

Public Accounts Committee

Oral evidence: [Transforming Courts and Tribunals: progress review](#), HC 1523

Monday 7 October 2019

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Members present: Meg Hillier (Chair); Sir Geoffrey Clifton-Brown; Chris Evans; Nigel Mills; Layla Moran; Stephen Morgan; Anne Marie Morris; Lee Rowley; Gareth Snell.

Gareth Davies, Comptroller and Auditor General; Adrian Jenner, Director, Parliamentary Relations, National Audit Office; Oliver Lodge, Director, National Audit Office; and Marius Gallaher, Alternate Treasury Officer of Accounts, were in attendance.

Questions 1 - 39

Witnesses

I: Penelope Gibbs, Director, Transform Justice; Nimrod Ben-Chaan, Head of Policy and Profile, Law Centres Network; Richard Miller, Head of Justice, The Law Society; Samuel Townend, Member of Legal Services Committee, The Bar Council.

Written evidence from witnesses:

– [Transform Justice](#)

Examination of witnesses

Witnesses: Penelope Gibbs, Nimrod Ben-Cnaan, Richard Miller and Samuel Townend.

Q1 **Chair:** Good afternoon and welcome to the Public Accounts Committee on Monday 7 October 2019. We are here today with some ongoing work for this Committee looking at the Ministry of Justice's work in transforming courts and tribunals. The National Audit Office has helpfully put together a progress review on these proposals and we are having a full hearing with the Department a week on Wednesday, but I am pleased today and thankful to our witnesses, who are here to tell us more about what it is like at the front line and what is actually going on in the courts.

I will first introduce our witnesses. We have Nimrod Ben-Cnaan, who is the head of policy and profile at the Law Centres Network. I will ask you to introduce your organisation briefly when you first speak, if that is okay. Then we have Penelope Gibbs, director of Transform Justice; Richard Miller, who is the head of justice at the Law Society; and Samuel Townend, who is a member of the legal services committee at the Bar Council. Thank you very much for coming.

Her Majesty's Courts & Tribunals Service, which is an agency of the Department, had set itself quite revolutionary targets about how to transform the way that people engage with the Courts & Tribunals Service—putting more online and reducing actual attendance—but also put a stiff savings target and a deadline on it. The deadline is now going to 2023, which is seven years. As a Committee, I should say at the outset that, the last time we did a report on this, we urged them to look at delivery rather than sheer speed. I would be interested in your thoughts on that when we get to questions. Three years late may not necessarily be a bad thing, if it is done well. What we are hoping to get from you is what is working, what is not and what we should be asking the Department in 10 days' time.

Can I ask each of you in turn, starting with Nimrod Ben-Cnaan, to what extent you think the reforms have been successful in improving services for users of the system, so far? Mr Ben-Cnaan, do you want to explain a bit about your organisation as well?

Nimrod Ben-Cnaan: Thank you very much for that and for inviting us over. The Law Centres Network is a national membership body for law centres, as the name suggests. Each law centre is a not-for-profit agency or charity.

Chair: Could you speak up a bit, as the acoustics and the noise outside with the helicopters make it difficult today?

Nimrod Ben-Cnaan: Sure. A law centre is a not-for-profit law practice. It employs solicitors who specialise in social welfare law, in particular. They target their services, largely for free, at disadvantaged people trying



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to get access to justice. Law centres have been around since 1970, so nearly 50 years now, and we now number 41 members across the country.

Q2 Chair: How do you think the reforms are working so far, from the law centres' point of view?

Nimrod Ben-Cnaan: I would divide it into two main parts. On improving the process of services to users, the people we help are largely in courts out of necessity. They face the possibility of home or job loss. They come to the formal justice system almost as a last resort. It is a stressful experience for them. Over the last six years, due to legal aid cuts, their legal assistance was quite significantly curtailed and local courts were shut as well. Right now, their experience of the system is worse than before and their justice seems more remote.

On improving outcomes, as distinct from process, we do not yet know, but there is cause for concern. We do not know because data is not collected and projects are piloted where the decision, in principle, to go ahead has already been made, whereas the case for their efficacy is yet to be made. There is cause for concern in the thrust of the reforms, especially the emphasis on resolving disputes and delivering clarity, rather than upholding abused rights and delivering justice.

Q3 Chair: You raise an interesting point about monitoring the impact of what is happening, which the National Audit Office also raised, so we will come back to that. Can I ask Penelope Gibbs to answer that first question and introduce her organisation?

Penelope Gibbs: Transform Justice is a small charity a bit like a criminal justice think tank. I have looked mainly at crime in terms of this reform programme, but a bit over the whole programme. I am most worried by the process they are undertaking in testing what they are doing, starting right from the beginning and looking at evaluation as well. Some of the new online products, such as divorce online and maybe probate, look as if they are probably making things more efficient. If you go back to the very beginning, I am concerned that some decisions were made about what the mechanisms were to transform courts and tribunals—so video hearings, online processes and so on—and we worked backwards at every point and lacked really true public consultation and open policymaking about those ideas.

The testing is being done behind closed doors, in a way that is not easy to understand from outside. We never see the published results of any of the testing and it is still not clear that they are looking at justice outcomes at the end of the testing, once they have uploaded or started the product. They quote satisfaction levels that are online tick boxes. I went on the single justice procedure today to see if I could see what a defendant did. I did not have the right number so could not go through the process, which is quite frustrating, because you cannot see what people do.



Q4 **Chair:** By “see what people do”, do you mean whether they plead guilty or not guilty?

Penelope Gibbs: On the single justice procedure or probably other online procedures, I, as a citizen, cannot go online with a beta thing and see what the questions are. I cannot see the process that anybody is going through. From the point of view of open justice, that seems to be closed justice. I cannot even see the dummy run.

Because I could not continue with that form, I was then switched immediately to their tick box: “Are you satisfied or not?” I had five levels—very satisfied, less and so on—and I could do that without even having got a number for the offence. If that is their measure of success, it is not justice.

Richard Miller: I am the head of justice at the Law Society, the representative body for 170,000 solicitors in this country. So far, we have seen two main strands or themes to the programme. One is about digitising existing processes and one is about more transformational change. The strands that relate to digitising existing processes generally seem to be going fairly well. The online divorce and small claims processes seem to be going fairly well.

