Commission for Justice in Wales

Submission by Professor Penny Darbyshire p.darbyshire@kingston.ac.uk

I am a retired professor at Kingston University and an adjunct professor at the University of Notre Dame, Indiana, London Law Centre. I have taught and researched at UC Berkeley and been a visiting fellow in Cambridge. I have researched in, taught and written about the English and Welsh legal system in general since the 1970s, requiring current awareness of legislation and case law (including Welsh law), civil procedure, ADR, courts and tribunals, the legal profession, human rights and EU law, legal aid and so on. My specialist research areas were magistrates, worldwide jury research, judges' working lives, plea bargaining, judicial Crown Court case management and criminal procedure in general. In my PhD research, work-shadowing and interviewing magistrates' legal advisers in 1975-1978, I spent 20 months in eight English and Welsh courts. In my 2002-2012 research, work-shadowing judge every type of judge, in every jurisdiction, throughout Wales and England, at every level from district judges to the UKSC, I observed and interviewed a disproportionately high number of Welsh district and circuit judges, spending working days with them, in and out of court, in the remotest and biggest of Welsh county courts. I travelled on circuit in Wales and stayed in judges' lodgings with a Welsh speaking high court judge, sitting in the Crown Court.

Notable publications

Darbyshire on the English Legal System 12th edition, Sweet & Maxwell 2017 (online update 2018)

Sitting in Judgment: the working lives of judges, Hart 2011

1. Magistrates' and magistrates' courts

The well-known concerns, explored in depth in my textbook, and which the Commission needs to address and continually monitor are:

- Court closures
- The consequent loss of local justice dispensed by local people.
- The loss of access to local justice by lay and professional court users
- The struggle to recruit a representative bench.

These were all examined by the Parliamentary select committee on Justice, in its inquiry into the role of the magistracy here. **I strongly urge the Commission to read the 2016 report *and the evidence*.** Another round of court closures is underway.

1a. Court closures and "digital by default" in general (crime/family/civil)

Because magistrates' workload has diminished, thanks to alternatives modes of disposal, such as cautioning, fixed penalty notices, single justices and so on, widespread court closures have accelerated since 2010 and more will occur following the implementation of "digital by default". **In my adult lifetime, there has never been any rational planning of the court estate in general and the waste of public money has been shocking.** Here are three examples. When I was travelling with a presiding judge in Wales in 2004-05, a newly-refurbished court was listed for closure. In the 2010 consultation on court closures, Senior Presiding Judge, Goldring LJ pointed out that Abergavenny Magistrates' Court was listed for closure, because it was said not to have been used since 1999, yet it had been refurbished and re-opened in 2010. Where I live in Dorking, a large magistrates' court was opened in the 1980s, used for a few years, closed for about 20 years and is being demolished as I write in 2018. Although HMCTS has promised, in the 2018 consultation below, that the court estate will now be examined rationally, this appears not to be happening yet, as Professor Nicky Padfield's recent comment below demonstrates.

In January 2018, HMCTS and the Ministry of Justice launched a very comprehensive consultation, *Fit for the future: transforming the Court and Tribunal Estate*, the next big practical paper after the abstract wish-list *Transforming our Justice System* 2016. It was a consultation not just about closing eight more courts but about the way these bodies consult on court closures and what the criteria should be for closing court buildings and improving the remainder. The paper is very informative about courts and tribunals and makes radical proposals for merger of court and tribunals buildings, the flexible use of all HMCTS buildings and the renting of other buildings to provide courts and tribunals part-time.

