

Selling off our silver

Nic Madge reports on the devastating impact of a decade of court closures on access to justice and the justice system as a whole.



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Access to justice is a fundamental civil right. It is a cornerstone of democracy. The right to a fair trial is deeply rooted in the common law and is now guaranteed by article 6 of the European Convention on Human Rights. Without public and local hearings in criminal cases, citizens have no protection from abuse of state power. Jury trial not only involves trial by one's peers, it also involves observation of the trial process by one's peers. Access to courts for civil cases is a vital protection for the weak against the powerful. It also prevents disgruntled citizens from taking the law into their own hands. There has to be a local element in both criminal and civil justice to ensure access to justice. If court buildings become distant, justice itself becomes remote and nugatory.

Over the last 10 years, the government has embarked on a massive programme of court closures. Almost half of all courts in England and Wales have been closed: between 2010 and 2018, 162 out of 323 magistrates' courts were closed; and over the same period, 90 county courts shut down. Most have been sold. Between 2010 and 2017, the sale of court premises raised c£223m. In London, 20 courts were sold for £175m.

Initially, closures were part of the government's austerity programme. However, more recent closures have been justified as an element of the Ministry of Justice's (MoJ's) reform programme: 'an ambitious programme of court reform, which aims to bring new technology and modern ways of working to the way justice is administered'. Shailesh Vara MP, then parliamentary under-secretary of state for courts and legal aid, said in 2016:

We want to use modern technology, including online plea, claims and evidence systems and video conferencing, to reduce the need for people to travel to court. Face to face hearings should in future be reserved only for the most sensitive or complex cases.

HM Courts & Tribunals Service (HMCTS) expects that by 2023, 2.4m cases each year will be dealt with outside physical courtrooms: 'Collectively, the planned changes to the courts and tribunal system are on a scale never before attempted anywhere in the world.'

Losing our public heritage: from court to luxury hotel

There is no doubt that the court system needs reform. In particular, much of its IT system is inadequate and outmoded. Procedures can and should be modernised. In appropriate cases, hearings should take place by video link. There is also no doubt that, after years of neglect, the fabric of many court buildings is in a parlous state. The government is right to say that attention needs to be given to improving the physical state of court buildings.

The reality, though, is that recent court sales have had nothing to do with access to justice. They form part of a long-term government policy to transfer land from state to private ownership, described by Brett Christophers in *The new enclosure: the appropriation of public land in neoliberal Britain* (2018) as 'the biggest of the privatisations that begun under Margaret Thatcher', which has 'continued under every administration since'. He estimates that since 1979, the state has sold two million hectares - about one-tenth of Britain's land mass, worth, in today's prices, £400bn. In 1979, state-owned land was 20 per cent of Britain's total area; now it is 10.5 per cent.

Visits to former court sites confirm the loss of many of the jewels in the state property portfolio. Iconic Bow Street Magistrates' Court, the site of a court since 1740, was sold in 2008 and is now owned by the Qatari investment firm BTC, which has planning permission to convert it into a 100-room hotel. The grand Edwardian magistrates' courts at Old Street and Tower Bridge, both designed by John Dixon Butler, appointed in 1895 as architect and surveyor to the Metropolitan Police, have been converted into luxury hotels.

The Judge & Jury [sic] restaurant in one of the former Old Street courtrooms has portraits of stars such as Martine McCutcheon, Barbara Windsor and Sid Vicious wearing full-bottomed wigs. Suites at the hotel cost £499 a night. The bar in one of the former Tower Bridge courtrooms has pseudo-photographs of Victorian 'criminals', wearing caps and jackets with floral buttonholes, holding slates describing their crimes ('larceny', 'indecent assault'). Rooms there cost



Old Street Magistrates' Court is now a luxury hotel



Bow Street Magistrates' Court sold for £17m in 2008

between £220 and £440 a night.

