SEC Written Submissions to Consultation regarding proposed closures of Wandsworth County Court and Blackfriars Crown Court

1. The South Eastern Circuit represents over 2,000 employed and self-employed members of the Bar with experience in all areas of practice and across England and Wales. It is the largest Circuit in the country. The high international reputation enjoyed by our justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners.

2. These are the written responses on behalf of the South Eastern Circuit ("the SEC") to the Ministry of Justice and HMCTS consultation regarding proposed closure of Wandsworth County Court and Blackfriars Crown Court.

Summary

3. After careful consideration, the SEC opposes the proposed closures. The consultation is a very disappointing document. Its analysis is superficial and not based on evidence. It makes unjustified assumptions and omits essential factual information. It fails to provide the consultees with sufficient information in order to engage with the questions asked or to answer in any meaningful way.

4. The approach taken in the consultation gives the impression that the real considerations here are that two valuable commercial property sites in Central London have been identified as a source of revenue and that little or no thought has been given to the impact on local users of services, particularly those who are vulnerable or have protected characteristics.

5. Whilst this chimes entirely with the impact assessment, the SEC suggests that it entirely misses the point of the courts service provision. It would be expected that provision of the

best possible service would drive decision-making as to suitability of court buildings, not whether they stand on land with a high resale value.

6. As a result, the consultation shows little understanding and no regard for the importance of accessing local justice systems and conducts no analysis of who uses the courts and for what purpose. There is no evidence presented to suggest that either any future courts yet to be built or online systems will replace the services lost. Little or no regard is therefore paid to what will be lost by closure.

Quality of information provided insufficient to make responses meaningful

7. It appears to the SEC that the information provided in the consultation is selective and potentially misleading to consultees. There is only partial information on the running costs of each building. In particular, reference to 'agency staff' being re-located suggests that the Ministry of Justice derives an income from use of the premises currently which will be lost on closure which ought to be taken into account when considering 'savings' from closure. The running cost figures are potentially misleading, therefore. Moreover, there is no information as to what the costs of moving would be or what the costs of maintenance and investment in the buildings in question would be. Blackfriars Crown Court in particular, would appear to require less investment and maintenance than other buildings in the court estate which it is proposed to retain.

Failure to identify who uses the courts which are proposed to be closed

8. This consultation only does half the job. No meaningful attempt has been made to identify which individuals from the community actually use the court buildings in question. As a result, there is no analysis of the effect of closure on witnesses, victims, defendants, parties to civil litigation or other court users in any detail. A proper analysis would have revealed:-

    a. How many visits on average each user needs to make to Wandsworth County Court and Blackfriars Crown Court to see their case through from start to finish;

    b. What types of hearing are heard, e.g. trials, family hearings, possession hearings, housing cases, personal injury or debt actions;

    c. Where users currently travel from in order to attend hearings (rather than simply assuming that the only individuals affected live in the local authority in which the court is situated).

9. This information can be easily gathered by the Court Service should it wish to engage with the use of its service by its actual users. A simple survey at modest investment of time and cost would reveal the relevant information.

Flawed assumptions regarding 'utilisation'

10. The consultation proceeds on the basis that 'under-utilisation' is a factor of supply and demand as if court use were a feature of an open market economy. In other words, it is assumed that if the use of a court sitting time is low, then it can be concluded that is because the service is not needed and/or there are insufficient potential users.

11. This is a flawed approach when considering a service which relies entirely on public funding. The following features are all relevant to so-called 'under-utilisation':-

    a. Lack of judicial time is a significant reason why court rooms sit empty. This is a funding issue which affects the number of full-time judicial appointments and payments for Recorders and Deputy District Judges;

    b. Lack of investment in basic facilities and technology also results in court 'downtime', for example poorly functioning or absent video-link facilities;

    c. In civil cases, parties could and should be encouraged to settle their disputes without the need for a hearing. Where this occurs shortly before a listed hearing, then inevitably there will be a reduced need for sitting time. This is not the same as 'under-utilisation' of a court: it cannot be compared to an hotel or commercial service. Very often it is the fact of an impending hearing which creates the circumstances in which disputes resolve amicably. Availability of a court room in the event that a dispute does not settle is therefore an example of utilisation of the service – not 'under-utilisation';

    d. The quality of the service being provided to users has not been considered. In particular, no consideration has been given to the likely impact of these proposals on listing, short notice adjournments or change of venue. It is already standard practice in civil county court listings in London for the parties to be warned that the venue of the court hearing might be changed *on the day before the hearing*. The adverse impacts of such listing will be increased by closure of courts.

12. Delays in accessing justice due to adjournments, over-listing or lack of judicial time may engage the common law right to access to justice or Article 6 (the right to a fair trial) as well as Article 14 (insofar as those with protected characteristics such as sex and race are concerned.)