> "Many people who access justice at present do not attend a court or tribunal in person. For example in the 2016-17 financial year, over 898,000 civil default judgements were issued (out of a total of 1,055,000) with no requirement to attend court. Similarly, of the 114,000 divorce cases started only 4,000 hearings took place to resolve the divorce or financial settlement and 28,000 social security and child support appeals are dealt with 'on the papers'." (out of 191,000 total appeals). (para 4.5)

It said that lots of Crown Court case management and preparatory hearings do not need a face to face forum. In 2017, there were 284,000 preparatory or case management hearings, 167,000 of which were preparatory or case management, which did not all require a face-to-face meeting. I made this point myself in my empirical research reported in "Judicial Case Management in Ten Crown Courts" [2014] Crim LR 30. At that time and in all the years I had spent observing courts since the 1970s, it seemed to be the default plan to call advocates in to the Crown Court (and many magistrates' court proceedings) for a "mention", even if that took two minutes and kept the advocate(s) travelling and/or waiting for several hours. This was despite Auld LJ's recommendation in his 2001 Criminal Courts Review that existing case progression officers should be proactively moving cases forward, by telephoning lawyers etc. The 2018 paper said more hearings can be conducted by telephone or video-link but the choice remains in the hands of the judiciary. The paper mentioned successive judicial speeches championing digitisation, such as that of Sir Terence Etherton MR,

> "justice can be delivered in many ways – by the most appropriate decision-maker; in modern hearing rooms, or in mental health hospital units, community halls or remote locations; by video links, on laptops, tablets and smartphones, and online with the citizen and decision maker coming together virtually." ("The Civil Court for the Future", 14 June 2017).

The 2018 paper therefore promised a range of options including fully video hearings. They reported that they were developing virtual hearings for remand cases, allowing police officers to give video evidence. They were designing a virtual hearing capacity to allow ordinary people to participate using their own computer and a standard web browser. These were being tested on the public, lawyers, judges and government workers.

The presumption in criminal cases was that only things that needed to be done at a physical venue would appear in court: trials and sentencing. The same principle would apply in civil, family and tribunal jurisdictions. They planned to do more to help people resolve their disputes and they said they now offered online services to apply for a grant of probate or divorce since January 2018. Users' feedback had rated them highly. (Why on earth were these not offered years ago? I ask. Tesco delivered its first online order in 1984 and launched Tesco Direct in 1997). One advantage is reducing waste of time and paper. 40% of paper divorce applications were returned because they were incorrectly completed. (I mentioned in my 2011 book on judges' work, that I had observed that county court district judges would regularly have to return much of their pile of paperwork to different solicitors' firms and personal applicants because the forms in many or all the files were incorrectly completed.)

The 2018 consultation paper said that flexible hearing times were being piloted. I fear, however, that **evening and weekend courts will not work**. They were piloted in magistrates' courts in the 1970s. I feel as if I am the only person that knows this. They could not work because they required all professionals to be available, extending their working day and interfering with their domestic lives. Predictably, the Bar has raised the same objection and, indeed, in a September 2017 blog-post, HMCTS said it was *suspending* the experiment with flexible hours.

The 2018 paper said that most administrative work would shift out of court buildings into national court and tribunal service centres so that

> "Aided by the latest technology, those working in local courts and tribunals will be able to focus on what really matters in the justice system: helping and supporting the public through the process, knowing that for many coming to court will be a high-stakes, once in a lifetime experience which needs great consideration and care. They will also be able to provide high quality support for judges and magistrates; and create and maintain a modern professional workplace for all court and tribunal users." (para 1.22)

Incidentally, the first two such service centres were launched in November 2017, each employing over 300 people. According to the MoJ press release on 2 November, they are designed to be user-friendly.

On court closures, the consultation paper said there had been rounds of closures since 2010. They were now consulting on eight more closures and there would be future consultations. 121 buildings would now close, reducing courts and tribunals in total from 460 buildings to 339. As of November 2017, there were 94 Crown Court locations, 160 magistrates' courts, 210 county courts and 141 tribunals, in 350 buildings. 310 were within 15 miles of another HMCTS building. Existing buildings were too inflexible and a new design guide was planned. The maintenance backlog was £400 million. They cited the pressure group JUSTICE's report, *What is a Court?* which emphasised the need for flexibility and the use of other buildings for pop-up courts and tribunals. **This is highly commendable and should have been organised decades ago.** The consultation paper depicts some existing court buildings, illustrating changes, starting with the architecturally stunning Manchester Civil Justice Centre that houses 52 courts and enabled the closure of five small county courts.