The former Bloomsbury and Marylebone/Central London County Court on Park Crescent has been demolished and will be replaced by 73 new homes, the most expensive apparently selling for £15m. The plan includes no affordable housing. Instead, the developers have paid just £5m in compensation to Westminster Council. Bow County Court is now used as a church by The Redeemed Evangelical Mission. Other court buildings, like Lambeth County Court and Tottenham Magistrates' Court, are unused. We, the people, are losing a public heritage from what was, in retrospect, a golden age of civic building.

The impact on access to justice

County courts and magistrates' courts were always intended to be local courts. On the passing of the County Courts Act 1846, which established the modern county court system, the lord chancellor, the Earl of Cottenham, wanted everyone to be within seven miles of a court. Transport facilities have obviously changed since then, but the closure of local courts is causing real difficulties to those seeking to access justice.

Up to 2010, when considering travel times, the MoJ used a benchmark that court users should not have to spend more than an hour travelling to court. That was loosened so that anyone should be able to attend court on time and return within a day. In future, decisions

on whether or not to close courts will be based on reasonable journey times, namely whether the overwhelming majority of users would be able to leave home no earlier than 7.30 am and return by 7.30 pm, using public transport, if necessary.

It is wrong, though, to consider issues of access to justice purely on the basis of numbers, assuming that all people have equal need and equal ability to get to court. The need of a single mother to get to court to apply to suspend a possession warrant is greater than that of a claimant suing for the refund of the cost of an unsatisfactory holiday. The difficulty for a disabled person travelling by bus and train is far greater than that for a fit, non-disabled car owner.

Solicitors in law centres and advice agencies describe the daily problems of litigants who have been unable to travel to court. The House of Commons Committee of Public Accounts refers to 'severe difficulties' in travelling to court. Police officers are, anecdotally, increasingly facing defendants who surrender to local police stations, rather than distant courts, seeking to use police cars as a taxi service. The difficulties following the closure of Lambeth County Court have been well described by Giles Peaker on his *Nearly Legal* blog.

Similarly, it is wrong to assume that all citizens can access courts digitally or by video conferencing on an equal basis. HMCTS itself acknowledges that 15m people will require assistance to use a digitalised system. There has been very limited meaningful consultation

and no adequate research or piloting to show that government proposals will work. The experience of the criminal courts using video links to prisons, which have dedicated video suites, has been problematic. The systems often go down or prisoners are not in the right place. There have also been difficulties in prisoners accessing legal advice. As a result, many video-link hearings have been adjourned.

Additionally, insufficient consideration has been given to the significant number of people without access to a computer or the internet. Even if potential court users can get to a library or some other place with a public computer, many, especially older people, simply do not know how to use such facilities. Can someone using a shared computer in a public library really be on an equal footing with litigants able to attend court in person or other parties who have access to computer facilities in their own company offices or at home? People with literacy difficulties, mental health problems or who speak English as a second language are likely to be particularly disadvantaged.

Selling capital assets to meet running expenses

Court closures have been justified on the basis that existing courts are underused. Challenges to the reliability of those statistics have been made elsewhere. However, even if there is any underuse of court buildings, it is a direct result

of government policies. Savage cuts in legal aid and increases in civil court fees have prevented many from litigating. Cuts of 30,000 in police numbers mean that despite increases in most categories of offences, there have been fewer arrests and so fewer prosecutions. Cuts in CPS resources have further reduced the number of cases in the criminal courts. In Crown Courts, judicial sitting allocations have been reduced, so that courtrooms are empty, even though there are cases waiting to be tried. Indeed, in July, some Crown Courts were notified that, in order to save money, the sitting allocation was lower than the number of full-time circuit judges at the court – with the result that judges have been instructed to take ‘reading days’ at home. The government should be seeking to reverse those trends, not using them as an excuse to close courts.