Inadequate Equality Act analysis

13. SEC disagrees with the assessment under the Equality Act.

14. There is likely to be a disparate effect on women due to the proposal to close Wandsworth County Court. Access to civil law justice, including through recourse to affordable, accessible and timely remedies, is an essential part of the UK's obligations from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1986.

15. No analysis of how these closures affect women in light of the evidence that women are disproportionately affected by the changes made in LASPO and loss of civil legal aid and therefore are more likely to be self-representing in family, civil and housing matters (see the EHRC CEDAW follw up report March 2016).

16. Most housing cases have been excluded from civil legal aid. In the Government's own assessment of the likely equality impact of LASPO, limiting legal aid for housing was predicted to have a disproportionate impact on women given their overrepresentation among housing clients compared with the adult population as a whole.

17. Women are more likely than men to have problems with over-indebtedness: 64% of people who are over-indebted are women. This makes women more likely to be users of local county court services and less able to afford to travel.

18. Moreover, the impact in relation to people with a disability has not been adequately addressed. It is assumed that people with a disability would be able to use public transport, such as the underground, trains or buses. Moreover, the disabled access facilities at the proposed replacement courts are inadequate.

<u>Wandsworth County Court:</u>

1.

a. Do you agree with our proposals to close Wandsworth County Court?

No. The SEC believes that Wandsworth County Court should remain open.

The key reasons are:-

(i) There is no evidence that the Court is not needed/has 'spare capacity'. The survey period included July and August during which sitting hours are often reduced due to holiday periods and reduced judicial hours. It is likely that any 'spare capacity' is linked to the fact that trials are listed in multi-track cases at Central London – which is considerably over-burdened as a result – and better listing practices would result in more even use of existing resources and a better service;

(ii) The failure to consider the type or nature of use of the court means that it cannot be said that it is 'under-utilised' or that it is not an essential part of the local courts network serving the local community, providing access to justice and allowing them recourse to dispute resolution and therefore upholding the rule of law in local communities;

(iii) There is adequate wheelchair user access to the ground floor at the court. The courtrooms are purpose-built, of a good size and suitable to be used as modern courtrooms, albeit that maintenance investment is needed. There are suitable conference facilities for out of court negotiations and privileged legal advice conversations, waiting space for parties and witnesses;

(iv) The court is very accessible by public transport and there is local on-street parking;

(v) If Wandsworth were to close, there would be no civil county courts in central South London. Lambeth County Court and West London County Court – the two county courts closest to Wandsworth – were closed in the last round of closures. Individuals living in, say Brixton, would need to travel to Croydon, Bromley, Kingston

b. If we close Wandsworth County Court, what are your views on the proposed options for re-allocating the work?

<u>Clerkenwell & Shoreditch/Wimbledon Magistrates' Court</u>

It is not a practical proposal to place the sitting hours from Wandsworth into Wimbledon. There is currently NO sitting capacity for civil (or indeed any) cases at Wimbledon Magistrates and therefore it is a false comparison and there is no evidence that there would be adequate judicial or staff capacity.

This is a small building which is a very busy court centre. There is not adequate space in the building for parties, witnesses and other users when waiting for hearings. There is no space for privileged legal advice conversations or negotiations to take place. It does not have courtrooms designed for civil cases.

Clerkenwell is a significant travel distance for court users away from Wandsworth. It already has serious listing problems with cases being taken out of the list overnight and at short notice or cases listed on a 'back-to-back' basis and therefore adjourned for lack of judicial time. There is no sensible basis for adding to this burden.

Clerkenwell has poor access by those needing to use a car for transport and there is little access to on street parking within walking distance of the court.

Kingston County Court

Kingston County Court does not have enough 'spare' sitting hours on the assessment conducted to take the cases from Wandsworth. The consultation suggests that during the sample period there were 1,654 unused sitting hours, whereas Wandsworth heard 1,591 hours. That is unrealistic in the context of civil justice where it must be anticipated that disputes will continue to be negotiated up to the door of the court and therefore some unused sitting time is desirable as it is a sign of the system working.

The travel distances and costs from central South London and further afield will have a considerable impact, particularly in short hearing cases such as housing, possession and direction hearings, family and children cases where several visits are often required. The impact of the removal of civil legal aid funding means that parties are more likely than in the past to be unrepresented.

c. *What other options do you think might work?*

Re-organising listing so that there is less pressure on the 'trial centres' and shorter waiting times for hearings/fewer adjournments due to lack of court time, by utilising the Wandsworth County Court to hear the cases.

Investing in adequate judicial provision and sitting hours so that court users do not have to wait excessive amounts of time for hearings and trials.

d. Would these closure and re-allocation proposals have any particular impacts for you or any group you represent?

See below in relation to Blackfriars Crown Court and above in relation to Wandsworth.