On access to justice and location, they said that, instead of calculating travel times to court by car or public transport, they would copy the Scottish courts:

> "we should, as is done in the Scottish system, set an aim that nearly all users should be able to attend court or a tribunal on time and return within a day, by public transport if necessary". (para. 4.19).

On value for money, they said overall utilisation of buildings was around 60% capacity (**a point now challenged by parliamentarians, as we shall see**) so they needed to use them more flexibly. They provided examples of better listing and management.

Evaluation had shown that big courts could have "floating" cases, to be shifted into empty courtrooms. (This is not new. I observed it in big magistrates' courts in 1975.) Also, multi-jurisdictional use of rooms maximised use of space. They intended to improve data collection and commission condition surveys of all their buildings. As in Newcastle, they could consolidate court work of different types into two strategic locations for hearings and

> "Alongside our strategic locations we need to make provision for other locations, usually rural areas which are less populous, to ensure that access to justice is maintained where transport links may be poor. This may include retaining existing courts and tribunals even

> though they may not be well utilised, or have a narrower range of facilities compared to our larger hearing centres." (para. 4.42).

They provided case studies, with pictures, of the use of buildings other than courts, such as a town hall used for civil hearings every Tuesday, a hall hired from a charity for tribunal hearings and a community centre and a coroner's court. They recognised their obligation to maintain heritage buildings and they intended to carry out an audit of facilities for victims and witnesses. There were already 500 witness links in criminal courts and 137,000 cases were heard by video link in 2016-17. They depicted refurbishments piloted at three courts.

On digitisation and assisted digital provision, they said they would train people to act as on-site Digital Support Officers.

> "We are researching and testing with a wide range of user groups – including elderly people, the young, vulnerable groups, geographically remote users and users who find accessing our services online particularly challenging… The assisted digital support services will cover a range of channels, from web chat or telephone assistance and … more intensive face to face support [which]…will take place in appropriate local settings, such as libraries and community hubs, rather than in court and tribunal hearing centres…Over 5000 organisations …already participate in the Online Centres network, delivering digital inclusion programmes on behalf of organisations such as NHS England…" (4.92).

I was hoping to find out more about "assisting access to justice" in practical terms, from a speech of this title given by the Senior President of Tribunals in March 2018 but it does not provide any more detail on how this is working out.

HMCTS said they had commissioned a review of their evidence base for further proposed estate changes. They set out their plans for future consultation *methods* and, of course, they posed questions within the paper on all of their proposals. They again cited the paper by the pressure group, JUSTICE, which is here

Shortly after the consultation was published, the Lord Chief Justice, Lord Burnett of Maldon said

> "Since the online divorce pilot started in July last year roughly 1500 people have requested links to it. [Under the old procedure] 40% of [paper] forms were rejected because they had not been completed properly. The new online process takes applicants 25 minutes to complete, compared to an hour for the paper forms. And because the online form is well designed, all but eliminating the scope for errors, the rejection rate has fallen to 0.5%. This has the potential to save significant amounts of HMCTS staff and judicial time."

He explained that as part of the modernisation plan, more "routine, straightforward judicial functions" (boxwork) were being done under authorisation by case officers (legal advisers). (Speech, Association of DJ's Conference, 13 April 2018).