However, we have concerns about whether people have the right prompts and opportunity to get legal advice when they need it. The classic example for us is the ambition to extend the small claims process to claims above the small claims limit. That would mean someone bringing a claim would potentially risk an adverse costs order; they could be ordered to pay the other side’s costs, which could run into tens of thousands of pounds. If they do not know that when they press that button, it could be a real danger.

Q5 **Chair:** Does it not say that or do we not know yet?

Richard Miller: As far as we are concerned, it is not clear that people are being given adequate warning of the risks they are potentially running. The projects that are intended to be more transformational are very much focused on the criminal courts, not exclusively but mostly. They seem to be running very much ahead of even the cutting edge of technology, let alone what technology that could be bought en masse for the entire court estate would be capable of doing. We remain far from convinced that the ambition is achievable and we are concerned about whether the money that is being put into those projects is being well spent. There are other aspects, such as the extended hours pilot that is being undertaken. Again, that seems to us to be a poor idea without much reason behind it. Money is being spent on this that could be better spent elsewhere.

Samuel Townend: I am on the legal services committee of the Bar Council. The Bar Council represents about 16,000 self-employed and employed barristers, often at the so-called cutting edge, doing advocacy



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in courts and tribunals. We think it is worth the Committee looking at this reform programme, if you are trying to assess where there are improved services or—as the Chair put it in June last year—whether they enable access to justice and fairer outcomes in the wider picture. The wider picture is that, by 2020, the Ministry of Justice’s overall budget will be cut by 40%, while overall Government expenditure has increased by 13%.

As far as the criminal justice system is concerned, reports of crime are up by 8% this year, but prosecutions and penalties are at an all-time low, 29% lower than 10 years ago. At the same time, you have a 15% reduction in sitting days in the Crown Court, from 97,400 last year to 82,300 this year. In the face of that, this reform programme, which is already trying to make cost savings, is going to find it very difficult indeed—we suggest any reform programme would—to improve services and achieve access to justice. It is very doubtful it will do so, when looked at in the round.

Q6 Chair: Thank you. You have all raised some interesting points. I was interested to pick up justice outcomes and their measurement with Ms Gibbs, because this is something we were concerned about the first time we looked at this. You may all want to come in on this. How do you think this could be done better? Have you been asked? The service told us last time it agreed with our recommendation that it should engage better. Is it engaging better and has it listened to any of your suggestions about this? You raised some very valid points about the transparency issue as well: people cannot see what the outcomes have been.

Penelope Gibbs: They have a very innovative reform programme and then they are going into untested waters, in the way they are engaged with—“stakeholder” is a terrible word—people who work in the justice system. They have had stakeholder engagement groups, but they do not conform to any model of open policy processes. For people who have been involved in those stakeholder engagement groups, it is not clear why anybody has been invited, why somebody else has not been invited, what the remit of the group is and what its result is. People have been on those groups and they have been disbanded. There have been no published reports of any meetings and the people on them are not clear whether they were just there to be listened to or if there has been some other output.

There is really good documentation on the internet on open policymaking by the Civil Service as a gold standard. The key point there is that it is open and they approach it in a different way. They feed back to people about where things have got to. Stakeholder engagement has got better in the sense that they have talked to people, but the rules of engagement for that conversation have not been clear and, ultimately, it is no replacement for proper research, of which there has been very little.

Q7 Sir Geoffrey Clifton-Brown: You talk about open engagement. You talk in your evidence about the key group, which is not really consulted, being the victims and perpetrators of crime.



Penelope Gibbs: They are service users in the testing process. They are also stakeholders. Victims' charities might have been involved, but defendants themselves have not been involved in stakeholder groups. The stakeholder groups are about the legal profession, court staff, the CPS and so on, but defendants have not had their own group. My greater concern is the lack of rigorous, proper, social science-based research because, at the end of the day, that has rules of engagement and it is published. We know it is done by proper people and, if it looks at results and justice outcomes, we can see some kind of comparison.

For instance, one outcome from the single justice procedure that seems crystal-clear is that the pushing of the single justice procedure—which is where a magistrate adjudicates on the papers for a criminal offence, on their own in a closed court—has pushed up the proportion of defendants who are not pleading either guilty or not guilty to a crime. That is an outcome. That is not engaging with the criminal justice system.

I did a calculation and, nowadays, over 500,000 criminal cases are going through that process without the defendant saying whether they are guilty or not. There is an outcome from that as well, because they are then considered guilty in their absence; they get the maximum sanction possible for whatever it is—not having a TV licence or whatever—and then that hangs over their life, possibly without them knowing that they have it. Again, outcome-wise, from the research, we do not know why all those people are not responding. They get their charge through the post and huge numbers are not responding, but they might not have got the letter. People live in houses of multiple occupation; lots of post gets lost. Just one letter is sent to them. We just do not know about that outcome and yet the justice outcomes have changed significantly.

HMCTS says that the online method for responding to the charge is improving the response rate, but it is from a very low base. It has not changed the fact that the overall reform has pushed up the proportion of people who are not engaging with their criminal charge. That is an example.

Q8 Sir Geoffrey Clifton-Brown: In your evidence, you make a pretty damning statement in paragraph 2.1. You say, "One would expect a £1 billion programme to be subject to considerable testing and piloting. This court reform programme has, but they have followed a model untried on this scale in Government and in the justice sphere-service user design". Your criticism is pretty strong on how they have consulted.

Penelope Gibbs: Service user design has an evidence base in consumer service testing. To my knowledge, Government have not taken such a big programme and said, "This is how we are going to do it". It has a place alongside proper research, data collection and so on, so I do not object to it on its own at all. The beauty of it is that you test a new form with people and, if something goes wrong, you change it slightly. The idea is not to do big-bang technology projects and waste huge amounts of money. The problem is what you test in that process. If you test only



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whether somebody completes the form quickly, it will probably not be broad enough for the justice system. Alongside the user-testing system that they are very reliant on, you need proper research, public consultation and parliamentary scrutiny. A lot of these changes have come through without primary legislation associated with them. Therefore, that parliamentary scrutiny has not come in. There are statutory instruments, other secondary legislation and so on.

