The NAO has done reports on this suggesting it has not worked well; it has been late, and all the rest of it. This is despite the fact that just shy of 400 courts of various types have been closed since 1997—so over the past political generation or so. This is a much smaller courts estate, which means that individual consumers may have to go much further to find that their sitting has been cancelled, but there we are. It is patchy. I believe that Manchester is sparkling and new.

Elizabeth Gallagher: It is really good.

Matthew Maxwell Scott: But, as we have just heard, some are literally falling down.

Dr Byrom: I do not know whether we are going to touch on the accessibility of court buildings as part of this.

Q23 **Rachel Hopkins:** Is there anything else about the state of the estate? You talked earlier about insufficient consultation rooms. Is that something that is more likely than not—that there is insufficient capacity if you want a private consultation?

Emily Giles: Especially when you have vulnerable witnesses, such as in an antisocial behaviour case, if they do not want to see the defendant and you want to keep them separate, that can become a logistical juggling thing. Maybe you are sitting outside the court building in a nearby café or something and then getting a phone call to bring them in when it is time for the case to go ahead.

The other point is that, sometimes for your "ordinary person", this will be their only experience of going to court. You turn up and that is what you are presented with. It is supposed to be crucial to our democratic society. You are walking into a courtroom and you are met with these appalling conditions. Yes, you have the coat of arms up there, but bits are falling off, it is boiling hot and you cannot get into the building if you are in a wheelchair.

Q24 **Rachel Hopkins:** That is my next question. I was shocked that there are 10 county courts that are not accessible for wheelchair users, and it is across the country, whether that is Darlington, Hertford or Truro. What would you say to that? Is it all part of the terrible state of the estate?

Elizabeth Gallagher: It is scandalous. In the PIBA submission, that is anecdotal; we have not gone round every single court and checked. The idea that anybody who is disabled in this day and age would not be able to get into a public building is something we should be ashamed of. In a personal injury context, when a person who is injured cannot get into the building for the resolution of their case about their injuries, it beggars belief.

It is particularly frustrating for us as a profession, as barristers, because we have been working very hard in recent years to improve diversity in our profession. I know specifically of two barristers' chambers—and barristers are part of PIBA—that are in the process of undergoing quite significant renovations to their building to make them accessible for their disabled trainees. These disabled trainees cannot go to court and do the work because they cannot get into the building. I can't even find the words to say how wrong this is.

Matthew Maxwell Scott: Could I add something about vulnerability more generally? Obviously, this is a huge issue across public services and across the economy. I made a freedom of information request recently to the Ministry of Justice. Practice direction 1A sets out a list of things that might count as a vulnerability. I said, "Do you collect data on how many vulnerable people use the courts?" The answer I received was, "They do on an individual court basis, but it would cost too much money to collate that data to give a sense of how many vulnerable people use the courts."

Once again, they do not know the size of the problem and the scale of the challenge they have because they do not collect the right data or, if they do collect it, they collect it in the wrong way. Natalie is very strong on this point. There is a big data gap here that needs to be filled if we are to have the sorts of courts structures and courts infrastructure that people need.

Q25 **Rachel Hopkins:** Thank you for that. I have a final point. Is the county court making sufficient use of remote hearings, or what are your views on them?

Elizabeth Gallagher: We were really hopeful that some kind of positive lessons would be learnt from covid about remote hearings and when they can be used well. Certainly, they do not work well with litigants in person who do not have lawyers, but where lawyers are involved, particularly for interim hearings and even some final hearings, they can be used effectively. Anecdotally, there has been a mood among the judiciary of, "Let's just get everybody back to court." So we are finding that hearings are not happening remotely when they could, and that is not making effective use of technology.

Remote hearings can be a really helpful way to use time as well and to show respect for everybody's time. You are not calling people to sit in a courtroom at 10 o'clock when they will not get heard until 3 o'clock, but you are offering that flexibility of, "Your slot might be later in the day," or, "It might be between, let's say, 10 and 12 or something like that," and people are not having to go to the physical building and wait around. It works better for everybody who is involved and it works well for professional users of the court system.

Dr Byrom: In the pandemic I led for the Civil Justice Council the first report looking at the impact of remote hearings on the civil justice system. One of the key recommendations that we made to the Courts Service was that, in order to come out of this great experiment in remote

hearings with an understanding of what the impact has been, you need to collect data to understand the impact on hearing duration. A lot of professionals and the Bar are saying, "This is more efficient. This will make our lives easier." The lived experience from the judiciary who are performing those roles is, "We don't have the right IT infrastructure to support this. We think it makes hearings take longer. We think it's less efficient."

Essentially, unless you have that objective data and you are able to demonstrate to people and reflect back to them whether or not hearings take longer when they are done remotely, you are going nowhere. A lot has been said about the fact that it has been a great experiment. It is only an experiment if you have a hypothesis and then collect the data to understand what the outcome has been. I am afraid, in that fundamental respect, we have failed and we are still failing, and it is not good enough.

