

Modernising the Civil Courts

The Advice Services Alliance's response to the
Court Service consultation paper

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1 Introduction

1.1 The Advice Services Alliance is the representative body for advice and information services in the UK. Current full members are:-

- Citizens Advice Scotland (CAS);
- DIAL UK (the disability information and advice line service);
- Federation of Independent Advice Centres (FIAC);
- Law Centres Federation (LCF);
- National Association of Citizens Advice Bureaux (NACAB);
- Scottish Association of Law Centres (SALC);
- Shelter;
- Shelter Cymru;
- Youth Access.

1.2 This response has been prepared by the County Court Advisers Group, a working party of the Alliance, which provides a forum for information exchange and policy discussion for advisers who provide services in county courts. Membership consists of representatives from the Alliance's member networks and co-optees. The main areas of expertise are debt, housing and consumer cases, the latter usually involving small claims.

1.3 One of the Group's two primary objectives has always been *to ensure that the county courts in England and Wales meet the needs of individuals using them, particularly those who are disadvantaged, unable to represent themselves, or have little experience of the courts*. This includes the needs of both claimants and defendants.

2 Overview of the proposals

2.1 We are in no doubt that the civil courts are in need of an overhaul, and we agree with much of the analysis in the paper of why this is so. We also welcome many of the proposals in the paper. Although the MCC project is still at a relatively early stage, we believe that in principle, it offers considerable scope for enhancing services in the medium to long term.

2.2 The users likely to obtain the greatest benefit from many of the proposals are however the bulk issuers and those who are legally represented. We therefore welcome the acknowledgement that the goals of enhancing the use of IT and reducing costs must not be pursued at the expense of users unable to take full advantage, and the recognition that the need to retain and enhance traditional methods of dealing with the courts will remain for some considerable time yet. This is particularly important in deprived areas, where all the indications are that withdrawal of facilities would not be mitigated by access to IT. Recent Government research¹ indicates that in deprived areas:

- access to a pc, the internet and a personal external e-mail address at home, work, or place of study is around half that in non-deprived areas;
- in deprived areas, 71% of respondents had no access to any of these technologies, compared with 48% in non-deprived areas.

¹ Attitudes to Public Services in Deprived Areas - Final Report: People's Panel Analysis (Research Study Conducted for Social Exclusion Unit) 2000

- 2.3 Other research also highlights inequalities in access to IT. National Statistics reported recently that whilst the proportion of households with access to the internet at home is as high as 34% in London, in Wales it is only 20%.² Furthermore, access was found to be far less among households with the lowest incomes, at under 10%, compared up to 60% among the highest income households. Use in lower income households also appears to be increasing at a far slower rate than among those with higher incomes.
- 2.4 Notwithstanding our opening comments, we have some major concerns regarding the proposals, and principal among these is the cost of modernisation. The £43 million secured so far is less than half the projected £94 million to £125 to be spent on modernising the Crown Courts³ - of which there are half as many. The paper contains no projections of the costs of the civil courts project, but it seems obvious that £43 million will not go very far.
- 2.5 Nor does the paper deal with the question of where the necessary capital investment is to come from. Our view is that it is essential that the source is other than court fees. Even on the argument repeatedly made by Ministers that court users should pay *'the full cost of the civil justice system they are using to resolve their dispute'*⁴ there is no justification for extending the policy of full costs recovery to fund investment on the scale required here. That would involve today's users paying for facilities to be had not by them, but by the users of tomorrow. Although bulk users obviously have an ongoing interest in seeing the fees they pay used to fund an efficient system, individual one off players are in a wholly different position - and in any event, fees paid by bulk issuers are simply added to the debts owed by those they sue.
- 2.6 Another concern is whether this consultation process and other measures taken so far are sufficient to identify the various needs of all types of users. We are aware of the user surveys, and the recent report of satisfaction levels of 79% and higher.⁵ However, these findings are based on a self-completion postal questionnaire. Response rates to such surveys are often very low, and it would be therefore be interesting to see a breakdown of responses to this one, particularly from litigants in person and defendants. Previous postal surveys of small claims litigants have generated markedly lower response rates among defendants than claimants, and we suspect the same here.⁶
- 2.7 In addition, by definition, self-completion postal surveys present obstacles for users with reading difficulties and whose first language is not English. We understand that the Litigant Information Sub-Committee of the Civil Justice Council has also raised this as a concern. Given that such users are among those who may be expected to be least able to cope with IT, we would like to know how the Court Service is tackling the issue of ascertaining their views.