Chair: I was hoping you would all come in but, when you pick up on any of those points, tell us what your engagement has been with the Department's consultation processes.

Nimrod Ben-Cnaan: I have been involved in one of the aforementioned engagement groups that HMCTS set up. It is important to say that, by the time of the first National Audit Office report on this last year, most of those groups had been dissolved. They had been running for about a year and a half prior, and then were dissolved into something supposedly more streamlined, involving fewer stakeholders at a higher level. During that time, there was quite a revealing experience: the distinction that comes to mind is between engaging to inform and shape, and engaging to communicate. The cement was not wet by the time we entered the room.

We know now that much of the general shape or contours of the transformation programme had already been decided by early 2016, when the Boston Consulting Group was looking into it for the then Lord Chancellor, Michael Gove. The communications we had in the engagement groups were more about communicating changes or tinkering around the edges than about discussing how best to attain them or how to get stakeholders on side, to be honest. Salient details about the reforms were not actually brought up. Engagement was episodic so, between meetings, there was not a lot going on.

There were two larger, open, overarching engagement events for all stakeholders. They were structured more like speed-dating events, so you did not really get a lot of time to get your head around the various elements of the programme. Even talking about for engaging to communicate, last year, one engagement event was held at the offices of the law firm Freshfields. Two law journalists, reporters, were actually disinvited from it, despite being precisely the kinds of agents of information you would expect to sit in those events and report to people who could not make it. I could go on, but the basic point is that a lot of engagement has been around informing stakeholders, in the expectation that they will get with the programme.

Chair: It was information after the event, rather than shaping it before.

Samuel Townend: That is precisely the experience that the Bar Council has had as well. Everyone knows that HMCTS has had trouble with staff churn, and we think that has been part of the problem. Particularly when it came to those stakeholder meetings, the Bar Council, at least, felt that



it was often saying the same things it had said two years ago, but to different people on the same sorts of groups. We feel that communicating what they have decided to do has improved somewhat, but we have not been involved in the design phase.

It might be useful for the Committee to have a worked example, relating to video hearings in the civil courts, on which there has been a pilot. We had a presentation, perhaps on an ad hoc basis—I do not know—to our legal services committee. What was interesting about it was that a handful, fewer than 10, final hearings were ultimately part of the pilot, so we think it is impossible, from properly looking at the evidence, to reach any conclusions about the pilot at all. It was very limited in number and those who participated were entirely self-selecting. As for the impression that video hearings will be part of the future for civil justice, even though they feature highly, they have a very long way to go before they are, in any way, a practical, realistic proposition.

We certainly have, and we suspect you have, all sorts of questions about open justice and how non-parties may view that justice going on. This is with the background of case management and other things being delegated by judges to other officers, under the recent Courts and Tribunals (Judiciary and Functions of Staff) Act last year. We query how far the final hearing has appropriate dignity and authority. Ultimately, will the unsuccessful party accept the ruling that is delivered after a video hearing has the same effect and authority as one where they are there in person, such as we are with you today? Do they feel like they have had a fair hearing?

All this is ultimately about the maintenance of the rule of law and whether it is respected. Going back to a point made earlier, we do not think that the overall impacts are being properly assessed. There are not even measures in place by which they will be assessed, in due course. There seems to be a decision to carry on regardless. I am sure we will talk about it soon, but it looks like flexible operating hours fall into that category as well.

Q9 Chair: Mr Miller, you raised the flexible extended hours pilot. I want to know more about your concerns about that.

Richard Miller: Solicitors have had a slightly different experience, because a lot of the strands of work are about the day-to-day work that solicitors do in preparing divorce petitions, online civil proceedings and that sort of thing. There has been reasonably good engagement with HMCTS on those projects. We have tended to find that improvement has increased over recent months. For example, we were getting very short notice and meetings were being held at inconvenient times for practitioners. That has significantly improved: we are getting decent notice and HMCTS is taking account of what a suitable time is for working practitioners to engage with them. There are some definite improvements in those projects.



However, I certainly share the concerns expressed by my colleagues about some of the projects relating more to the hearing side of things. That reflects our experience as well. On the justice outcomes issue, we have made repeatedly made the point that it is absolutely vital that justice outcomes are evaluated alongside process outcomes. The particular example we have in mind is about video hearings. There is a clear demonstration in research from the United States that, where judges and decision-makers engage with people over a video link, they have a lower degree of empathy than when dealing with someone face to face. This can lead to them being more likely to disbelieve someone they are seeing over a video link. It can lead to harsher decisions and harsher sentences being passed. It could ultimately lead to innocent people being convicted or harsher sentences being passed than is appropriate.

That of course has an impact on the public purse, because they then have to be kept in prison for longer than otherwise would be the case. There are some real, significant potential justice impacts there, and we have not seen any indication that they are being looked at properly. That is something that needs to be done.

Q10 Chair: Talking about people appearing in front of each other, we have seen a number of court closures and there are more on the way. Is that having an impact? Some MPs have contacted us saying they would like their court building closed, because they have plans to build a nice, spanking new one somewhere down the road. The buildings themselves are not always loved, but have you have looked into that aspect of justice?

Richard Miller: As far as court closures are concerned, there have been some for which the response from practitioners was, "Thank God that court has gone". It was a small, out-of-the-way court. It was a nuisance to have to go there. It was not well served. Then you get things like the proposal to close the court in Cambridge, which is a brand new court, kitted out with all the modern technology you could hope for, with good disabled access. Yet HMCTS selected that court for closure and we could never understand why. They actually reprieved that one, in the end, but it made no sense why you would close it.

I believe the NAO itself highlighted that there has now been a massive increase in the proportion of the population who are at least 20 miles from the local court, as opposed to most being within two to five miles. This inevitably has an impact, not just on the availability of justice and assistance from court staff, which people would often access in the past, but also on whether court hearings will be effective.

People just do not turn up. We have had a lot of anecdotal evidence of defendants in criminal cases choosing not to attend and waiting to be picked up by the police and taken to court, because that is easier than making their own way there. Almost inevitably, if people have to travel long distances by car or public transport, they are far more likely to run into transport difficulties that mean they do not get to the court on time.



