



Transforming our justice system: summary of reforms and consultation

ICAEW welcomes the opportunity to comment on the *Transforming our justice system: summary of reforms and consultation* published by Ministry of Justice on 15 September 2016, a copy of which is available from this [link](#)

This ICAEW response of 10 November 2016 reflects consultation with the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies. Members of ICAEW's Information Technology and Tax Faculties were also consulted. Both are internationally recognised as sources of expertise and responsible for ICAEW policy on technology, the digital economy and taxation. Both draw on the expertise of accountancy and other professionals with an in-depth knowledge of technology and taxation respectively.

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MAJOR POINTS

1. We welcome the opportunity to comment on the Ministry of Justice's (MoJ) and Her Majesty's Courts and Tribunal Service's (HMCTS) proposal for reform of the justice system.
2. We support the introduction of digital processes wherever appropriate as we agree that they are likely to deliver benefits for the users of courts and tribunals as well as cost savings for the government.
3. We are concerned, however, that the short consultation period will not enable all those potentially affected by the proposed changes to gather sufficient evidence or even to be aware that there is an ongoing consultation. This is detrimental to the outcome of the consultation and may mean that not all eventualities and the effect on users will be identified, considered or taken into account. For the public to trust and accept any new system (digital or not), it must be developed in consultation with its users. This is particularly the case with the justice system, given the variety of court users.
4. As the proposed reforms could potentially effect a significant proportion of the population, we are concerned that not all the relevant bodies may have been consulted. We would hope that the MoJ and HMCTS will consult directly (if they have not already done so) those charities and support organisations that work with the vulnerable and the socially excluded as well as those with exposure to the current justice system (prisoner welfare groups, mediation service providers, claims advisers, Citizen Advice Bureaux, for example). We would add that any reforms should not be just for the convenience or cost benefit of the judiciary but should benefit all those who come into contact with the justice system. Digitisation is one way to increase access to justice but any digital process must be designed with the needs of all users if it is to achieve this and remain just and proportionate.
5. Any new system (digital or not) must be robust and properly tested before it is launched. We note that the consultation does refer to the testing of some elements but not all and we would suggest that careful consideration is given to the outcomes of the testing process and to a phased roll out of the assisted digital process as a whole.
6. We note that the MOJ and HMCTS are learning the lessons of other government initiatives (although the consultation does not specify which initiatives and which government departments) but we suggest that it would also be useful to look at other jurisdictions that have increased the digitisation of their courts and tribunal services. In particular it would be useful to compare the timetable for successful implementation achieved by other departments or jurisdictions as we note that the consultation does not include any indication of the proposed timetable for these changes.
7. The consultation does not make clear whether the new digital processes will be mandatory or optional. We note that alternatives will be provided for those who cannot use the services but the consultation ignores the possibility that some may choose not to engage digitally. ICAEW is strongly opposed to the mandating of digital processes. There should be a choice. If the new processes are good, people will naturally opt to use them; a good example of a positive response to digitisation is demonstrated by the uptake of online self-assessment for tax.
8. We are responding on behalf of our members and have considered our responses from the standpoint that a well-functioning legal system is to the benefit of all citizens and a pre-requisite of a well-run, fair and just society. In addition, our members and their clients are impacted by the complexity of tax, financial and business law and regulation and can provide a different perspective on the justice system than that of legal professionals.

RESPONSES TO SPECIFIC QUESTIONS

A. Assisted Digital

Q1: Do you agree that the channels outlined (telephone, web chat, face-to-face and paper are the right ones to enable people to interact with HMCTS in a meaningful and effective manner?

9. We agree that it is important to ensure that there are sufficient channels to ensure that as many people as possible are able to access justice.
10. The channels outlined cover an appropriate range of the currently available channels. However, we are concerned that adequate resources must be available to support each of these channels in both the short and long term, and that their suitability assessed on a regular basis. Over time other channels may emerge that are more suitable or existing channels may become obsolete and both of these possibilities should be reviewed on a regular basis and then the service offering amended accordingly.
11. The consultation has suggested that 'face to face assistance' may be provided by a third party organisation but does not suggest any third party organisations. We wonder whether the MoJ has already contacted third party organisations to undertake these services, as the availability and expertise may not currently exist on a cost effective and/or national basis.
12. Web chats and telephone help services, for example, are only as good as the people running and updating them. It is therefore imperative that the MoJ builds in to the system a regular review of all providers to assess the quality and appropriateness of the assistance given and to ensure that they are sufficiently funded to continue to provide a good quality service.
13. We note that some people may chose not to use digital services, usually because of a concern at the safety of such services. Ways to eliminate or reduce the prevalence of this mistrust should be factored into any system. As we have noted above, although the MoJ should aim to increase trust to minimise the number of people who prefer to continue with the undigitised service, at the same time people should not be forced to adopt a digital approach against their will.
14. Limitations on an individual's access to any digital services is not always caused by lack of education or confidence but due to the lack of physical access to a computer, third party provider or reliable broadband and internet connections. Again the consultation does not specify how the new system will overcome these hindrances but if access to justice is to be increased then provision must be made for those users who face these obstacles. We are particularly concerned over significant regional variation in access to a reliable internet connection.
15. In order to increase the uptake of digital services, the MoJ and HMCTS should consider how best to educate the public on their availability and the benefits of using them. This will add to the initial cost of the scheme but would be worthwhile to ensure that the system is taken up with alacrity by the public.
16. The aim to reduce costs overall is laudable but cost savings will not be immediate. The consultation does not state the amount earmarked for the proposed changes out of the total £700m available nor does it outline the timetable for reform. It is therefore not clear if there is any scope for slippage in terms of time and cost.

