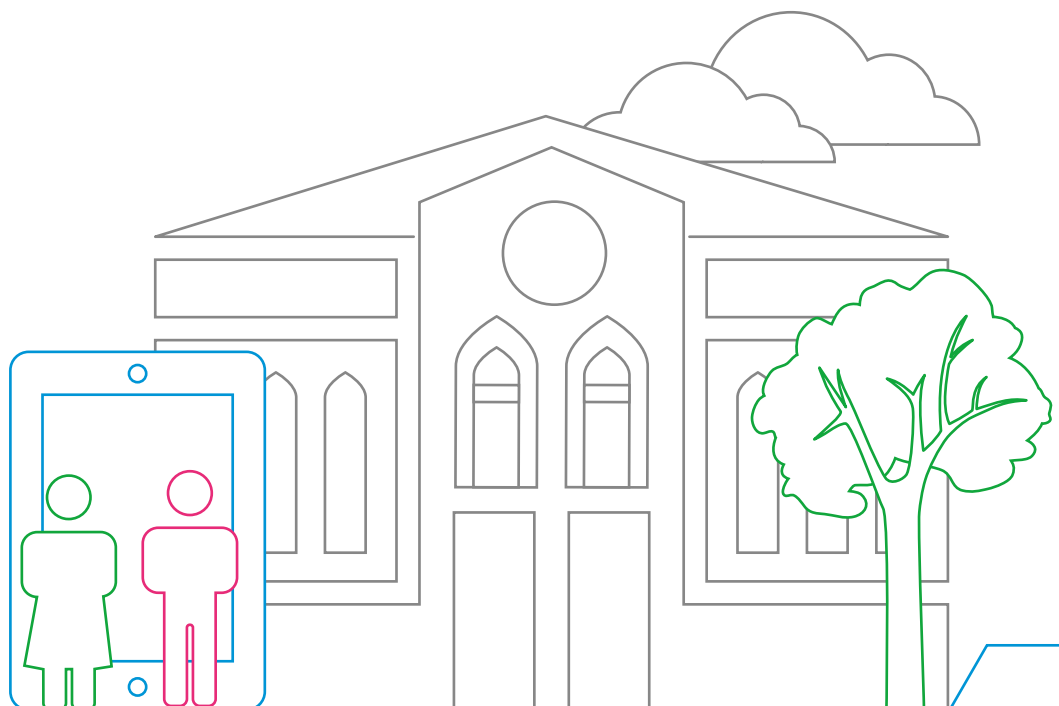




HM Courts &  
Tribunals Service

# Flexible Operating Hours Pilots: **Prospectus for Civil and Family Court Pilots**

November 2018



# Introduction to Flexible Operating Hours

## Background

1. HMCTS is investing over £1 billion to modernise our courts and tribunals and bring our justice system into the 21st century. Our aim is for a system that is just, proportionate and accessible. Our reform programme spans the full range of our work and is ambitious. There are currently more than 50 distinct projects working across all jurisdictions. We are designing our processes around the people who use and need them, to improve access to justice, and to create a system that is more considerate of others' time and convenience, as well as more efficient.
2. As part of the programme of reform, the flexible operating hours (FOH) project was set up to look at options to maximise the use of our court and tribunal hearing rooms by using them at different times of day, outside the traditional hours of 10am-4pm. We have developed a small number of pilots to test these options across jurisdictions.
3. We want to test whether FOH can support a more efficient and effective justice system. We have not made any decisions about using FOH in the future and are committed to the pilots being a fair and transparent test. We have appointed an independent organisation to evaluate the pilots, looking at the impact of these pilots on all court users and conducting a cost-benefit analysis for a potential scaling up of the pilots. To support a cross-justice system approach to the evaluation of the pilots we have set up an Evaluation Advisory Group which includes representatives from the judiciary, partner government agencies, the Bar Council, the Bar Standards Board, the Law Society and CILEX.
4. In October 2017, we published an FOH Pilot Prospectus setting out the background and detail of proposed pilots. We committed to listening to the responses we received and to review the pilot models before we proceeded with the actual pilots. We are grateful to all those who contributed. We listened carefully to the concerns that were raised, particularly by those in the legal profession. We agree that there are currently particular pressures in the criminal jurisdiction and have therefore taken the decision to not proceed with pilots in the Magistrates' and Crown Courts. We have decided to proceed only with two pilots, in the Civil and Family Courts.
5. This document outlines the changes that we have made after considering the responses we received to the initial Prospectus, and sets out our intention to proceed with pilots in the Civil and Family courts. It sets out the background and the aims and objectives of the FOH pilots; summarises the responses we received to the initial Prospectus; and sets out the changes that we intend to make as a result.