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There is likely to be an increase in the number of ineffective hearings as a result, which will again have a cost to the public purse. We can see no evidence that this is being properly analysed with data gathered to find out what is happening, so that we know what the impact of this is and how it impacts on the overall savings being made from these closures. There are some significant problems from the court closure programme.

- Q11 **Chair:** I have one small point, but I wonder if any of you have direct experience of this. When we last looked at this, we had an example of somebody who needed to travel to be a witness but, because of public transport paucity in her area, had to get a taxi, but could not get paid for the taxi until she had travelled by taxi to the court. She was caught in this vicious circle of not being able to attend without the money upfront. I saw Mr Ben-Cnaan nodding, so does that ring a bell with you? Have there been any improvements since we last had evidence on this?

Nimrod Ben-Cnaan: No. In fact, it has got slightly worse. Even in London, where you are supposedly talking about shorter distances, a return Tube ticket is around £5.80 or something like that. Where courts have already closed due to consolidation, some law centres are reporting to us that clients are starting to walk to court instead, because they cannot afford the bus fare. Certainly for procedures such as possession proceedings, they are already in debt, which is why they cannot afford to pay the rent. To then fork out another nearly £6 to attend court and defend their home is too much for them, so they leg it instead. It should not be that way. Of course, it disproportionately affects people with disabilities.

- Q12 **Chair:** To be clear for the record, when they arrive, if no one is able to fund them upfront, can they reclaim that fare if they are on a low income?

Nimrod Ben-Cnaan: How much money is set aside for that by HMCTS? It would be interesting to find out.

Chair: The London example perhaps is not the best one, because the Tube fare to a court close by is more or less the same as the Tube fare to a court a long way away.

Penelope Gibbs: Some people are faced with fares in rural areas of more like £25 return on a train. You would probably need to go in peak time, to get to court, and some of the distances are large. On the point Richard was making about failure to appear, I have recently heard, from both police and officials, that there has been a significant increase in defendants failing to appear. Again, we do not exactly know why. It could be police bail changes, but there is a report about court closures in Suffolk, where there is only one court left, Ipswich, which is not in the centre of Suffolk, so people travel a long way. That research suggested that it is defendants around Bury St Edmunds, where the court has been closed, who are failing to appear at court in Ipswich, not the ones who live around Ipswich.



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Nimrod Ben-Cnaan: There are more warrants for arrest of those people failing to show. It does not just end with a procedural matter.

Richard Miller: There is another point I want to raise on the impact on people with disabilities of pure access to the courts. For example, in Yorkshire, Sheffield Crown Court is still operational, but it does not have facilities for defendants with disabilities. They have to take Doncaster Crown Court out of mothballs if a defendant has disabilities.

Q13 **Chair:** This is an awful question to ask, but do they save up cases like that to open Doncaster efficiently for one day a month or something, or is it really haphazard?

Richard Miller: It is really haphazard. Apparently, the Doncaster building is still used for tribunals, so the court has not been entirely closed down, but it is not used for Crown Court sittings at all, apart from when a person with disabilities needs to be dealt with.

Q14 **Chair:** Was the whole point of the courts programme not to make sure that they were all disabled-accessible and modern technology was built in? Are you saying it is lagging behind on the ground?

Richard Miller: Yes, in quite a few courts there is no adequate disabled access. In fact, if you have to look at a closure programme, lack of access for people with disabilities would be a legitimate ground for saying a court is a higher priority for closure. But that does not seem to be how decisions are being made.

Q15 **Gareth Snell:** Mr Miller, I have had individual cases where, although the court itself is accessible, the contracted-out staff who deal with front of house and security arrangements are not necessarily aware of the levels or standards expected by the Courts & Tribunals Service. Have you or any of your colleagues come across similar cases where, actually, the G4S staff in particular, who are not part of your service or the team you are operating with, cause a problem for people who should be appearing, because of access requirements?

Richard Miller: I have not specifically had reports of that. Generally speaking, the feedback we get from members is that court staff can be very difficult to find and to get the help that they need from, but I have not heard anything specific relating to a particular company or any examples like that.

Samuel Townend: I am afraid I have not, either. I am sorry about that, Mr Snell. On the impact of court closures on access to justice, the point that my colleagues have mentioned is of fundamental importance. Also, it should not be forgotten that these courts that have closed are usually the hub or centre of a local network of legal and general advice. High street solicitors and perhaps law centres are often situated in and around that court. Once you have closed that court, it is very difficult to get it back. I cannot give you facts and figures, I am afraid; it is another example of where the impact has not been fully evidenced and assessed. But one can



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imagine that that legal advice centre then dies off or is certainly very threatened. I know Sir Geoffrey has had Cirencester and Gloucester magistrates' courts close. You, as MPs, will know better than we do about the number of people who come to your surgeries because of the absence of that justice and advice network.

Richard Miller: I can give a specific example of that. I was speaking to a journalist in Halifax, who told me that, after the court closed, a number of solicitors providing services in that area closed their Halifax offices as a result.

- Q16 **Chair:** I want to go back to a point you made at the beginning, Mr Townend, about the reduction of sitting days. When we have looked at the court service generally before, there has been an issue with the availability of judges, which has reduced sitting days. Were you referring to that or talking about reduction of sitting days as a cost-saving target? Can you explain more about that?

Samuel Townend: As far as the criminal justice system is concerned, there has undoubtedly been a reduction in the number of sitting days, as I mentioned, from 97,000 to 82,000. This was raised with the senior presiding judge, Lady Justice Macur, who was recently written to by the chairman of the Bar. It is our impression from that that the decision has been made to maintain the existing backlog of criminal cases—not to reduce it, but to keep it the same. Therefore, courts up and down the country, including the Old Bailey and Snaresbrook, have empty courtrooms, with judges and recorders not sitting, even though there is the same backlog there was last year.

- Q17 **Chair:** A previous member of the Committee, who would sometimes sit as a judge, would get requests often late the day before, with a list of opportunities to sit at short notice. That struck us, most of whom were not lawyers or judges, as extraordinary and not a very good way to run the system. Is that the problem or has there been a deliberate decision by HMCTS and the Ministry of Justice just to reduce the number of sitting days for cost reasons?