Blackfriars Crown Court:

2.

a. Do you agree with our proposals to close Blackfriars Crown Court?

The SEC does not agree with the proposal to close Blackfriars Crown Court.

Under-utilisation

The analysis of use of Blackfriars (and all the courts) is too generic. The failure to consider the detail of use of the courts means that the proposal is skewed and incorrectly assumes there is in fact 'under-utilisation' of buildings and facilities as a result of lack of demand / spare capacity.

In fact, the apparent under-utilisation of the court is in line with the other courts in the area looking at the figures provided. In the main it will be because there are not enough appointed full-time Judges to meet the need in the court and there are insufficient hours for Recorders to meet the work.

In this regard it is striking that the consultation does not even address wait times for hearings or any listing or adjournment difficulties.

In addition, the under-utilisation of the courts at Southwark and Inner London is because not all court-rooms can hold trials and the digital and video-link facilities (which are central to full-utilisation of the court) are not available in all court rooms. It is not because there is no use for those court buildings and facilities.

It is notable that the consultation does not seek to consider the specific use of the court buildings or the reasons for any apparent 'under-utilisation'.

Access to Justice

Justice cannot be pushed to the periphery. Justice must be located centrally in the public consciousness as well as in terms of geographical location. If this court estate were lost, it would never be recovered.

It is notable that the consultation mentions 'access to justice' but equates that concept simply to the practicalities of travel. That is to miss the point. Provision of publicly accessible, locally located and suitably designed court buildings is a function of the state and demonstrates the importance which attaches to the rule of law and securing justice for both victims and accused persons alike. It is not to be equated with a consumer service or administrative function.

Even adopting the access to justice = travel time reductionism, the closure of Blackfriars would significantly diminish access to justice. Blackfriars is centrally located. It is convenient to witnesses, defendants, police officers, court staff, CPS and members of the independent bar. From London Waterloo (the busiest station in the UK) it is 1 tube stop or a 13 minute walk. From another significant transport terminus London Bridge the court is 1 tube stop or a 15 minute walk.

The courts to which the work would be re-allocated are significantly further away (see below). This would have an increased burden in terms of cost of travel and journey times and would have a disproportionate effect on those with disabilities, the infirm and the vulnerable and those in lower socio-economic groups in which women and BAME individuals are disproportionately represented.

<u>Closure inconsistent with policy of developing England and Wales as a centre of 'global justice'</u>

If, as appears from the consultation, the rationale is to close courts that have poor facilities or are difficult or expensive to improve or upgrade, Blackfriars is not one of those courts.

In comparison to other courts in the surrounding area, Blackfriars is a modern and accessible court designed for trials in this century. There is no doubt that this was one of the reasons it was selected to be part of the pilot Flexible Operating Hours scheme. It is well-equipped for recent developments in criminal trials and pre-trial hearings, such as special measures and video-conferencing facilities. The same cannot be said of the old courts at Inner London. It has a large number of suitably sized conference rooms outside

the courts, something that cannot be said for Harrow. It is all on the ground floor, with good disabled access from the front. The same cannot be said for Wood Green.

Judicial facilities at Blackfriars are also particularly well designed, with retiring rooms all on one corridor, fostering a collegiate atmosphere in which those sitting as Recorders (an increasingly indispensible part of judicial provision) can easily access advice and assistance from permanent judges and staff. The proximity of the rooms to the courts also allows for efficient use of court time.

b. *If we close Blackfriars Crown Court, what are your views on the proposed options for re-allocating the work?*

In line with the above, all of the suggested alternative courts offer a poorer quality of facility and increased travel time from central London.

Wood Green

Travel to Wood Green would more than double travel time for those attending court. [From Waterloo: 40 - 45 minutes (14 stops), from London Bridge: 45 minute travel time (12 – 17 stops)]

The facilities at Wood Green are poor. It is rare that the lifts work in the building and those who are disabled or elderly have to ask if they can use the Judges' lift which is entirely inappropriate.

An absence of separate catering facilities for the public and members of the bar as well as a lack of work space (the small area available has multiple trip hazards and insufficient seating) means undertaking necessary preparation at court is impossible. Tannoys cannot be heard in the conference rooms, which in themselves lack privacy being sited immediately outside the courts and with large windows in the doors. The building is in poor repair and the facilities wholly inadequate for modern working.

Harrow

Again, travel time would more than double for those attending court. [From London Waterloo: 22 stops on the tube, 1 hour travel, even further from London Bridge.]

This is a particularly busy court.

The lift is terrible and the facilities are poor: for example there are very few conference rooms available.

The court facilities are already under strain: in particular the cell area is inadequate for the current number of cases listed. There are always queues to see defendants, especially on 'list' days or with multi-handed trials, which often delays hearings.