## Why pilot?

6. The FOH pilots will test the impact of using court and tribunal hearing rooms more intensively, and how a wider range of hours offers the potential to improve access to justice. Crucially, this is based on a principle of people working different, but not extended, hours. We are not running any individual case, or asking any individual person to work, for more hours in a day; but finding ways of using valuable courtroom space more effectively. We recognise that some legal professionals have expressed the view that this is not possible in some circumstances, but we want the pilots to test alternative ways of working and to examine the effect of changes on all participants.

7. Our objectives for the FOH pilots are:

**Objective 1:** To test whether operating courts and tribunals at different times of the day offers more open and accessible justice for citizens.

**Objective 2:** To evaluate the impact of FOH on professional and public court users, and public agencies working in the justice system.

**Objective 3:** To test whether FOH can provide a sustainable, scalable and efficient way of working across the justice system, including the context of wider changes made in the Reform Programme.

Following the evaluation of the pilots, we will consider the evidence from the pilots to consider whether flexible operating hours could become part of the way courts and tribunals work in the future, and where and how we could use them.

8. HMCTS has run previous pilots extending the court and tribunal day. However, these did not set out to consider the full impact on the wider system, such as detailed financial implications. The previous pilots have offered useful insight into which sitting patterns can work for different courts. We have built on lessons learned to design the current pilots to carry out this wider evaluation and to establish the impact of flexible operating hours.
9. We recognise that the current court and tribunal estate is not used to its full capacity. However, we are piloting FOH on a small scale in the context of wider changes to the way we work in the HMCTS reform programme. Through these pilots we are seeking to establish whether flexible operating hours could be part of the way we work in the future.
10. We have not made any decisions to roll out FOH nationwide or in other jurisdictions. We would only do so based on robust evidence and data gathered through piloting with a comprehensive evaluation of the impacts, the costs, and the benefits across the justice system understanding the effects of the reform programme.