Samuel Townend: There is a problem associated with recorders, who come from solicitors as well as the Bar. It has changed. The policy used to be that you inform the Courts Service when you might be available and then it matches you up. Now, your clerk or whoever gives all your availability, and then, maybe only a day or two before, in an unplanned way, you are called upon to service wherever it might be as a recorder. That part of the system is unsatisfactory. We are also seeing a reduction in the number of recorders with a criminal ticket. They were reduced in the latest round, which is a problem for the criminal justice system, because being a recorder is often a good step and part of the training before becoming a full Crown Court judge. There are problems associated with that.



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The reduction in sitting days seems to be directed by the MoJ, as opposed to something specific for the judges. If one started to reduce the backlog, one would assume that the low level of prosecutions and penalties taking place would get higher. That then presumably has an impact on the Prison Service. I see this as all being far removed from the ambitions of this court reform process. In fact, it seems to be about cost savings and cost savings alone.

Q18 Sir Geoffrey Clifton-Brown: I want to pose a few questions to work out whether the planned court closure programme is, in any way, linked to the predicted rise or fall in crime and hence the number of cases. The parliamentary answer we got was that cases between 2010 and 2019 appeared to show, in most cases, in the Crown Court, magistrates' courts and nationally, a significant drop. But where will we be in the next five years, particularly with the increased number of police officers we are going to get? Will we see that trend of dropping cases start to reverse and start to rise? How will this impact the court closure programme?

Penelope Gibbs: Nobody knows, but it could well go back up again. With that many more police officers, you would have thought there would be more charges and prosecutions coming through. It is critical that we do not close courts according to the amount of capacity that is being used at the moment, because it is very low, but could go up. Equally, it is about the number of court staff who are cut and so on. It is likely to rise. It is also to do with the police bail changes that I mentioned. Nowadays, there are lots of people under what is called RUI, "released under investigation". That means they are in limbo while the police investigate their case to see if they can charge the person. There are many more of them, which are creating a huge backlog out there. They may come through, but one does not know how quickly they will proceed to charges.

With the delays they have at the moment, it is hard to say whether they have gone too far in cutting down the number of judge days. They seem to be saying, "The volume has gone way down. Let us keep the same timings for cases, even though the volume is down, by cutting the number of courts open", et cetera. They may have overshot in some areas. The Criminal Bar Association tweeted today that a trial that was ready, about some defendants accused of sexual activity with children, has now been set for September 2020. A sentencing for a child grooming case has been delayed four times, because there is no judge.

Chair: There must be an access to a justice issue about a delay that long involving children.

Sir Geoffrey Clifton-Brown: That is terrible.

Q19 Chair: Is that common? No one looked terribly surprised by Ms Gibbs' comments.

Samuel Townend: It is happening up and down the Courts Service, including in the High Court. There are insufficient High Court judges, so



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judges in specialist courses are being put over to administrative cases and so on. You get stood out the day before at whatever level of court, except in the Court of Appeal, but certainly in first-instance cases. That is a reality of county courts, Crown courts and magistrates' courts. The warned lists are still in place, where all parties turn up hoping to be heard. Very often they wait until perhaps 2.30 pm before they are told, "No, you are not going to be heard today". At the same time, as I mentioned, there are courts, certainly criminal courts, sitting empty where there is no judge put over to hear the case.

Richard Miller: The feedback from our members is that, very frequently, there are long delays in cases being listed for hearing and high prospects of the case not going ahead on the day it is listed. This has a particular impact on youth offenders because, if the person is not tried before their 18th birthday, the court loses a lot of powers to divert that person into all sorts of different interventions that might steer them away from a life of crime. As soon as they turn 18, they are no longer available. Just the standard adult penalties are available. That means opportunities to intervene in young offenders' lives and turn them away from crime are being lost, because of these delays.

Q20 **Sir Geoffrey Clifton-Brown:** Following Ms Gibbs' helpful answer about numbers, I will ask this question of the three of you who are representing the legal profession. It is not just about numbers, is it? Is there a trend in which each case is becoming more complex and, therefore, taking more time than it used to 10 years ago, say?

Richard Miller: The feedback from our members suggests not so much that, on average, cases are more complex. There is an element of that, particularly with video evidence, computer analysis, mobile phones and that sort of thing. There are increased volumes of evidence in cases, but it seems from what members tell us that there is more likelihood of the less serious and more straightforward cases resulting in either no further action or non-court disposal. It tends to be the more complex cases that go forward to prosecution. That means those cases that reach the courts are, on average, more complex but, in the past, when there were more resources in the system overall, more of the simpler and more straightforward cases would also have gone forward to the courts.

Q21 **Anne Marie Morris:** Ms Gibbs, you mentioned the lack of any system to measure whether justice was being delivered. If you had a magic wand and you could set out the criteria and what the Government should be measuring to work out whether we are getting to access to justice, what would you look at?

Penelope Gibbs: I am afraid you would have to look at quite a lot. I would refer the Committee to the Legal Education Foundation, which has a very good document about how to evaluate this programme. The four dimensions of access to justice they think need to be measured, in some way, are: access to the formal legal system; access to an effective hearing; access to a decision in accordance with substantive law; and



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access to remedy. They go into detail about how you might measure those things.

I will just give an illustration from the criminal courts. We are talking about video hearings, and we need to know, if the defendant appears on video from the prison on remand, say, and the circumstances and so on are as similar as you can get to those for another defendant who appears in the court, whether the person in the court is more likely to be released on bail than the person who appears on video. These comparisons, where you take as like cases as you can, need quite a bit of data, but they can and have been done in the past.

In 2010, the Ministry of Justice did a pilot of what we call video remand hearings, where somebody appears on video, in fact from the police station—they had been detained by the police—in the court for the first hearing. They did a comparison. You need to benchmark another court with similar hearings. That study found that people who appeared on video were less likely to be represented by a lawyer and more likely to get a harsher sentence than those who appeared in the court. As part of this study, they eliminated huge differences in order to make the comparisons. You need good social researchers, but you can set up those kinds of systems. They are expensive, but we are talking here about people's lives, just outcomes and so on.