3 Improving customer service

Q1 Do you agree that customers should be able to give instructions to the court by telephone?

² First Release: Internet Access (data from the Family Expenditure Survey and National Statistics Omnibus Survey) December 2000.

³ Hansard, HC Written Answers for 1 November 2000, column 513W

⁴ Hansard, HC Written Answers for 1 November 2000, column 513W

⁵ LCD Press Release 147/01, 14 April 2001

⁶ E.g. 12% compared with 46% in the National Audit Office report, Handling Small Claims in County Courts (1996);

Q2 Can you identify services that you would like the court to provide by telephone?

Q3 Are you satisfied that appropriate levels of security can be achieved in order that the court can deal with claims that instructions have been falsified?

Q4 What are your views on the use of [e mail and internet] technologies?

- 3.1 It seems to us that telephone and e mail instructions would be appropriate mainly in situations where rules require the court to only hear from one party. Otherwise, the court would be unable to action matters immediately, thus reducing the benefits of these forms of communication. Where e.g. requesting judgment to be entered, or accepting an admission and offer, it would obviously be important for the claimant's communication to include some sort of certificate as to the situation, in a form which allows for easy verification of any offer made by the defendant at a later date if need be.
- 3.2 The need for courts to be confident about the identity of parties giving instructions and to ensure security suggests that at least initially, use of telephone and e mail would be of benefit mainly to bulk users and solicitors, who may be expected to develop their capacity to encrypt instructions and who could be supplied with identification codes. It is more difficult to envisage arrangements being developed in the near future which would allow courts to accept such instructions from litigants in person or one off players, unless there has been prior initial contact involving verification of their identity. In the longer term, the proposals for links with advice agencies in Section 5 of the paper (see below) perhaps contain potential to assist here. Several issues would however arise, especially whether agencies could reasonably be expected to take responsibility for verifying clients' identities.
- 3.3 Payment of fees is one obvious additional facility that should be available over the phone by credit/debit card, but if the function of taking payment were separated from that of issuing claims and applications, there would need to be system for recording that payment had been made.
- 3.4 Another useful service would be on line access to the Register of Judgments, although again the method of payment of the search fee might be an issue.
- 3.5 We welcome the proposal for a call centre for handling requests for leaflets and forms, but only as an additional service - they must also be available to personal callers. That need not be resource intensive: if front line staff had access to a pc with a printer forms could be printed on demand.
- 3.6 Recent research for the Cabinet Office found that *'touch-tone telephone menus and automated voice response systems are not popular. As well as being prone to user error, these are seen as impersonal and wasteful of the caller's time and telephone bill'*⁷. We are pleased to see this acknowledged in the paper, and hope that it will be borne in mind in developing telephone services.

Q5 What a) services and b) information do you think should be available via the internet?

- 3.7 The projects and pilots described in the paper are all useful developments, and we welcome them provide they are pursued to enhance access to the courts alongside traditional methods.

⁷ What's in IT for the Citizen? Delivering Public Services through Electronic Channels (Research Study Conducted for The Performance and Innovation Unit (Cabinet Office)) April 2000

- 3.8 The Court Service website is already a valuable resource, but is still not sufficiently geared towards the needs of all users. For example, forms used by debtors for applying for a time order under the Consumer Credit Act 1974, are not currently available. Nor is the form for applying for fee exemption or remission. Although many users on low incomes currently lack access to the internet, many advice agencies would make use of them.
- 3.9 A relatively simple but useful addition to the directory of courts would be maps, directions and information about public transport (where it exists). There are already several websites offering links which might be utilised here without the need for the Court Service to produce it's own maps (e.g. multimap.com, which already has a link on the JustAsk site).
- 3.10 Documents which explain how the courts operate, such as the guidance to court staff on dealing with applications for fee exemption and remission, and the determination of means guidelines, also ought to be made available on line. Despite courts being instructed that these are public documents, advice agencies are often unable to obtain them locally. In some cases, staff appear to not even be aware that such documents exist - which is a separate issue, but on line access would be more cost effective for courts and many users.