## Listening to feedback

11. We recognise that the FOH pilots have been a cause of concern for some legal professionals working across the justice system. That's why we published the initial Prospectus in October 2017 to explain more clearly what we were proposing to pilot and invited feedback on the proposals. We have analysed all the responses that we received, as well as feedback we gathered from the series of roadshow events across the country to engage legal professionals on HMCTS's wider reform programme. This section summarises the changes that we are making to the pilot models as a result of this feedback, along with a summary of the core themes and issues which people wrote to us about.
12. The majority of respondents expressed concern about the suitability of flexible operating hours in criminal cases. We agree that there are currently particular pressures in the criminal jurisdiction and have therefore taken the decision not to proceed with pilots in the Magistrates' and Crown Courts. We have decided to proceed with testing flexible hours on a small scale in the Civil and Family Courts.
13. One of the recurring themes of the feedback we received was a perception that HMCTS have already decided to implement FOH across the country in the future and that we are not genuinely interested in reflecting on the viewpoints of the professionals who work in the justice system. We recognise the importance of listening to feedback, whether it supports or challenges our ideas. We actively seek feedback from legal professionals and other court users and act upon that feedback across the whole of our reform programme. As a direct result of the feedback we received to our initial Pilots Prospectus, we have changed our pilot proposals and we are committed to testing flexible operating hours in a measured way.
14. A number of respondents made plain that they do not believe that we should be piloting FOH at all. We recognise these concerns but we believe that it is right to test FOH in this small number of jurisdictions. We will publish the results of the pilot evaluation, and we have not committed to any course of action to introduce FOH, and will not make any decisions until we can see evidence from these pilots.
15. Some respondents were concerned that we are testing FOH with the view, that, if successful, they might be adopted as the 'new normal' way of working for every courtroom across England & Wales. Others felt that it was 'all or nothing' – either suitable for everywhere or nowhere – and that a small-scale pilot could not demonstrate suitability for FOH to be used everywhere. We want to clarify that, even in the event of a successful pilot, we think it is unlikely that it would make sense to introduce FOH as 'the new normal' in every courtroom across England & Wales. We are testing FOH on a small scale because we think that it may have the potential to be a useful part of how some courts operate – depending on their work, and the benefits of flexibility for the people who use them and the cases that are heard in them. We think that the most likely patterns might include offering more flexible hours in a proportion of court rooms in certain types of courts (likely to be larger court sites with higher volumes of work). This is our current, best assessment of how flexible hours might be used if the pilot suggests that they are effective; but whether they are used at all will depend on what the pilot shows.
16. Many respondents raised concerns about the impact on the legal profession, with a focus on diversity, personal circumstances and financial consequences. Many felt that work-life balance and caring arrangements could preclude legal professionals from engaging with the pilot, and that if rolled out, flexible hours could negatively impact on the diversity of the profession. The effect of flexible operating hours on court users' personal lives and work/life balance is an area that will be monitored by the independent evaluator as part of the pilot, in order to respond to these concerns. Participation in the pilots will not be mandatory and we will ensure that people will not be required to work outside of normal court hours. We have also reviewed the types of work included in the pilots to try to give as much listing certainty as possible.

## What are we changing?

17. In response to the feedback we received after publishing the initial Prospectus, we have reviewed the pilot models to assess the changes we should make to the pilots which would mitigate the concerns which have been raised and put into practice some of the ideas which were suggested. The key changes we have made are:

### *Not taking forward the proposed criminal pilots*

- The majority of the responses from the prospectus focused on pilots in the criminal courts and demonstrated concern about the suitability of flexible hours in criminal cases. The responses raised concerns about the impact of FOH sessions as proposed pilots, and whether they would result in cases running over into more days and causing additional stress and anxiety for victims, witnesses and defendants, and creating more work for an already stretched criminal justice system. Strong concerns were raised about there being a high likelihood of advocates being required in both early and late sessions, especially more junior barristers.
- Respondents also argued that – if piloting in crime were to be done – it would be better coming after changes to improved scheduling and listing practices, rather than before or alongside such changes.
- We have reviewed our proposals for the Magistrates' Court and the Crown Court and we recognise that there are currently particular pressures and issues in the criminal jurisdiction. On that basis, we have decided to not proceed with pilots in the Magistrates' and Crown Courts and to proceed only with pilots in the Civil and Family Courts.

### *Pilot participation fee for legal aid legal providers*

- A point frequently raised in feedback was that publicly funded legal professionals would face additional financial burdens through enhanced costs to their firms. This was mostly raised in relation to proposals for the Magistrates' Court pilot, but also noted by some about the other pilots. Given that the pilots create a short-term change in usual arrangements we have decided to make a small amount of funding available for a pilot participation fee for publicly funded legal professionals who attend court outside the hours of 09:00-17:30.
- We have decided to introduce a pilot participation fee for a FOH court session requiring the attendance of a publicly funded legal representative which takes place wholly or partially outside of the hours of 09:00-17:30. This will be a HMCTS funded pilot participation fee which will be administered by the Legal Aid Agency. Providers should claim the fee separately from, and in addition to, their normal legal aid claim which should be claimed from the Legal Aid Agency in the standard way. We are working on the exact detail of this participation fee. Guidance on how to claim the fee will be issued by the Legal Aid Agency once the details have been finalised.
- As part of our overall evaluation of FOH we will review the costs and benefits of the pilots which will include consideration of the potential impacts on legal aid in the long term.