That is my concern about the programme again. It has so many projects and ideas but, in the end, you have to take each one, spend proper resources on working out what the effect will be and have an open mind as to whether to go ahead. On video hearings, they have gone ahead looking at civil, without us really knowing how they work in criminal. We do not have the data in criminal. We do not have this comparative research. We have the 2010 study, but nothing else. Civil and criminal are different but, even so, one would have thought you would get a good body of evidence of the effect in criminal, before going to civil.

Q22 Anne Marie Morris: Is any measurement being taken at all, to your knowledge?

Penelope Gibbs: They are doing a proper evaluation of video hearings, using this outcome stuff, in Medway Court in Kent. They are doing that but, if you read the literature from HMCTS, there is no question mark as to whether they will go ahead. To me, the point about this kind of thing is to do a proper evaluation with an open mind, as to whether video remand is a good idea.

Q23 Chair: The National Audit Office recommends that HMCTS should better demonstrate how it is monitoring the impacts of its reforms on users of the justice system, in the summary on page 9. From the way you were nodding, and you can just say "yes", do you all agree with that and what Ms Gibbs has said, basically?



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Samuel Townend: As I mentioned before on the civil video hearing, they were all volunteer participants. In one sense, you get the outcome you ask for. The service providers, whoever carried it out—I am afraid I do not know if it was HMCTS or a contractor—are consulting and getting answers to questions from those who participated, but they volunteered in the first place. A contrast might be said to apply where you have so-called flexible operating hours. One gets the impression they are only flexible for HMCTS, certainly not for litigants who are being told to turn up at 8 am for a hearing.

As far as staff are concerned, the chairman of my committee passed by Brentford Court last week, where staff were on strike as a result of this flexible operating hours initiative. You have had written evidence from the Bar on the impact on people with caring responsibilities, women in particular, of being told, if they want the brief and want the work, to ensure they are at court well before 8 am to consult with their clients or whoever. For the management of all barristers' practices, it is very difficult to operate in that way. Anecdotally, one understands that judges too are not particularly happy with it.

- Q24 **Chair:** It is interesting that you say it does not fit with current working practices. You seem to be saying there has been no discussion with you about it. Are you saying it could work, but everyone would have to change their way of working and agree to that? You are saying that one bit has suggested it, but has not really liaised with the rest.

Samuel Townend: HMCTS has never explained to our committee why this is a good thing, especially in circumstances where, as I mentioned, there are courtrooms in courts sitting empty during ordinary working hours. What is the purpose of these flexible operating hours? What are they intended to achieve? We do not see any outcome for your principles of access to justice and getting fairer outcomes. Our method of consulting at the Bar Council is just asking people who participate at the different levels what they think of the results. That is one way in which an assessment could be made. When that is made compulsory, as on the pilot scheme, you get some straightforward responses.

- Q25 **Anne Marie Morris:** I am particularly struck by the challenge of those hearings involving children that get delayed and delayed. Is somebody collecting all these figures, so that we can look at that nationally and say, "This is going wrong, so somebody is looking at it and trying to work out how to fix it"?

Richard Miller: This has traditionally been one of the big challenges. The data that HMCTS can collect is not great. This is something that they have long been concerned about and one of the things they want to fix with this programme. Their systems are something like 20 years old and very poor at gathering data. Time and again, when we ask for data or statistics on what is happening on particular aspects of court work, the answer is that those figures are just not available. It is not for want of



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trying. I would not blame HMCTS for that. They have been stuck with very poor systems for a long time.

Q26 **Anne Marie Morris:** Until we fix that, we will never know whether we are even close to working out access to justice.

Nimrod Ben-Cnaan: In terms of the desktop analysis of the dry figures you have, part of the problem is that HMCTS estimates about the court reform programme are based on the general population. The courts are meant to serve the entire population but, in effect, some people end up in the justice system more than others. That gap between the estimate and the reality merits a much closer look, alongside better data collection of what they do not already know.

Q27 **Sir Geoffrey Clifton-Brown:** I have to apologise to you all. I am going to ask this question, but may not be present to hear the answer. I am on a statutory instrument on 4.30 pm and we need to be there before then. It is on access to justice. Mr Townend, you very kindly gave me this prompt, in that I have a huge constituency of 500 square miles. It is 65 miles from one end to the other. They have closed the magistrates' courts in Cirencester and Gloucester. Parts of my constituency are 30 miles away from Cheltenham, where the nearest magistrates' court is. Ms Gibbs, you gave the example of Ipswich and Bury St Edmunds; it is at least that scale, if not bigger. How can that closure of my Cirencester magistrates' court contribute to good access to justice?

Samuel Townend: It is difficult to see how it can, in those circumstances. In my opening comments, I discussed the background of a 40% overall cut in budget. We have delocalising and centralising of certain functions. For historical reasons, we have reduced access to legal advice, legal aid and representation. The distance between the party and the judge making the decision is becoming greater.

We talked about video and telephone. You may, in due course, look at the impact of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018, in which certain judicial functions will be carried out by and delegated to legally qualified staff or possibly even non-legally qualified staff. That is being consulted on by a number of the procedure committees, at the moment, not by Members of the House of Commons as always used to be the case, because it would be part of delegated legislation. By operation of the Act, it has been put a level lower to the procedure committees. Then the impact on litigants in person, as opposed to those who can afford to instruct people like me, would be particularly detrimental. They are facing this distance and the relative lack of transparency. In those circumstances, closure of two courts in a Member's constituency does not help access to justice.

Q28 **Chair:** I want to touch on transparency, because at the beginning Ms Gibbs touched on that and the lack of transparency if you are just trying to find out what has happened. One of the benefits of an online system surely ought to be that you can find access to information, data, records



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and so on, if you need to. For instance, a litigant in person might be able to find it and access court documents more easily. Has any of that materialised?

Nimrod Ben-Cnaan: No, not entirely.

Chair: Is there any good news there, from your perspective?

Richard Miller: The small claims system is starting to move in that direction.

Chair: You think that is getting better.

Nimrod Ben-Cnaan: It is. I would like to pick up on what Mr Townend was saying about litigants in person, the kinds of issues they struggle with and the missed opportunity to support them. Litigants in person have always been a feature of the justice system. They have become a much more prominent feature after the legal aid cuts of 2013. The current court reform programme does not address that, explicitly or implicitly. It is a great missed opportunity.