Q6 What are your views on the opportunity for electronic partnerships for particular customers or processes?

- 3.11 Again, the suggestions in the paper for enhancing access and reducing the time and cost of issuing proceedings are welcome. However, it is likely to be some time before we would be confident about local authorities issuing possession claims on line. Continuing difficulties with administration of housing benefit claims in many areas would need to be addressed first.
- 3.12 One measure which ought to be incorporated into the development of packages for on line issue is the rejection of claims which do not contain details in all the relevant fields, thus ensuring that rules regarding particulars of claim are adhered to.

Q7 What are your views on the development of a more distinct small claims business within the courts, supported by a customer contact centre and a video network?

- 3.13 The proposals for small claims appear attractive, and could perhaps allow the popular concept of 'the small claims court' to become more of a reality. However, we think there are question marks about a small claims business centre. The first is that under the CPR, there is of course no such thing as a small claim until a defended case has been allocated to the small claims track. Would cases enter the business centre prior to that point? If not, the opportunity to tailor services to individual small claimants at the point when they are arguably most in need of procedural advice - i.e. the outset, would be lost. If so, the obvious criteria for routing claims to a separate business centre would be whether they are of a value for which the small claims track is the normal track - which would appear to involve usurping the judicial case management function which at the heart of the civil justice reforms.
- 3.14 Our second concern about a small claims business centre is that as Professor John Baldwin's research for the LCD has shown, very often, a small claim will involve a litigation in person defending a claim by a business or institution.⁸ Individuals are also often suing other individuals. Any small claims business centre must therefore be geared towards meeting the needs of defendants as much as claimants, and care

⁸ Monitoring the rise of the small claims limit: litigants' experiences of different forms of adjudication, 1997

must be taken to ensure that the public perception is not of a service simply for claimants.

Q8 What are your views generally on the issues raised by the proposals for centralisation of administration?

Q9 What views do you have on our early thinking about the business centre approach and the centralisation of services?

- 3.15 Provided that the Court Service is able to make good the commitment to maintaining and enhancing front office facilities, and the necessary investment in the infrastructure and staff resources were there, we think the centralisation of back office functions would be acceptable. The ability to deal with any court would be a positive development, particularly if it allowed applications for hearings to be held in local courts to be made locally (see below).
- 3.16 However, we have some concerns regarding the proper division of functions. The paper appears to suggest (at p 41) that all post would be directed to business centres. We hope that would not include a letter seeking advice on how to halt an imminent eviction posted or delivered to a local venue, whether an office or hearing centre. The consequences of that being redirected to a central point would be potentially disastrous.
- 3.17 The paper refers (at p 40) to accounting for fees. This is another function that might be considered 'back office'. However, it is essential that facilities for taking fees should be maintained locally - in cash if need be (see below).
- 3.18 We agree with the various comments in the paper about the opportunities centralised administration and the development of business centres would offer for staff to specialise and thus increase expertise. Indeed, this would be essential in developing the necessary infrastructure. Present experience suggests that courts have found it difficult to cope with the changes which have already taken place in recent years, and that this is in part at least due to the many different and new demands constantly being made on staff who, almost as soon as they have got used to a role, move on.
- 3.19 If efficient access to front office facilities is to be maintained but on a smaller scale in some areas, the staff providing such services are however likely to need a wider range of skills and knowledge than they are expected to have at present.
- 3.20 We would like to know more about what the proposals would mean in practice before commenting on the desirability of regionally located business centres dealing with housing cases, particularly possession claims. As suggested elsewhere in our response - and as has been accepted in the context of the enforcement review⁹ the ability to deal with urgent applications to suspend possession warrants is essential. It is not clear from the paper how this would be maintained if there were a separate centre for housing cases.
- 3.21 Similarly, as acknowledged in the paper, it is difficult to comment on a separate business centre for enforcement matters pending the outcome of the second phase of the LCD's enforcement review. For the time being, we would simply note our disappointment at the emphasis on execution against goods in the discussion at p 76 - 79. Creditors relying almost exclusively on bailiff action due to the ease and relatively low cost of issuing a warrant is a feature of the current system which we would hope will be less common in the future.