Q26 **Edward Timpson:** Can I take us back to one of our favourite topics, which is the reform programme? I will direct this principally at Natalie, but I am very keen to hear others' views as well. It has been eight years since its launch in 2016—a huge programme of £1 billion-plus of taxpayers' money, with very worthy and much-needed objectives of reducing pressure on the physical court estate, improving accessibility to justice and making the whole system much more efficient. It is now due to conclude in March next year. We will wait and see. To date, what has the reform programme actually achieved and how has it affected the work of the county court?

Dr Byrom: As I have said previously, when it was first talked about, the focus of the attention was very much directed at the county court and how we might use technology to improve efficiency and all those things. The problem is that many of the initiatives targeted initially at the county court have been scaled back and scoped back.

I have already touched on enforcement. That was withdrawn from the scope of the reform project. We have reached a point now where we are looking to the Department for Levelling Up, Housing and Communities to digitise the possession process. Originally, possession was in scope. It was not conducted as part of the reform programme. We are still hearing about the failure to get the basics right in terms of IT infrastructure and wi-fi in the county courts. Lord Justice Briggs's Solution Explorer, modelled on successful initiatives in British Columbia, has failed to materialise.

One big challenge with getting to grips with what the court reform programme has and has not delivered is the lack of transparent communication about what the original scope of what we were intending to deliver was and how what has been put in place compares to that scope. That is something that the NAO has put up. It is a source of continual sadness because, with such significant investment and a huge opportunity to put in place the infrastructure that would set the system up to be able to be run like a system, the fact that it has not materialised in that way is, frankly, quite devastating.

Edward Timpson: Is that a shared view?

Matthew Maxwell Scott: Very much. Can I add something about modernisation and the use of technology and portals? We have not yet mentioned the damages claims portal that was introduced recently. It is effectively an online county court. Everyone—defendants and claimants—agrees it is a very good idea and everyone is behind it, but it is not working in practice. It is having significant problems and is adding to delays. Part of the reason for that is that they did not understand the scope of it and it was perhaps rushed through.

What we see again and again with the MOJ and HMCTS is inadequate engagement with the market and stakeholders—a failure to speak to practitioners and say, "What do you think would work? How should we do it?"—and when things are rolled out to have things like change control committees that can immediately look at problems when live cases go into them and resolve them quickly. There seems to be a sort of arrogance among officials that they think they know best, but they do not because they do not have to use them day to day. We are seeing good ideas failing in practice at least on a short to medium-term basis because they are not making use of the expertise out there and the shared willingness to make these things work.

Emily Giles: I do not know if this has been touched on or if the Chair and the members of the panel are aware of this, but there is MCOL and possession claims online, which is used for routine rent matters by our in-house income team. The whole point of any kind of IT system is that it is dependent on how it is structured and administered. The functionality of it should mean that, once a claim is on foot, you put in the claim details and it will generate your claim form and your particulars of claim.

If you were using it as it is intended, you should be able to electronically file your documentation, whether it is witness evidence or applications, as you go through, and the orders and notices should come back in as well as anything that is coming in from the defence. That is not how it works in practice, because, ultimately, it is dependent on who is on the other end of that, inputting that information and data. The systems exist, but they are not being utilised to their full effect, and there is no joined-up working in how they function and operate. That is one of the biggest stumbling blocks in all of this. Ultimately, you are still having to go back to the people behind these systems to make sure that they are being administered effectively and used properly.

Q27 **Edward Timpson:** Is the answer to trying to prioritise what is now needed to make the functionality of this reform programme a reality about getting the basics right and speaking to practitioners and the users—those who are interfacing with the courts—as well as those who are trying to run them day to day, to establish what is holding the reform programme back? Is that the best use of what resources are left in the programme should be targeted towards?

Dr Byrom: It is difficult, because the National Audit Office reported that we have £120 million left in scope of the original budget, which is a not insignificant amount of money, obviously, but it is not enough to do the things that are needed.

If you look at the Boston Consulting Group report produced for the reform programme in 2016, HMCTS and MOJ were warned about all of these issues up front—this was not a surprise—and the fact that they failed to heed those warnings or put in place an effective structure of governance and management to enable them to deliver this reform programme in the way that was needed is incredibly frustrating.

It is not as if these issues were not consistently flagged. My secondment into HMCTS was designed to help improve stakeholder engagement and stakeholder management and the way that the Courts Service engaged with the expertise of people who worked in the system; that did not materialise. It is very difficult to look at what has happened and say anything other than that radical reform to the way we govern these systems is needed.