The closest thing there to better involve them and increase the accessibility of the justice system to them is the Assisted Digital support service, except that service is specified only to enable them to make initial applications. It is technical support. It has nothing to do with advice or increasing their legal capability in order to better manage the process or own their business at the court or tribunal. No amount of "download it yourself" and "take it offline and do it there" kind of solution is likely to compensate for that. There is where we would like to see much more improvement.

Q29 **Chair:** Mr Miller, you say it is working better for small claims issues. Are there other areas where it is working well? What could the Department or HMCTS do? It is going to take a while; it is not easy to do, but could it do more?

Richard Miller: This is one of the issues. A lot of the problems caused by the court closure programme may be addressed by some of the projects within the reform process, but that depends whether they work, whether they are fully rolled out and how long that takes. The court closures are happening now and the other measures that might help to mitigate the problems are not in place yet.

The small claims process is a good example of how people can now start proceedings from their own homes, on their own computers. That means access to the local court is not as important as it once was. You used to have to fill in the form, take it along to the court and get it issued there to kick things off. The system is, slowly but surely, being improved in a way that reduces the need for that local court. But, if the matter does not settle, there will need to be a hearing, which has to be accessible for everyone, regardless of where they were when they started the



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proceedings. There is a real concern about whether the court estate is sufficiently accessible.

Other things can be done. For example, there has been talk about the idea of pop-up or mobile courts. There are potentially ways and means of ensuring that justice is brought to where people are, rather than them having to travel vast distances to get it. That ought to be explored a lot more than it is currently.

Q30 Chair: I presume you are thinking mostly about civil cases, because of the issue of custody suites and cells.

Richard Miller: I am primarily, although some less serious criminal cases could be dealt with in the same way.

Penelope Gibbs: Most criminal defendants do not need to go in the cells at any point, and there are cases where imprisonment could not be used at all, so you can do it for criminal and for youth. It is possibly part of the answer. We talked about the difficulties in getting to court but, if you are 15, these huge distances are even more difficult. For many of the cases in which children are involved, it would be better if there was a local pop-up court.

Samuel Townend: We were talking about digitisation. I agree with colleagues that civil money claims and probate online are a positive outcome. One of its key features, though, is that it is optional, so you can still fall back on the paper option at the moment. The true test of this digitisation programme, even as far as it has gone to date, will be when it becomes compulsory. Then, the litigants in person or equivalent, who may not have ready access to the internet, confidential circumstances or the wherewithal, are stuck with that programme. At the moment, they can turn up to a court office to try to have it dealt with there.

Q31 Chair: That is a very important point. I recall the constituent who came to my surgery and said, "Remember, my internet access, if I can get it, is one hour a day in the library". That is not secure or private. You might even need to ask for help from a librarian. I have not seen any data about how many defendants or other users of the Courts Service do not have access to the internet. We can ask the Department this next week. Mr Ben-Cnaan, I guess a lot of your clients will not have easy access to the internet.

Nimrod Ben-Cnaan: Our clients are one thing, but we are told about the reform programme that the assumption is that 18% of the general population are digitally excluded. Coming back to the point I was making earlier, that is about the general population. Among the people who end up using county courts, tribunals and magistrates' courts, the ratio is likely to be much higher.

Q32 Chair: Does anyone have a figure of how much higher it is?



Penelope Gibbs: I know a researcher who has looked at this for the Civil Justice Council and I will get the reference to their research, because it is very good. This is Dr Catrina Denvir, and she would say that it is one thing not to have the internet at all but, even if you have the internet, your legal capability to do these kinds of things on it is not the same as your ability to talk to your friend on Skype.

On transparency, I just want to say that there is transparency and the ability to have information for the individual, but this is for the whole programme. I would still say that there are some missing links here. We have not seen the business case. We do not have access to the business case. There is no budget published for the whole programme, nor a detailed plan of what they are doing when. That would be useful to understand what they are trying to do going ahead, so there is a little road to go there.

Q33 **Chair:** They have forecast savings, which have gone down because of the delays. Whether they are reinvested, with the reductions in funding of the MoJ, is another matter. I am warning you now that I will ask you three things that you would like to recommend to HMCTS or the Department, when we have them in front of us next week. At the beginning, a number of you raised the general point about the difference between hard and easy cases. We touched on it just then: a straightforward claim in a small claims court might be quite easy to do online. Do you have any sense that HMCTS is differentiating between simpler and more complex cases, and doing any analysis of whether, for example, video links are better for the first appearance in court compared to the full trial, or certain levels of crime or civil cases? Is it just scattergun, to use a very untechnical phrase?

Samuel Townend: The first thing is to look across the piece at trying to assess the impact, in terms of access to justice, fairness and outcomes, as opposed to a focus on a cost-savings exercise, which seems to be the case. That is a perfectly proper aim, but one needs to assess whether the outcomes are correct and good. Secondly, specifically relating to the impact of digitisation and video hearings on justice outcomes, if possible, we should focus on getting the backlog of cases down, for criminal but also the civil cases concerned, and stopping the delay in justice, which must cause injustice, rather than focusing on too many court closures.

Q34 **Chair:** Is there enough analysis of the delay versus the new ones coming through with new technology?

Samuel Townend: There is a real clarity as to the backlog of criminal cases. There probably is that information for civil cases, but it is not available to us at the Bar Council. A number of general principles come through the discussions we have had today, about open justice and access to justice. The general principle is that delayed justice is bad justice. We have talked about youth offenders in particular and that must be the case.



Richard Miller: Picking up on your question about whether they are talking a scattergun approach and how they are doing things, my experience is that they are focusing on a particular type of hearing and asking, "Can we make this change? Can we do this by video or online?" They are focusing narrowly on the type of hearing, rather than on variations in the characteristics within that type of hearing or—and this is perhaps the most important point—variations in the characteristics of the participants in the process. For example, for video remand hearings, we said, "Let us have a list of characteristics and say, if the defendant has these characteristics, the default assumption is that they are not suitable for a video remand hearing". They would not go down that route. They just wanted the default of saying it would be up to the judge in each case, and for the police officers to take a judgment in the first instance and the judge to review that.