⁹ Report of the First Phase of the Enforcement Review London (July 2000)

Q10 How important to you are extended hours of service for a) office services b) hearings?

Q11 What office hours of service would you like to see from the courts?

Q12 In which areas do you want 24 hour service?

- 3.22 Recent data from the People's Panel¹⁰ suggests that demand for out of hours facilities for public services generally focuses on telephone availability during early weekday evenings and Saturday day-times, and that the main types of things court users would like to be able to do at these times are check on progress of a case; find out information and request forms and leaflets.
- 3.23 However, over half of court users in the survey did not want to do any of these things outside usual office hours. Although the numbers involved here were small, the larger number of non-users expressed even less interest. Of course, demand may increase as facilities become available - but this suggests that it is more important to ensure resources are devoted to maintaining and enhancing access during traditional office hours.
- 3.24 The People's Panel survey did not address the question of out of hours hearings, but we wonder whether the resource demands - not only on courts, but also on others, such as witnesses and legal representatives, would be worthwhile in many cases. Again, we therefore think it is more important to devote resources to ensuring access to hearings at civilised hours.

Q13 Are there other electronic ways in which the Court Service should deliver advice and information?

Q14 Do you agree that there is a wider advice role for our staff and do you have views on how such a service might be developed?

- 3.25 The use of kiosks located in public libraries and other venues is currently in vogue, but we think it worth noting that the research on access to IT in deprived areas cited above also found that libraries are used less frequently in deprived areas than in non-deprived areas. Sixty-four per cent of respondents in non-deprived areas had visited a library in the previous year, compared with 51% in deprived areas. 28% of respondents in deprived areas reported never having used a library. Further measures are therefore likely to be required if the Telford kiosk pilot is to achieve it's full potential.
- 3.26 We very much support access via the courts to sources of advice such as the Community Legal Service Directory of providers. Although advice much earlier on is important, individuals issuing or facing proceedings are at a stage where a swift and appropriate referral for legal advice can be crucial. The Directory and the JustAsk! website offers scope for providing court users with far more help than the traditional suggestion to simply 'contact a CAB or solicitor'. However, the suggestion seems to be that users would be expected to access the directory themselves. Some would need help, and training for court staff is therefore important here - lay users do not always categorise their problems in the same terms as professionals, and it is also important that staff are knowledgeable about the different levels of the CLS Quality Mark and entitlement to free advice to point users in the right direction.

¹⁰ Delivery of Public Services, 24 Hours a Day, Seven Days a Week (24x7): Wave 4 Research Study Conducted for Cabinet Office Service First Unit 2000

- 3.27 As well as providing links to the Directory at court outlets, court forms and leaflets should also carry the website address and telephone helpline number.
- 3.28 One concern we have about proposals here is that similar levels of help should be available to users in all courts. Although not dealt with in the paper, we have been advised that the Court Service plans include dividing courts into three categories, offering different levels of advice provision. Whilst we accept that there is a cut off point below which it is difficult to justify the physical presence of an adviser, it is important that all courts are able to assist users to obtain advice. Where numbers of users attending are low, it is therefore important that alternative access to advisers is developed. The Telford kiosk appears to have potential here, and we will watch this pilot with interest.
- 3.29 Mention is made (at p 47) of the possibility of court staff visiting advice agencies to provide procedural advice. As mentioned below, issues of independence and identity would arise here, as would resources of agencies. Some agencies would welcome the attendance of court staff as a means of enhancing the services provided to clients, but many others would be unable to devote time and space to hosting such facilities. It is therefore important the Court Service explores such possibilities with a view to increasing outlets rather than replacing existing provision.

4 Access to Justice

Q15 What other areas may be suitable for a ['Gateway Partnerships']?