### *Participation in the pilots*

- Another area which was frequently raised in the feedback received was the ability for parties, including legal professionals, to participate in the FOH sessions. We will work with the Local Implementation Teams (LITs) to ensure that pilot participants understand that it is their choice whether or not to participate in a FOH session.
- We will work with the Local Implementation Teams (LITs) on these issues, to ensure that pilot participants are informed about a FOH session and their ability to opt-out of any session.

## Next steps for Flexible Operating Hours pilots

18. The Civil and Family pilots will run in two court sites - Brentford County Court and Manchester Civil Justice Centre. We will work with the Local Implementation Teams (LITs) in Brentford and Manchester to agree the exact start dates of the pilots, based on listing lead-in requirements; they are likely to begin in Spring 2019 and to run for six months from their start dates (which may be slightly different, according to the precise circumstances in each court).
19. Before the pilots begin, we will publish the evaluation framework following review by the Evaluation Advisory Group that we have established. The Evaluation Advisory Group includes representatives from:
  - HM Courts & Tribunals Service
  - Courts and Tribunals Judiciary
  - Legal Aid Agency
  - Bar Council
  - Bar Standards Board
  - Law Society
  - Chartered Institute of Legal Executives (CILEX)

We have appointed IFF Research in consortium with Frontier Economics, to be the independent evaluators for FOH. We will focus the draft evaluation framework, on civil and family pilots. We will publish the final evaluation framework before the pilots commence. Once the pilots have concluded, we expect that it will take around three months for all the data to be captured and analysed, feeding into the final evaluation report. We will publish the final evaluation report once it is available.

20. We will work with the LITs in Brentford and Manchester to finalise the pilot proposals set out below. We want to ensure that the final pilot designs take account of local need and that the LITs have the time and space to work through this detail.

### Brentford County Court (Civil Court work)

	Court	Monday	Tuesday	Wednesday	Thursday	Friday
Weeks 1 – 2	A 08.00 – 10.30		Warrant suspen- sions; Civil appli- cations <30 mins; Adjourned posses- sion work			
	B 16.30 – 19.00			Small claims (max 2 cases <90 mins each); Telephone case mgmt hear- ings; Civil appli- cations <60 mins each		
Weeks 3 – 9	A 08.00 – 10.30		Warrant suspen- sions; Civil appli- cations <30 mins; Adjourned posses- sion work			Warrant suspen- sions; Civil appli- cations <30 mins; Adjourned posses- sion work
	B 16.30 – 19.00			Small claims (max 2 cases <90 mins each); Telephone case mgmt hear- ings; Civil appli- cations <60 mins each	Small claims (max 2 cases <90 mins each); Telephone case mgmt hear- ings; Civil appli- cations <60 mins each	
Weeks 10 – 12	A 08.00 – 10.30		Warrant suspen- sions; Civil appli- cations <30 mins; Adjourned posses- sion work	Warrant suspen- sions; Civil appli- cations <30 mins; Adjourned posses- sion work		Warrant suspen- sions; Civil appli- cations <30 mins; Adjourned posses- sion work
	B 16.30 – 19.00			Small claims (max 2 cases <90 mins each); Telephone case mgmt hear- ings; Civil appli- cations <60 mins each	Small claims (max 2 cases <90 mins each); Telephone case mgmt hear- ings; Civil appli- cations <60 mins each	