1b. Critique of court closures and digital by default

I have already criticised the extent and ramifications of court closures in several editions of my textbook, most recently in chapters 6 and 7 of the 2017 edition. I examine and critically analyse the plans for digital by default at length in chapters 6, 7, 10, 11 and 12. My argument is as follows. Closing courts and establishing online procedures within the courtroom and outside it for "petty" crime, civil claims up to £25,000 and divorce applications is lauded by the Ministry of Justice and senior judiciary as enhancing access to justice, because procedures will be easier online than going to court or form-filling and nowadays, people expect to be able to conduct activities online. **I agree that this is generally true for middle class, IT savvy users and to be welcomed. There are big problems, however. First, decades of experience up to 2017 has shown me that IT systems and video technology in the courts very often does not work satisfactorily, causing disruption, delay**

and stress, as well as wasting time and money and I provided countless examples of this, gleaned from years of work-shadowing judges, in my 2011 book, *Sitting in Judgment*.

Secondly, very importantly, **users of the civil, family and criminal courts are NOT a normal cross-section of the population**, as the same research demonstrated. (I think many lawyers and all district judges, magistrates and circuit judges would agree). There is a disproportionately high percentage of the mentally ill or impaired, often severely impaired, heavy drug and/or alcohol users, the poor, the homeless, those whose first language is not English, and those who suffer multiple disadvantages and lead chaotic lives and who were born into a cycle of deprivation. They are representative of the digitally excluded. **The fact that someone can use a mobile phone and Facebook does not make them IT literate**.

Thirdly, court closures destroy access to local justice in a courtroom. **County courts and magistrates' courts are meant to provide localised justice.** Magistrates were representatives of their communities and they benefited from understanding their localities and local people. When I spent 20 months in magistrates' courts in the 1970s, it was clear that magistrates would use their local knowledge to assist them in understanding evidence, for instance. They also understood local concerns about the prevalence of specific crimes and adjusted their sentencing accordingly. In my 1984 book *The Magistrates' Clerk*, I cited examples of magistrates delivering exemplary sentences to shoplifters and football hooligans and articulating their reasons "We're making an example of you. There's a lot of this scarf pulling about". They knew that their sentence and explanation would be reported in the local paper. There used to be a rule that magistrates had to live within 15 miles of their bench. Many have now left the bench because of the travelling required, caused by court closures, and their concern for court users. When yet another tranche of courts is closed, the MoJ/HMCTS always claims that most people can still access a court within an hour or two hours' drive BUT, **as is obvious from my description above, courts users as a group represent a disproportionately high number of people without a car**.

Fourthly, courts are meant to be open to the public. **The rule of law requires that justice is open**. I and many others are **entirely unclear as to how online justice can be scrutinised by the public**.

Fifthly, as for the introduction of **pleading guilty online**, which has been offered since 2017, the danger is the same as accepting the offer of a caution by the police: the offer is very tempting to the accused but if they are not represented by a lawyer, they cannot be expected to know if they are technically guilty, as **they have no idea of the actus reus and mens rea of the crime with which they are charged and, very importantly, they have no idea of the consequences of a criminal record**.

Sixthly, **the use of video and digital communication within the courtroom is now extensive but highly problematic**. Jane Donoghue's article, "The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice" (2017)80(6) MLR 995–1025 is by far the best critique of digital by default and court closures. She takes a holistic and analytical view of the impact of digital systems (which are growing internationally) on the principles of the justice system by penetrating all that this means in practice to court users. Her article is highly researched, informative, detailed and though provoking, like her previous articles in the MLR and elsewhere. Here is the abstract:

> "This article addresses a little discussed yet fundamentally important aspect of legal technological transformation: the rise of digital justice in the courtroom. Against the backdrop of the government's current programme of digital court modernisation in England and Wales, it examines the implications of advances in courtroom technology for fair and equitable public participation, and access to justice. The article contends that legal reforms have omitted any detailed consideration of the type and quality of citizen participation in newly digitised court processes which have fundamental implications for the legitimacy and substantive outcomes of court-based processes; and for enhancing democratic procedure

through improved access to justice. It is argued that although digital court tools and systems offer great promise for enhancing efficiency, participation and accessibility, they simultaneously have the potential to amplify the scope for injustice, and to attenuate central principles of the legal system, including somewhat paradoxically, access to justice."