Q16 In what other ways should the Court Service seek to extend its services to the citizen?

- 4.1 We welcome the proposals to connect advice agencies with courts, which has potential to greatly enhance the services they can provide to clients - and we agree that gateway partnerships would accord with some of the conclusions of the Policy Action Team, referred to at p 51, on enhancing access to IT in deprived areas. We also agree that such facilities should be available to agencies with the Community Legal Service Quality Mark - although we think further consideration is required as to the appropriate level at which the Quality Mark should be held, and whether it ought to be held at the same level for agencies to be able to access all on line facilities.
- 4.2 As the paper notes, independence and identity would be important, for both agencies and the courts. Linked to this, and equally important, is clarification of the proper roles of each. People may prefer to seek advice from agencies rather than courts - *'where in any event the scope of advice is quite restricted'* (p 50), but courts must still take responsibility for providing help and advice with procedural matters, and checking that papers are in order.
- 4.3 The posited scenario (at p 52) of how an agency might handle an application to suspend a possession warrant does not deal with how two other important issues would be addressed. The first is that this looks very much like the conduct of litigation - which non-solicitor agencies are of course not permitted to undertake under current law. The second is that whilst a failure to act on advice is often a source of frustration for advisers, clients must retain the right to follow or not follow it. Therefore, the courts must be clear that they cannot expect advice agencies to somehow act as their agents in persuading clients to take certain courses of action.
- 4.4 Resources are also clearly an issue here. Opening hours in many agencies are currently far more restricted than those operated by county courts, and although

many agencies are on line, that does not necessarily mean advisers have access to a pc in an interview room while clients are in front of them. Demands on agencies also means that the time advisers can spend with clients at any one appointment is often limited. And unless acknowledgement that an application had been received and listed for hearing were immediate, the benefit of being able to confirm that to the client before she or he left the agency would be lost. For gateway partnerships with the advice sector to succeed, substantial resources would therefore be required - not only in terms of capital investment in hardware and software, but also for training and support at both ends - and, if hours are to be extended, for additional staff and running costs.

Q17 Do you agree that the current network of county courts does not represent the ideal geographical network?

Q18 Do you agree that there is scope for new ways of using our estate to deliver the services we provide?

Q19 Do you have other suggestions as to how the Court Service might address this issue?

Q20 What are your views on the proposed approach to local hearing venues?

- 4.5 We agree that the current location of and facilities provided by many courts is far from satisfactory. With over fifty county courts having closed since 1994, with little attention paid to the structure of the estate as a whole, it is refreshing to now see recognition of the need for a strategic approach. A major review is therefore welcome. However, we are concerned that there is currently no moratorium on further closures pending the outcome of the review. This gives the impression that certain outcomes may be pre-judged prior to it's completion. If users and other stakeholders are to have confidence in the process it is essential that as the review progresses, the Court Service develops and makes explicit objective criteria which will in future determine the siting and nature of local court facilities.
- 4.6 We agree that to maintain access to local hearings, opportunities for shared use of accommodation with Magistrates Courts and other facilities should be considered. However, as the Court Service will be aware, more than 80 Magistrates Courts have also closed since 1995. In several areas both the County and Magistrates Courts have been lost. It is difficult to see how a national strategy for maintaining access to local hearings can be put in place if this process continues unabated, leading to further opportunities to share premises being lost.
- 4.7 In this connection, Ministers have repeatedly stated to Parliament that under the Justices of the Peace Act 1997, closure of individual courts is largely a matter for local Magistrates Courts Committees (MCCS). However, the Lord Chancellor has power under s. 31 of the Act to give directions on how MCCS should discharge their functions. The Department is therefore in a position to do far more than just *'encourage mccs to liaise with the Court Service and other agencies considering sharing arrangements and ensure better utilisation of court buildings'*.¹¹
- 4.8 Again with regard to Magistrates Courts, as well as noting that many people find courts intimidating, Professor Hazel Genn's research¹² highlighted misunderstandings on the part of the public about the distinction between civil and criminal proceedings. That is consistent with other studies which have found

¹¹ HC Debates, 3 Apr 2001, Column 173W

¹² Paths to Justice 1999

negative attitudes towards attending civil courts, based on perceptions of criminal proceedings.¹³ If more civil hearings are to be held in Magistrates Courts, the Court Service should therefore consider how such negative perceptions might be addressed. The paper mentions (at p 26) that civil hearings are already being conducted in 30 or so Magistrates courts. There is therefore scope for researching attendance rates and the experiences of users involved in civil hearings held in Magistrates Courts to see what, if any, measures might increase confidence in their use.