The reality is that the government is selling court buildings to raise the money for its reform programme. Courts appear to have been selected for closure, not on the basis of the needs of court users, but rather for the money that sales will generate. Why, for example, decide to sell modern Blackfriars Crown Court, one of the best designed Crown Courts in London, but retain Inner London, which was never designed for jury trials? (It relies on six ‘temporary’ courts in the ‘Chocolate Box’, added in 1974, but declared unfit many years ago. Judges

there have to use the same corridors as remand prisoners and defendants they have sentenced.) The reality is that both court buildings are needed; the only reason for empty courtrooms is the HMCTS reduction in judicial sitting allocations. If there were enough judges, there would be enough cases to fill all the courtrooms.

Former prime minister, Harold Macmillan, said in 1985: ‘The sale of assets is common with individuals and states when they run into financial difficulties. First, all the Georgian silver goes, and then all that nice furniture ... Then the Canaletto goes.’ That is what the MoJ is doing. Capital assets are being sold to meet running expenses. Is the updating of IT systems, or the introduction of new systems, really a capital expense? Even if it is, any new IT is likely to be obsolete in 10-15 years. Major repairs to, or replacement of, buildings are needed because of neglect.

Serving judges are not allowed to make public statements about government policy and would be at risk of disciplinary action if they were to criticise the reform programme. However, senior judges have been frank about the serious state of our justice system after retirement. Lord Neuberger, immediate past president of the Supreme Court, says that further cuts ‘will lead to a collapse of the rule of law’. Former lord chief justice, Lord Thomas, refers to

‘severe and unjustifiable cuts’. Sir Brian Leveson, former president of the Queen’s Bench Division, says the court system is starved of funds and at ‘risk of collapse’.

Yet even more courts are threatened with closure. In London, decisions have been taken to close and sell Blackfriars Crown Court, Camberwell Green Magistrates’ Court and Wandsworth County Court. The Justice Alliance is calling for a moratorium on all further court closures until there is independent research on the impact on access to justice.

The many unanswered questions

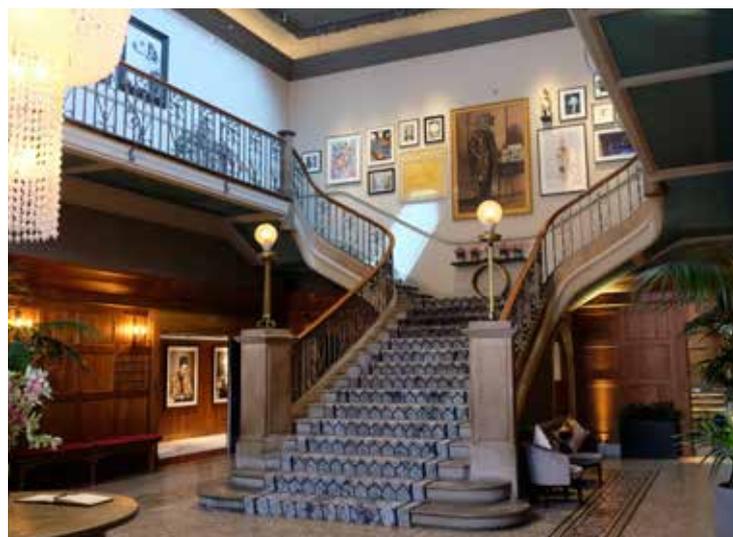
- *Why have court buildings been sold before the changes that are part of the reform programme have been put in place, tested, evaluated and shown to work?* The order should be: first, build and pilot the systems and see how they work and benefit the processes and justice outcomes; and then, second, close redundant buildings. The National Audit Office (NAO) has serious concerns as to whether HMCTS can deliver the programme, stating that, ‘delivering the reforms successfully remains extremely challenging. The NAO believes there is a significant risk that HMCTS will not be able to achieve all it wants within the time available ... significant risks remain. Not only could these delay improvements being delivered on time, the tight timetable could also force HMCTS to make changes before fully understanding the consequences for the justice system’. The select committee states that HMCTS ‘risks ... driving forward changes before it fully understands the impact on users and the justice system more widely’.
- *How will our courts cope with any future surges in work?* It is likely that, if police numbers increase, or CPS resources are restored, there will be increased numbers of prosecutions and, if there is ever any increase in the availability of legal aid, there will be more civil claims. We should not ignore the pressure put on a court system with far greater capacity by the large number of arrests and charges following the riots of August 2011. Those are not the kind of offences that could be dealt with by online pleas or video conferencing. What would have happened if the Extinction Rebellion protests had resulted in hundreds