Q35 **Chair:** Are you including age and other vulnerabilities in that? Could you give examples and a flavour of cases?

Richard Miller: The sort of things might be if the defendant was a youth defendant, if they had mental capacity issues or perhaps if they had drug or alcohol dependency.

Penelope Gibbs: It could be English as a second language.

Richard Miller: Yes, although illiteracy might be a ground for having a video hearing. These characteristics will, almost by definition, have an impact on the person's ability to engage. You need to focus to make sure you give them the best possibility of engaging effectively. Our view is that, in the majority of cases where the defendant has those type of characteristics, face to face is the way to ensure that.

Penelope Gibbs: I know it is going to cost, but they need to slow down even further. The problem is that they are taking one thing and assuming they are going to do it. Then they are moving video into civil and so on. In each case, we need to find out what the impact will be before spending huge amounts of money on the technology behind it. Secondly, there needs to be proper, open, academic impact research on every single new development.

Nimrod Ben-Cnaan: I would definitely echo that last point. It is about better data collection and sharing, enabling a meaningful and transparent scrutiny of court reform, and it needs to start now, not at any future time. That means you do not go ahead with future stages without having first assessed the impact of those already in train. That is one thing.

The second thing is to review actual client journeys, not personas, through the justice system, in order to specify the optimal journey in which a person feels that justice has been done, regardless of their particular outcome. That probably means introducing some measure of legal assistance alongside Assisted Digital to enable greater access for those people. The third thing is better standards of communication with



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legal practitioners, which are one type of stakeholder, and members of the public. There are plenty of examples I could give.

Chair: Mr Miller did not quite make his three points, because he was answering another point. Do you want to add to that?

Richard Miller: I agree entirely on data and transparency. That would very much be one of mine. Halt the court closure programme until we fully understand the impact of the closures that have already happened, because we are seeing problems emerging.

Chair: I fear they have banked the money already, Mr Miller.

Richard Miller: There is that fear. The final thing is to address problems, when they emerge, with sufficient resources. The particular thing I have in mind here is the probate reforms. They have closed probate registries and centralised the processes. As a result, there is now a huge backlog in the number of applications for probate outstanding. This has been in place now for six months and there is no sign of it getting better, at this stage. By now, they should have put much greater resource into resolving the problem that has emerged because, if they do not, it will undermine trust and faith.

Chair: That has a huge impact on people.

Richard Miller: It does, yes. Previously, they were turning around grants in a couple of weeks. It is now several months.

Q36 **Chair:** Does this go to the point you raised at the beginning? This is my final point for anybody who would like to comment. Mr Miller talked of running ahead of cutting-edge technology, so not even new technology, but cutting-edge technology. You have touched on that a bit, but can you give any other examples? Is that the problem with the probate system, for example?

Richard Miller: I do not think it is. I am not sure exactly what the problem is, but it seems to be several different changes coming together, so moving processes online, closing the various probate registries and centralising things, so there are different, perhaps less experienced staff doing it, in some cases. Those changes all came together plus, apparently, there was a spike in applications because of the threat of increased probate fees. That just added to the problems.

Q37 **Chair:** One bit of Government is not working with the other—surprise, surprise. Do you have any other examples of running ahead of cutting-edge technology?

Richard Miller: Again, there are the projects in the criminal courts, for either online or video processes, where that is going on. We were talking about how you would set up video hearings if multiple parties are beaming in by video link. At one meeting, the HMCTS staff were saying, "We have worked out that, if you have all these people showing up on



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one screen, they will be too small for the judge to see what is going on. They will need to have two or three screens, so they can see all the different parties". My response was, "But every party needs to see everyone as well. You cannot expect lay users and lawyers all to have multiple-screen set-ups that will enable them to see all these different people, so that is not going to work".

Q38 **Chair:** Did they assume, in any court building, you could just put up multiple screens for the judge?

Richard Miller: That was the solution they were speculating on for this particular problem they had encountered.

Q39 **Chair:** But they had not thought about that before. I am sure the NAO is drinking this up, if Mr Lodge and co have not looked at the technology at that level of detail yet. Can I thank you very much? Is there anything else anyone would like to add, before we finish, remembering that the Department will be in front of us in 10 days?

Penelope Gibbs: The back end of criminal is very important. They have been working on the digital case files and that kind of thing. The common platform, if it works, will be really good and an improvement.

Chair: That was a positive comment from Ms Gibbs on which to finish. Does anyone else have anything to add?

Richard Miller: They should focus on the digitisation projects that are delivering real benefits to users and have the prospects of delivering substantial cost savings. They are blowing it by putting a lot of money into projects that seem to have much less prospect of actually delivering what they intend. They need to focus on the projects that have the best chance of delivering success.

Samuel Townend: I agree that digitisation, or offering an alternative digital option when you start claims or probate online, is a good thing and has had some success. But we have no transparency of the ultimate outcome that HMCTS now wishes to see. It seems that they have moved back from having justice by decision tree or algorithm and all the other aims, some of which were laudable, to a much more basic replacement of the paper-based with the digital. The question is where they intend to go now. The Bar Council is not sure. We would like to know, so that we can help them to design it and can inform it.

Chair: Mr Ben-Cnaan, do you have anything to add? Do you disagree with him?

Nimrod Ben-Cnaan: No, between us, we have covered it all. I would emphasise accessibility, but empirically gauged.

Chair: We love it on this Committee when people talk about data, because that is what we need to do our job and the National Audit Office assists us greatly in that. I have to say that the Ministry of Justice is on



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my list of worrying Departments in my annual report and has been for the last couple of years, because so many things are changing. We have had a useful discussion about the many things changing just in the Courts & Tribunals Service.

Thank you very much indeed for your time. Our friends at Hansard were not expecting to be here this week, so we may be slightly slower than usual in getting the transcript on the website. It goes up uncorrected in the next two to three days, so please keep an eye out for that. We are not producing a separate report on this hearing, but we will produce a report once we have had the hearing in 10 days' time. Assuming no general election, we might get that out before Christmas and will send you a copy. Thank you very much indeed. You are welcome to come to the next hearing if you wish. We will keep a seat warm for you.