4.9 In defining regional - and local, need, as noted above it is essential that the review takes account of levels of deprivation, and access to IT when deciding where facilities should be provided. The research already cited¹⁴ indicates - not surprisingly, that compared with those in non-deprived areas, people living in deprived areas:

- have far lower average incomes;
- are much more likely to be in receipt of welfare benefits;
- are almost twice as likely to have no formal qualifications;
- are three times as likely to be without a car;
- are much more frequent users of local bus services.

4.10 The same research suggests that:

- minority ethnic groups (both black and Asian) are more highly represented in deprived areas than non-deprived areas;
- respondents in deprived areas (and their other household members) are more likely to suffer from a long-term illness or disability than in non-deprived areas;
- respondents in deprived areas are more likely to have young children in the household, and are more likely to be separated than in non-deprived areas.

4.11 All this indicates that facilities for local hearings - especially in housing possession and debt cases, are likely to be greater in deprived areas. Viewed in this context, the suggestion that resources for improving physical facilities should be focussed on primary hearing centres (p 54) appears misconceived. More resources may be required to ensure equal access to both types of facilities for users with disabilities, whose first language is not English, and with child care responsibilities. Facilities at local hearing centres dealing with housing and debt cases ought to be an equal if not greater priority.

4.12 In planning local hearing centres, decent facilities for practitioners and space for private consultations with clients are also important. This is especially so in respect of the duty advice schemes run in many courts on possession days, the contribution of which is acknowledged in the paper.

Q21 Do you agree that the citizen (as opposed to other practitioners) essentially only requires a small range of the services?

Q22 What are your views on the proposition that some of the key services provided by the courts might be available at a wider range of outlets?

Q23 What are your views on the notion that the front office of the court might be a shared facility within another agency?

¹³ See e.g. John Baldwin's research noted above.

¹⁴ Attitudes to Public Services in Deprived Areas - Final Report: People's Panel Analysis (Research Study Conducted for Social Exclusion Unit) 2000

- 4.13 We welcome the recent statement by the Minister that the MCC project is expected to result in a substantial increase in the number of locations at which county courts can serve their local communities.¹⁵ Provided that issues such as independence and identity - and confidentiality, are addressed, we agree it makes sense to achieve this through the sharing of accommodation.
- 4.14 Broadly speaking - although we do not have access to the data on which the Court Service has based its conclusion, we accept that the range of services which need to be provided via a front office may be relatively small, and that those cited - checking and issue of claims and applications, and filing of documents, are correctly identified. However, as noted above, we question whether the necessary information on the needs of all users has been obtained. The fact that few types of matters are currently the subject of face to face contact does not necessarily mean others are not needed - it may be that there are barriers preventing users and potential users from obtaining services which they would want to obtain via a front office.
- 4.15 Ancillary matters such as taking of fees and dealing with fee exemption and remission, supplying copies of documents from the court file and checking on progress of cases should also be available. The latter two should be possible at a relatively low cost if the proposals for the electronic court file allowing access via any court come to fruition. Front offices also need to retain the capacity to deal with other matters - if not directly, by liaising with business centres themselves, rather than redirecting users.

Q26 Should we aim to provide access to service at every court or are there limits in respect of particular services?

- 4.16 We think the answer to this depends on what is meant by 'access' and 'service'. As at present, it will remain reasonable for certain courts to have wider jurisdiction than others. It is also unlikely to be possible to provide precisely the same physical facilities in all places. However, we believe there should always be access to all the services needed by court users - even if, in some locations, this is 'virtual' or provided by front office staff helping users to access business centres.