On 27 February 2018, the Chairman of the Parliamentary Justice Committee wrote to the Undersecretary of State for Justice to express these concerns about elements of the above plan to rationalise court and tribunal estate and close eight more courts, as follows.

1. No justification had been offered for their plan to ensure that only 90% of court users could reach the nearest magistrates' court in one hour on public transport. For example, if Northallerton magistrates' court were to close, it would take up to 3 hours 22 minutes for the one-way trip to Harrogate. It would be indirectly discriminatory on women as carers and no adjustment was offered to disabled people.
2. It was questionable whether alternative courts would have the capacity to handle work from the closed courts.
3. HMCTS/MoJ had not consulted on their plan that only trials and sentencing would be done at a physical court venue.
4. The preference for virtual or online justice was announced without recent research, or evaluation of pilot studies.

   "Focus group and survey evidence from the national charity, Transform Justice (reported in October 2017: *Defendants on video*) suggests that unrepresented defendants, defendants who do not speak English well, and older and younger court users are likely to be particularly disadvantaged by video hearings; there was also evidence of video equipment failures, poor sound quality and mismatches of sound and image. **The MoJ appears to have undertaken no evaluation of virtual hearings since its pilot programme in Kent and London, which was evaluated in a report published in 2010. This found that virtual courts were expensive to set up and to run, that defendants appeared less engaged in the process and that the rate of guilty pleas and custodial sentences was higher than in traditional courts for reasons that were unclear. This discrepancy indicates that further evaluation is needed before moving towards routine use of virtual hearings**."
5. They also expressed concern about the capacity of court users to cope with digital justice:

   "were digital justice to become the norm, we believe that substantial barriers would be faced by non-users of the internet, estimated as 18% of 55-64 year olds, 35% of 65-74 year olds and 56% of 75+ year olds. In relation to socio-economic groups, 16% of C2s and 27% of DEs are non-users of the internet (Ofgem, Adults' media use and attitudes report 2017). We do not consider that the MoJ/HMCTS proposals for providing face to face assisted digital support have been adequately developed, evaluated or costed."
6. As for the criminal courts, they were not aware of any pilots or consultation on online pleas.
7. They had "particular fears" about departing from the principle of online justice.

Cambridge Professor Nicky Padfield was also highly critical of the general plan of digital by default, coupled with a mass of court closures (Editorial [2018] Crim. L.R. 351). She cited the example of Cambridge Magistrates' Court, brand new in 2008, in a city of 125,000 with good transport links, yet scheduled for closure in the consultation paper.

Surprise Surprise! The IT is not ready

The Online Court Committee of the Civil Procedure Rules Committee threatened to withdraw judicial cooperation after lack of communication by HMCTS and false claims. Mr Justice Birss, chair of the

subcommittee said that the Online Court, due to go live on 26 March, was not close to being ready and did not take the user further than the existing MoneyClaim Online.

1c. Court closures in Wales

Because of the rural nature of Wales, its sparse population and the difficult terrain of some areas, all of the problems of physically accessing the courts and maintaining localised justice are exacerbated. In a fascinating and unusual 2016 study of "Attitudes to justice in a rural community", conducted in mid-Wales, Daniel Newman of Cardiff University reported that, of the 163 courts closed overall in 2010-2015, only 52 had been sold. Nevertheless, given that most people never go to court, it is unsurprising that many of his interviewees did not know where their local court was and were unaware of proposed court closures but, along with police station closures and so on, it was seen as the loss of another piece of history and community. (2016) 36(4) *Journal of Legal Studies* 591.

1d. The struggle to recruit a representative magistracy

I list the problems and all attempted solutions and proposals in ch 15, part 2 of my textbook, summarised here. (Some current statistics - gender, age bands and ethnicity - are on the Judiciary website).

I. Lay justices are not a cross-section of society. Logically, this can never be achieved as they have to be articulate, non-criminal and literate.