Blackfriars Crown Court was put up for sale earlier this year



The former Tower Bridge Magistrates' Court is now a luxury hotel, The Dixon



The interior of The Dixon hotel

of criminal charges? (Due to cuts in resources and reduced cell-space, the police released the vast majority of those arrested without charge.)

- *Have court buildings been sold at an undervalue?* Some figures appear to indicate that they have. In 2008, Bow Street Magistrates' Court was sold for £17m. In 2016, without any works having been carried out, it was resold for £75m. Horseferry Road Magistrates' Court was sold in 2011 for £20.7m. In its place, developers Barratt built a block of 129 flats. They were sold for a total of over £187m. (In 2018, Barratt made profits of £835.5m.) Haringey Magistrates' Court was sold in 2014/15 for £10.1m. In its place, developers Bellway built a block of 69 flats. They are currently for sale at prices ranging from £700,000 to £1.95m. (In 2018, Bellway made profits of £652m.) Hammersmith Magistrates' Court, built in 1996, was sold in 2017/18 for £43m. The purchasers, Dominvs Group, have submitted a planning application to build a 25-storey hotel.
- *Has there been any provision on sale enabling the government to share in any development profit through overage or clawback clauses? (as recommended in para 4.2.3 of Guide for the disposal of surplus land, Cabinet Office, 2017)?* If there has, how much, if anything, has the government received from such clauses?
- *Is the MoJ getting value for money from its management consultants? How do their hourly rates compare with legal aid*

payments or, indeed, judicial salaries? The MoJ/HMCTS has paid huge sums to management consultants. Government documents show that in 13 months between January 2018 and January 2019, HMCTS paid almost £75m to consultants. Yet, the Association of Her Majesty's District Judges notes (in evidence to the Justice Committee): 'More than half of the budget of £1.1bn has already been spent for limited tangible benefit. Court closures and huge reductions in staff numbers with more to come have led to a stark deterioration in the service with no immediate sign of the promised technology being delivered.' It refers to the prospect of 'chaos and complete inefficiency'. The Infrastructure and Projects Authority states that 'successful delivery of the reforms [is] in doubt', an assessment accepted by the MoJ.

- *Why have so few former court buildings been used for affordable housing?* Housing and Planning Act 2016 s207 provides that government must engage with local authorities and other specified public authorities when developing proposals to dispose of surplus land. Following a package of reforms announced in the 2013 Spending Review, all developable and viable surplus land and buildings held by government and its agencies should be transferred to the Homes and Communities Agency (now Homes England) for disposal to ensure that it is released efficiently to support housing and economic growth. Why are there so many occasions when that has not happened?

- *Where will the money to fund our justice system come from when all saleable assets have been sold? We do not get what we do not pay for. We cannot obtain justice unless we put sufficient resources into our justice system. It is instructive to compare the capital sums received on court sales with examples of MoJ/HMCTS current expenditure. In 2018, the MoJ agreed to pay Mitie and G4S £51m to manage courts for six months, and over £1.5bn to procure prison escort services.*

Before his death, former Court of Appeal judge, Sir Henry Brooke, blogged that 'the villains of the piece are our politicians who believe that once the justice system has been scraped to the bone, no harm can be done to people's lives by giving the well scraped bone another scrape or two'. The continual scraping has now exposed the marrow. ■

References/sources for this article are available in the online version: www.lag.org.uk/?id=206681.

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