Q28 **Edward Timpson:** I might come on to that point in a moment. About 15 years ago when I was last in full-time practice, there was talk that people would no longer be bringing in suitcases full of papers into the courtroom every day and we would be moving to a paperless existence. Here we are 15 years on, and as I am probably about to go back into practice I suspect I will still be picking up bits of paper.

How much longer are we going to have to wait until we have that paperless system that we see in other jurisdictions, including Singapore, where we went quite recently as a Committee? Is this a pipe dream for me in the next stage of my career at the Bar, or is this something that we can all look forward to in the next five years?

Matthew Maxwell Scott: You could bring in rules to say, for example, that parties should only communicate with a court by email if they are represented and just simply make it, effectively, illegal to do that. There are ways you could achieve it.

I believe the Chair may have recently visited the CNBC centre in Northampton and was "staggered"—I think that was the word I heard—about the sheer quantities of paper there and that teams are employed full time just to open the post. Again, this is not a good use of resource. There may have to be more mandating of this, because perhaps paper is somehow a comfort zone for some people. I do not know.

Dr Byrom: It is difficult with the digital exclusion point because I am sympathetic, particularly if we are thinking about a system where more vulnerable people represent themselves and may not have access to technology. The problem is that the failure to institute an end-to-end system means that we rely on manual workarounds for the points where the digital systems drop off and it is just wholly inefficient. Very sadly, I suspect paper is going to be with us for a while to come.

Edward Timpson: I will keep my supply of pens and pencils, then.

Dr Byrom: Indeed.

Q29 **Edward Timpson:** Unfortunately, at the Civil National Business Centre in Northampton, we did not find the Ark. We did find that claims have been taken out of the digital system and moved back into a paper-based court system. Is this a phenomenon that others have come across? How widespread is it? What issues is it creating?

Matthew Maxwell Scott: When cases drop out of the damages claims portal, that quite often means they cease to be digital and become physical again. That happens in a huge proportion of them, adding to delays, costs, friction and the possibility of lost papers and all the rest of it. It is incredibly hard, it seems, to make them do it. That is why I said it should be compulsory, with the exception of those with certain vulnerabilities. If you are legally represented, you should be able to make sure your legal representatives are operating digitally.

Elizabeth Gallagher: It is fine to compel people who are legally represented to use online systems if you can be sure that those online systems are going to function properly, that the people working in the court office know how to use them, that the judiciary knows how to use them and that everything will make its way to the judge for the day of the hearing. My sense is not so much that parties are wedded to paper and are therefore inundating the court with paperwork; it is simply that the systems are not in place on the HMCTS side of things to encourage a fully digital system.

As barristers, lots of us have gone paperless now, and we are turning up to court without any physical paperwork any more. As a profession, we are very keen on paperless working and looking for ways to develop that on our side of things.

Emily Giles: Some of the courts, when you get your notice of hearing, specify that three days before the hearing they would like an electronic hearing bundle produced. They say, "Within three days before the hearing, please will you file this hearing bundle?" You do and you think it is marvellous. You have spent time on Adobe Pro and you have made a lovely, fully searchable, proper electronic bundle, which I am sure Elizabeth would appreciate if she was instructed. Then you find yourself at the hearing, and you will have told your instructed counsel and your client officer to take spare copies of the papers with them just in case, and that electronic bundle will have been disregarded. Either the member of the judiciary does not like them or that email has not made it on to the case management system so that it is available in the first instance to be looked at. As I said, there is always technology and people's willingness to use it, but it is how you apply it and make it effective.

Elizabeth Gallagher: Or the file is too big.

Emily Giles: Yes.

Elizabeth Gallagher: That seems to be a problem.

Matthew Maxwell Scott: That seems a very easy one to overcome, you would think—just to increase limits.

Emily Giles: It is the lack of consistency as well. Different courts will behave in different ways. Some of them are not remotely interested. If you try to send something by Egress, they say, "We don't accept things by Egress." You say, "I'll put it into a protected document in Adobe Pro. Will you take that?" "No, we won't take that." That would be a major help.

Maybe something to go back to is amendments and reforms to the practice directions within the Civil Procedure Rules so that all these various eventualities with technology are prescribed and set down so that all parties—the claimant, defendant and the court—know how they can bring these cases into the courts.

Q30 **Chair:** Thanks very much. Would you leave HMCTS as it is, or is there a fundamental problem with the set-up of HMCTS itself? Natalie, you have been very critical of the leadership, the culture and the structure of HMCTS. There is an argument that says it is not accountable adequately because it falls between two stools; it reports to the Executive, MOJ and the judiciary, but nobody really owns the problem. Can you rely on the current structure, or do we need to start again?

Dr Byrom: I am increasingly convinced that that is the position that we are coming to. It is important to recognise that the criticism of the structure is not an indictment of any one particular leader or person.

Chair: No, it is not the individuals; it is the structure.