II. While the bench is gender balanced, its ethnicity is less representative of some of the communities it serves than it was in the 1990s. I have not examined this issue in Wales but it is readily done, roughly, by comparing the magistrates stats on the Judiciary website with the census. Stats on economic position and employment/professional status are not collected.

III. Successive studies since the 1940s have demonstrated that the middle classes and certain occupational groups are over-represented. As Morgan and Russell found in 2000, they were "overwhelmingly drawn from managerial and professional ranks".

IV. There are various reasons. People who travel for their jobs find it too difficult to serve, as do those running small businesses. The loss of earnings allowance does not compensate the latter group adequately.

V. Despite the protection offered by the Employment Rights Act 1996, people fear they will be sacked for taking time off work, or will irritate colleagues, or hamper their chances of promotion.

VI. Single parents find it very difficult to sit and many people cannot afford to do unpaid voluntary work.

VII. For my part, I have expressed concern since the 1990s about the **age profile of the magistracy. By 2016, 4% were under 40 and 86% over 60,** though things had improved somewhat by 2017**.** This makes a double generational difference between the bench and many defendants appearing before them.

VIII. **I think that the overwhelming problem in recruiting magistrates, especially young magistrates, is that the public do not know what magistrates do**, affirmed by Andrew Sanders in 2000 (*Community Justice*, IPPR). Also, I have found that **almost all incoming law students do not realise that anyone can apply to be a magistrate and I have no reason to believe that the public at large are any more knowledgeable**. **Of course, almost no-one knows that you *do not even have to be a UK citizen to apply* (Act of Settlement 1701). This almost universal lack of awareness can only get worse**, thanks to court closures, which will further lower the profile of the magistracy, **especially in Wales**, where the nearest court is so far away. While magistrates have given their own time since the 1970s to hold court open days, very few people will be prepared to travel to these, or even know about them.

1e. Attempts to recruit a diverse bench

I examine these in my textbook. They are summarised below. TV advertising in London in the 1970s did not work, as it attracted more of the groups who were already over-represented. What is needed is **targeted recruitment** of **under-represented groups in Wales, notably young people**. This was addressed by my Notre Dame student, Riley Smith, an expert in recruitment, in his written evidence to the Parliamentary Justice Committee and if the Commission reads nothing else on recruiting magistrates, this document is a **MUST READ**. It is on the Parliament website here.

I. The first National Recruitment Strategy was launched in 2003, with the aid of Operation Black Vote. It included a work-shadowing scheme and succeeded in recruiting more non-whites.
II. Auld LJ made recommendations in his 2001 Criminal Courts Review here
III. An Equality Working Group in 2000, established following the S. Lawrence Inquiry recommended attracting media attention to raise the magistracy's profile with underrepresented groups; training advisory committees about positive action; copying the TA model to reward employers who allowed staff time off to be magistrates; finding out why magistrates resign and so on.
IV. In 2013 and 2014, the Policy Exchange, a right wing think tank, published two reports (on its website). They emphasised the lack of occupational and socio-economic diversity in the magistracy. They recommended extending the OBV scheme to working class people. They praised a bus company who encouraged bench applications and whose driver-magistrates had developed a special loyalty to the firm.
V. The pressure group Transform Justice published a report in 2014 and more reports on magistrates and magistrates' courts were to follow, all on their website. Both groups recommended a 10-year tenure for magistrates. They gave evidence to the 2016 Parliamentary select committee.
VI. In its response to the Parliamentary Justice Committee's report, the Government said appointment data were improving, with 22% of new magistrate coming from BAME backgrounds and 40% under 50.
VII. Scottish Children's Panels: I have recently visited their very helpful chief executive and publicity officer in Edinburgh and observed panels in Glasgow. Panel members are visibly more economically and socially diverse than magistrates (e.g. a heavily tattooed lady with piercings and cerise hair and her colleague straight from work at Tesco's checkout, still in her Tesco uniform) and much younger. NB: their tenure is limited to 10 years. The fact that anyone can apply to be a panel member appeared to me to be well known in Glasgow. Even my taxi driver explained that many of his fellow drivers were panellists, as sitting on a panel fitted in very well with taxi driving.