Q2: Do you believe that any channels are particularly well suited to certain types of HMCTS service? Please state your reasons.

17. No. We believe that all possible channels should be made available to all citizens to enable as many as possible (who so wish) access to the judicial system. The key is ease of access and this varies by user not service offering.

B. Online convictions and statutory fixed fines

Q3: Do you agree with the principle of a statutory fixed fine process for those who enter an online guilty plea and are content to proceed with the process? Please state your reasons.

Q4: Do you think there are any additional factors which we should factor into this model? Please list additional considerations.

Q5: Do you think that the proposed safeguards are adequate? Please state your reasons.

18. We agree with the principle of a statutory fixed fine process for those who enter a guilty plea and are content to proceed with the process, but we are concerned that sufficient controls must be in place to minimise the incidence of miscarriages of justice occurring because of inappropriate pleas. In particular, we are concerned that defendants may be motivated to plead guilty to offences where they do not consider themselves to be guilty, in order to avoid the costs and inconvenience of a court appearance, or under pressure from prosecutors, law enforcement personnel or others affected by the alleged offence. We can envisage the situation that someone may plead guilty in a desire 'to get things over and done with' but without fully understanding or appreciating the consequences of such a decision.
19. We welcome the safeguards proposed but additional safeguards are required.
20. It should be explained to defendants that a conviction may have consequences other than those directly resulting from the court process. For example, the offences listed (fare evasion, and possession of unlicensed rod and line) are ones of financial impropriety which would lead to the likelihood of disciplinary action by professional and regulatory bodies including ICAEW, as well as many others to which 'fitness and propriety' are important. In addition, a criminal record will have other important consequences, such as the assessment of subsequent decisions, including whether repeat offending is an issue. It is not clear from the consultation whether all these potential consequences will be made clear to defendants before they plea.
21. We are particularly concerned that all defendants will be able to make an informed decision. Safeguards must be introduced to ensure that vulnerable defendants are protected, including the provision of proactive advice, not just reliance on them seeking it for themselves.
22. Equally important to explaining the consequences of a guilty plea, is the importance of explaining to defendants that it is wrong, in fact essentially lying to the court, if they plead guilty to an offence that they have not committed. Non-guilty pleas should be taken seriously, especially in relation to minor offences, as contributing valid defence evidence - though ways might be made to enable law enforcement authorities to refer to previous occurrences in the event of a number of prosecutions for similar offences.
23. We welcome the fact that the court would have the power to reverse a conviction and have the matter retried, in the event that the defendant did not understand the consequences of their decision to accept the conviction and total penalty. We suggest that a simple means for those convicted by the proposed procedures should be put in place, to enable them to apply for such a retrial – or even easier where a decision has not yet been made, and a guilty plea was entered inadvertently by choosing the wrong box.

Q6: Do you agree that the offences listed are appropriate for this procedure and do you agree with our proposal to extend further offences in the future, including driving offences? Please state your reasons.

24. We agree that it is useful to evaluate, in the first instance, the system by reference to a small number of summary, non-imprisonable offences. Any extension of the scheme, however, should not be introduced until the test system has been undertaken for a suitable lengthy period and the outcomes evaluated. We would caution against rushing into extending the system before the outcomes of the test have been fully understood and incorporated into a revised system.

25. The rationale for extending the system to other offences, such as certain road traffic offences, should be the subject of consultation with users (to include in the case of road traffic offences, motoring organisations, the highway authorities, the police and victim support organisations) rather than just extended as a matter of course.
26. The list of offences judged to be eligible for these procedures should be kept under review, with an assessment of their success not just in reducing costs and inconvenience, but also in their having positive effects on justice for defendants

C. Impacts and Equalities impacts

Q9, 10 and 11.

27. No comment.