21. Our starting proposals for the pilot in Brentford build on ideas tested in an earlier test of an evening session at Nottingham and are as follows:
- i. The first pilot will take place in the County Court at Brentford hearing civil work. The pilot will run an additional session with a small adjustment made to the start of the normal day to accommodate the new early session
  - ii. In a courtroom with an early start, the first hearing session would be a half-day 08:00-10:30. Following this, there would be handover and change of judge. A 'normal' court day would then run with adjusted hours from 10:45-13:45 and 14:45-16:45. In another courtroom the court would run a standard court day 10:00-13:00 and 14:00-16:00. There would then be a handover period and a separate judge would sit a session 16:30-19:00. It is not intended that both courts would run extended sessions on every day.
  - iii. The table above shows the types of work which will be heard in the morning or evening session. These are not the only sessions in which these types of work can appear, and all types of work in the table will continue to be routinely listed within the normal court day; only a proportion of the court's work will be listed into these morning or evening sessions.

### Manchester Civil Justice Centre (Civil & Family Court work)

22. Proposals for Manchester were again developed with the Local Implementation Team and enable us to test in two jurisdictions in a large court centre. They reflect judicial and others' feedback and have a significant element of work where people represent themselves and may find different hours attractive.
23. The starting proposal for the pilot in Manchester Civil Justice Centre (CJC) is as follows:
- i. Initially the pilot will have two courts sitting an additional afternoon session once a week (on a Monday) – as multiple courts on the same day will allow for more effective listing. The types of work heard in the pilot will be dependent on the ticketing of the judge and with a view to later expanding on an additional day (previously proposed to be Wednesday, though the LIT will now consider this further).
  - ii. In both courtrooms sitting the FOH pattern a Deputy District Judge would sit a half-day hearing from 10:00-13:00. A different judge would then sit 14:00-16:00 and 16:30-19:00.
  - iii. The types of work previously agreed to be heard in the FOH court sessions include:

#### Family

- First Hearing Direction and Appointment
- Financial dispute appointment
- Infant approval hearings
- Financial dispute resolution appointment
- Occasional urgent work which is sat at short notice – e.g. without notice non-molestation orders, urgent care applications (these are cases which would routinely be heard anyway, currently requiring a judge to stay late but can instead be heard in the pilot court when there is an appropriately ticketed judge)

#### Civil

- Small Claims
- Housing Possession (subject to changes to the rota for provision of a duty solicitor)
- Chancery applications
- Part 8/Stage 3 RTA applications
- iv. The above types of work will also continue to be listed normally within the court day; only a proportion of the total work will be listed into the FOH sessions.
- v. Parties will have the ability to opt to attend a normal court instead of the FOH hearing which will give valuable information on the suitability of different cases for flexible operating hours and the extent to which parties prefer different hours.

We will work with the LIT in Manchester to consider these proposals and to confirm the final design and start date of the pilots.

## Annex A: Overview of feedback and analysis

24. We received 109 responses in total following the publication of the initial Prospectus in October last year.
- Eighty-seven of these were from individuals and 22 were from association groups for legal professionals and the judiciary (some of these were formal representative groups e.g. the Bar Council, the Law Society and the Criminal Bar Association; some of these were informal groups e.g. Circuit Judiciary).
  - Fifty-five of the individual responses were from Barristers;
  - Five of the individual responses were from Solicitors; and
  - Twenty-five were from Judiciary (and a further two responses from others).
25. The responses received varied considerably in length and addressed a range of different topics. Most of the responses did not specifically address the questions set out in the initial Prospectus, so we have grouped them in to the key themes, analysing the concerns which were raised consistently across the responses.
26. The table below sets out each of the key themes and our responses to the issues which were raised, in order of the frequency in which these areas were brought up.