1f. What should the CJ in Wales do about recruiting magistrates?

Wales now faces a big struggle to recruit new magistrates in some areas, because of court closures and consequent distances magistrates must travel to sit. The Commission should

- Find out how Scotland recruits such diverse people to its Children's Panels.
- pay close attention to the *evidence* given to the Parliamentary Justice Committee in 2016, especially that of Riley Smith, on how to effect targeted recruitment.
- Analyse demographic data from Welsh localities and try hard to recruit benches to match.
- Continually consult Welsh magistrates and the Magistrates' Association in future.

- Target and inform young people and other under-represented groups via social media and by supporting and extending magistrates' visits to schools, especially visits by young magistrates.
- Pay attention to what has worked, such as work-shadowing schemes and the tactics used by Advisory Committees who have recruited young magistrates and those from under-represented sections of their community.
- Reward employers who encourage employees to be magistrates
- Generally, try to raise the profile of magistrates in Wales, draw awareness to what they do and inform people that any adult resident (including non-citizens) can apply.
- Consider introducing a ten-year tenure, though this would require legislation.

2. Criminal Procedure

As this paper is already far too long, I confine myself to two points.

2a. Case Management

Obviously, the biggest concern, highly topical at the moment, is police and CPS disclosure failures which derail the whole judicial case management process and . I drew attention to this in my 2014 research, mentioned above, [2014] Crim LR 30, but I had already noticed throughout my wider research with the judiciary, from 2002, that some areas suffer very badly from this and had done so for decades. The CPS had been underfunded since it was created in 1985 but one obvious problem for the police and CPS is the impossibility of scrutinising overwhelming amounts of electronic and other data. This was a well-known problem in complex and serious frauds but it now affects other trials, such as sex offences and any organised crime, because of the amount of text messaging between alleged offenders or between alleged offender and alleged victim. I recommend that the Commission examine/promote/expedite the use of artificial intelligence algorithms by the police and CPS to scrutinise evidence (a topic about which I know nothing). I do not know how extensive its use is in other jurisdictions. For example, practice in the USA varies on a state by state basis, as this is not dictated by federal law or practice.

2b. Court hearings via video links

I mentioned this above but it is another matter of widespread concern. A report by the pressure group Transform Justice in October 2017, *Defendants on video – conveyor belt justice or a revolution in access?* concluded that the mass use of video links from prisons or police stations for court appearances put defendants at a disadvantage:

> "The hidden story of virtual justice is of the harm the disconnect does to the relationship between lawyer and client. The rigid timetable leads to "stopwatch" justice, in which lawyers try to beat the clock to get instructions from their clients, many of whom have challenges understanding the basics of the criminal justice process.
>
> The defendants who appear on video are all, to a lesser or greater extent, vulnerable. They appear alone save a custody officer, isolated from the court, their lawyer, court staff and family, with their ability to communicate hampered by poor technology. No wonder they often appear disengaged or frustrated. Virtual justice further renders people vulnerable by providing no adjustment for those with mental disabilities. In some specific circumstances the ability to give evidence on video may be beneficial to those who have mental health issues, particularly social anxiety, but practitioners felt that virtual justice mostly exacerbated existing difficulties in assessing disability and vulnerability and in facilitating the

> participation of disabled people. Those with English as a second language and unrepresented defendants were also felt to be at a significant disadvantage." (p. 33)

The main source of information was a SurveyMonkey survey to which 180 criminal justice practitioners chose to respond, plus an examination of international articles and research.

Tom Hawker mentions his PhD research in the editorial at [2017] Crim. L.R. 585-6. He interviewed 20 Crown Court judges. They expressed negative comments about prison video links: the loss of gravitas, the practical and physical barriers to communication and technical and procedural concerns.