Inner London

Inner London's facilities are appalling at all parts of the building, for witnesses, legal representatives and Judges. The entrance and security are entirely ill-equipped to deal with a higher turn-over of work. The waiting areas have insufficient seating and facilities for a higher number of witnesses and defendants.

There are limited staff resources which find it difficult to cover the work and courtrooms at present.

Kingston

Although the facilities at this court are better than many others, there are already long and complex cases that are conducted at this court. It would be surprising if the court had the capacity to cover the complex and sometimes lengthy trials heard at Blackfriars.

The travel time to the court will inevitably be more than double the central London address at Blackfriars. Journey time is approximately an hour from London Bridge, involving a tube, an over-ground train, a bus from Surbiton and a walk. This cannot be a serious alternative to Blackfriars Crown Court.

c. What other options do you think might work?

Investment in manpower including the Judiciary and court staff to address the 'problem' of 'under-utilisation'. The reality is that there is plenty of hearing time needed, what is lacking is funding for Judges and personnel.

The fabric of the buildings and the facilities in most of them are frankly appalling.

Consideration should instead be given to the usefulness of the "Chocolate Box" courts at Inner London. These could be closed: the facilities may have architectural historical attractiveness, but as modern court buildings they are not fit for purpose. They have no natural light and the facilities for the visiting Recorders (as no full-time Judge would sit in them) are a disgrace. That work could go to Blackfriars with full-time Judges and there would be no issue with under-utilisation.

d. *Would these closure and re-allocation proposals have any particular impacts for you or any group you represent?*

Independent Bar

As above, the closure of Blackfriars would have an increased cost to independent practitioners in terms of the cost of travel for which they would not be recompensed. Travel to Harrow Crown Court is far more expensive e.g. to attend that court from Camden, a train journey is required to have a reasonable journey time, which would still be more than double the current journey time. A journey to Blackfriars Crown Court can be accomplished in a 25-35 minute bus journey.

Travel to Kingston Crown Court will also more than triple the cost of travel and more than double the time. Kingston cannot sensibly be regarded as an 'alternative' venue to Blackfriars.

This is an additional proposed burden on the independent Bar at a time of significant financial pressures and systemic under-remuneration of the publicly-funded Bar. Closure of local courts providing reasonable facilities in favour of moving work to busy, more distant and poorly equipped buildings will be a further nail in the coffin lid of morale.

Other Court Users

The SEC does not have access to representative evidence or data regarding the demographic characteristics of witnesses, defendants, victims or other court users. Rather than seek to obtain such information through anecdotal means of a question in a consultation, this information ought to be gathered by the Ministry of Justice through court user survey or data gathering work as part of its evidence base for any proposal to close court buildings.

3. *Do you think our proposals could be extended to include other London courts?*

   As above

4. *Do you have any further suggestions for improving the efficiency of the criminal or civil court estate in London?*

   The estate and service require significant investment to meet modern health and safety standards and to provide an efficient working environment conducive to access to justice and the wellbeing of all court users, whether court staff, judiciary, advocates or witnesses. Cuts in court staffing and judicial appointments have also adversely affected the courts' ability to function and provide a safe environment for those who work in them and those who attend as court users.

5. *Do you think we have correctly identified the range and extent of the equality impacts? Do you have any other evidence or information concerning equalities that you think we should consider?*

   The equality impact has not been correctly identified. See general comments above.

   To close the only central London court with adequate facilities for disabled access and with facilities which approach modern health and safety standards (hygienic and functioning sanitary facilities with provision for disabled or mobility impaired use for example – not available at either Inner London, Southwark or Wood Green) will necessarily affect those with impaired mobility or medical conditions more than others. (Indeed we would argue that the sanitary facilities and general 'fabric' at each of those courts are unacceptable for court users in general.) Provision of disabled facilities at Harrow is dependent on the lift working, which it has not been for many months. In recent years it has been out of order or malfunctioning (with the doors closing dangerously quickly) almost permanently.

CONCLUSION

The South Eastern Circuit opposes the closure of both courts. For the reasons outlined above we consider that the consultation itself is founded on inadequate and flawed statistical information and assumptions. This is required to be addressed before any proper, objective, analysis can be undertaken of either the feasibility or impact of the proposed closures.

As outlined above, we consider that the proposals will have a detrimental and irreversible effect on both access to justice and the quality of justice. We further consider that they will have a disproportionate impact on vulnerable groups, in particular those with mental health difficulties or physical disabilities and impairment, as well as those with limited financial resources (disproportionately women and BAME participants in the legal system). We have grave concerns that the proposals are capable of such potential harm as to engage breaches of the fundamental human rights outlined above.

Finally, we do not consider the proposals necessary. Indeed, *cutting* the provision and quality of court services and accommodation is in direct conflict with the obvious, overwhelming, need for further substantial *investment* in the central London estate in order to ensure that common law and statutory obligations are met.

The South Eastern Circuit

28 March 2018