Q27 What are your views about the impact on parties of the way in which hearing venue is currently decided, and on the opportunities to reduce that impact?

- 4.17 One example of the impact is that currently, defendants to applications for charging orders are often in a Catch 22 situation. Many charging orders are applied for by one particular bank, which lends to homeowners throughout England and Wales. The bank invariably issues out of one particular London court, which is allowed under the current rules. This means that a debtor wishing to contest the application at a hearing has to either travel to London, or apply for the case to be transferred to her or his local court for the hearing.
- 4.18 The court in London which has conduct of the case however often refuses to grant paper applications for transfer - if so, defendants therefore would have to travel to apply for a transfer, thus defeating the purpose. Not surprisingly, they often give up. We have argued elsewhere for a change to the rules on venue for charging order applications to deal with this situation, but as noted above, the ability to deal with any court would be a welcome development.

¹⁵ HC Debates, 3 Apr 2001 : Column 176

5 How best to deliver

Q41 Do you have views on the contracting out of services?

- 5.1 The trend obviously continues to be towards the contracting out of public services and, subject to proper controls, this may be relatively uncontroversial in respect of some functions. For example, we are not aware of any problems arising from the fact that the Register of County Court Judgments is run by Registry Trust rather than the Court Service.
- 5.2 However, the suggestion (at p 82) that post opening is not a core activity and therefore might be contracted out needs clarification. If this means simply running an envelope through a machine which opens it, then that may be so. But if it means dealing with the contents of the envelope, that may be another matter entirely, requiring the immediate attention of a member of court staff with the necessary knowledge, facilities and authority to act appropriately - particularly if, for example, the envelope contains a letter seeking the court's help to stop an eviction.

Q43 What are your views on proposals for fee incentives and electronic payment?

- 5.3 The statement (at p 81) that *'there will be those who are unwilling or unable to use technology' but 'those groups have as much right to access to justice as the IT literate' rings rather hollow when juxtaposed with the proposal (at p 83) to 'consider fee incentives to promote the growth of electronic services and the drift of more traditional work to the business centres'*. We are fundamentally opposed to the notion that users of traditional methods of dealing with the courts should pay more - which seems to be what is suggested here.
- 5.4 Charging different fees for processes depending on the methods used would be contrary to one of the main principals for fee structures set by the Lord Chancellor, i.e. that fees should be set on the basis of average not actual costs.¹⁶ In addition, although it would be wrong to suggest that disability necessarily precludes the use of IT, if disability is a barrier then we believe that charging more for use of traditional methods of access to the courts may prove contrary to Part III Disability Discrimination Act 1995.
- 5.5 Our main objection to a two tier fee structure, however, is that it would penalise all users unable for one reason or another to utilise IT. All the research noted above indicates that such users are most likely to be those already experiencing social exclusion, and particularly where debt or housing possession cases are involved, it would be wrong to add to that exclusion by the imposition of what would in effect be financial penalties. If the Court Service is committed to maintaining and enhancing traditional methods of access alongside IT enhancements, a two tier structure should therefore have no place in the MCC project.
- 5.6 It is also worth noting a finding from the research conducted for the Cabinet Office that *'the idea of incentivising online service users is not popular - for example, offering people a £10 reduction on their tax return for completing the transaction online. This is seen as unfair to those without access'* - and this was among 'willing adopters' of internet technology.
- 5.7 The suggestion that fees might be reduced in certain situations to reflect the costs of purchasing postal orders is however worthy of further consideration. Courts may

¹⁶ Civil Court Fees: Consultation Paper on Fee Levels and Charging Points, November 1998

already refuse to take cheques from individuals if not backed with a guarantee card, and users on low incomes and without access to the full range of banking facilities can face further costs which they can ill afford. The current charge for postal orders to the value of £25 - the cost of applying to vary a judgment or suspend enforcement, is quite high at £1.60. Travel to a post office may of course add to these costs. It does therefore seem just to reduce fees to mitigate these costs, particularly if there is an overall saving to the court - which would be akin to the current small discount for users of the bulk centre. However, a user who attends the court office with an application ready for issue and the cash to pay a fee ought not to be turned away.