Dr Byrom: It is not the individuals; it is the structure. HMCTS has made some changes, most notably to its board, but given the record of delivery it is difficult to argue that anything other than radical change at this point is needed. That is supported by numerous people, including the former Senior President of Tribunals, Sir Ernest Ryder, and Dr John Sorabji, a former legal adviser to the LCJ, neither of whom is known for hyperbole.

The problem is that HMCTS formally operates as a partnership between the judiciary and Government, but, in practice and culture, greater weight is given to the priorities of the Government than the judiciary. That is partly because the Government are responsible for funding and administration of the courts and they are accountable to Parliament for that, so that is fair enough.

As such, the public description of HMCTS as a partnership has been described by some as a description that masks reality. When you look at the issues that were engaged in the court reform programme as early as 2016, the Boston Consulting Group flagged that the chief executive of HMCTS was spending upwards of 70% of their time in upward stakeholder management, which is not efficient in any sense.

There is a huge issue as well in that, under the current framework, the judiciary is under-resourced to deliver its leadership functions. It is forced to combine significant roles in management, in change management and in all those things, with the work of judgecraft, without proper management training and support and the structures that are available to the civil service.

The bifurcated structure really undermines coherent engagement with stakeholders, which has come out really strongly from all of us. One thing that could have meaningfully impacted and made the reform programme better is if they had got that communication right from the start. The fact that you are often scrabbling around to find out consistently what is happening is a function of the fact that it falls between two stools.

You say that we need significant reform, but what should we have in its place? If you look at international comparative research into court administration, there is a strong argument that a judicial-led system could increase innovation and improve transparency and accountability, but it would require significant change from what we have at present.

First, the judiciary needs to be able to delegate decision making in the way that Ministers can to senior civil servants. At the moment they are simply unable to. Essentially, the system that we have at present means that the duties of leadership judges are basically carried out by a range of judges identified on the basis of their specific expertise or interest. In the courts centre that people have mentioned, you have a judge, brilliant though he is, who is there half time, overseeing 300 or 400 staff. That is not a half-time role that you combine with something else.

The net impact of what we have at present is that we have concentrated administrative decision making in the hands of a small group of senior judges, who are not really supported to do that and are trying to do that alongside other complicated roles. They just need to be adequately resourced.

The other thing that is important is, if we are to move towards a judicial-led system, we need to end the exemption of the judiciary from Freedom of Information Act legislation to ensure that we can properly scrutinise and hold accountable the management and administration. One key lesson that comes from the reform programme—and no one more than you, Chair, has tried to get to grips with what is actually happening and what is being delivered—is that failure of accountability and transparency that has led us to where we are, which is this huge, what looks like catastrophic waste of public funding at a time when we cannot afford to waste it.

It is very difficult to look at what has happened and say, "This is okay and we should just keep rolling on into the next thing." But making a break from the system that we have will require significant reform. The question is whether you have a Government that are willing to prioritise unpicking the Constitutional Reform Act and the framework agreement.

Q31 **Chair:** We looked at Singapore, where it has what is called an administratively autonomous system. Essentially, the judges are running it. Certainly, you need to have much more resource given to them to support it, but you also have to have the willingness of the judges to do that. I suppose I became a lawyer because I was interested in the law rather than being a manager. That creates a problem perhaps that we need to think about.

The other issue is: where would you leave judicial independence? Is that a fair point? You are accountable on the money side, but how do you separate that out from your judicial function?

Dr Byrom: It is very hard, is it not? I think you have it in Amsterdam. I suppose the US is a different system because judges are politically accountable in a different way. Instead of this fudge where it is described as a partnership but not really a partnership, we need to stop proceeding under what can be described as a fictional idea that they are jointly accountable and pick one of the two models.

Chair: Are there any other observations on that?

Matthew Maxwell Scott: When I have had meetings with HMCTS and I have asked if they have a strategy for dealing with the problem we are discussing today, which is delays in the county court, they seem surprised even to be asked that. Their answer is no, they do not have a strategy; they do not have targets; they do not have data. It is chaos, frankly. Whether or not it needs to be completely restructured is a bigger question.

What I would like to see after the next election, regardless of the outcome, is a civil justice commission being convened that brings together stakeholders right across the wider civil justice system to say what other countries do well, what the problems are and how we can address them. Is it about money in a time of restrained public finances? No. Where do we bring in tech? Where do we have ADR? Where does legal expenses insurance come in? There are big questions to ask.

In the short term, HMCTS has to be judged by the delays we are seeing. There are far fewer cases and they are taking far longer. That is an administrative failure.

Chair: Okay. I will not ask the people who sit in the judiciary to make any observations on that one, but it raises important issues. I am grateful to you all for your time and for your evidence today, which has been extremely helpful to us. I am very grateful to all of you. Thanks for coming. The session is concluded. All the very best, Natalie.