<p><b>It is more important that other operational issues are addressed.</b></p> <p>Most respondents were of the view that flexible operating hours would put the system and people under additional strain and questioned whether the pilots would run successfully as a result.</p> <p>e.g.</p> <p><i>Working hours are not fixed. They routinely extend far beyond court sitting hours.</i></p> <p><i>The difficulty with the way in which Courts are run at the moment is not that the Court room is not occupied all of the time but rather that failures in the system – such as a failure to get prisoners to Court on time or at all, failures to book interpreters, failures of poor IT and audio-visual equipment to name but three, hold up trials unnecessarily. If those problems were solved the existing system would be able to function properly.</i></p>	<p>We recognise the frustrations with some operational issues, such as availability of staff, or issues with buildings. Through the reform programme, we are working to address these. We recognise the justice system is complex, and there can be inefficiencies, but we believe that this is not a reason why we should not test different operating hours while working across the system to drive out inefficiencies.</p> <p>Our plan involves Local Implementation Teams – made up of partners across the justice system - in place at each of the pilot sites, who will monitor, report on and resolve operational issues. We will also ensure that sensible practice is taken into account – for example, making sure court buildings are open before and after hearings so that legal professionals can meet appropriately with their clients.</p> <p>Our national steering group will review and resolve problems that can't be dealt with locally or require a cross agency resolution.</p> <p>The pilots will provide us with an opportunity to test some alternative ways of working and also give a route to address current constraints in operating the courts effectively.</p>
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## FOH will have a personal impact on legal professionals

Respondents expressed concerns about the impact flexible operating hours would have on them personally and their work-life-balance.

e.g.

*I would not be able to travel the distance required for an 8.00am start (...) I would not be willing to sit until 6.30pm (...) and (...) as a result not arrive home until around 9.00pm;*

*this will further worsen my work-life balance;*

*We would need to be able to make flexible provision for childcare extending from 7.30am to 7.30pm, but only occasionally, and sometimes at very short notice. It just can't be done*

We recognise that the pilots will affect professionals in different ways. Some, including HMCTS employees, may welcome working earlier or later in the day, but we recognise the significant change to ways of working for legal professionals, and some judiciary.

We are clear that extending the hours a courtroom is used does not, and should not, automatically equate to extended working hours. Our aim is that people work differently, not longer.

We understand that working days extend well beyond the 'in court' day; and that this means there is a feeling that starting earlier or finishing later is very difficult, especially if patterns are not predictable. In addition, there was a feeling that, if a day was broken down into two "shifts", professionals would find themselves working both because of the current expectation, particular on juniors, that if you are in a particular court on a particular day, you handle all the relevant work that arises there.

The effect of FOH on court users' personal lives and work/life balance is an area that will be monitored by the independent evaluator and will be considered in any recommendations for any potential future expansion. There are of course many other professionals whose work extends well beyond their hours of required attendance in a particular place, but who are nevertheless asked to attend outside the hours of 10am to 4pm; and concluding that these are the only possible working hours does not fit with the experience in other countries where more flexible hours are used.

## FOH is the wrong area to focus on

Many respondents expressed the view that FOH is the wrong approach to change and that resources would be better invested elsewhere.

e.g.

*You are merely setting up something to fail, for no tangible benefit and at the risk of doing more harm than good;*

FOH is just one small part of our £1bn reform programme, which is currently made up of around 50 live service and enabling projects, each intended to transform the way courts and tribunals operate and the services we provide. Through Reform we want to provide a more open and accessible justice system that is quicker, easier and more efficient for those who use it, those who work in it and those who pay for it. The breadth and depth of reform goes far beyond FOH.

## Access to justice will be affected

Most respondents suggested that the impact of FOH on access to justice would be negative, but some outlined positive aspects for people.

e. g.

*The proposed start time does not allow for any conference time prior to court which is essential. (...) This will only serve to prolong trials.*

*Those with chaotic lifestyles (...) will not attend on time.*

*Getting time off work in today's working world is very difficult (...), so a late afternoon/evening or early morning court would accommodate the working person better.*

We accept that FOH will affect people differently, depending on their personal circumstances and the reasons why they are coming to court. We think that creating a more flexible day with some courts starting earlier, and finishing later, could make it easier for some people to make arrangements for attending court and improve access to justice. There is some evidence from earlier experiments that suggests this is worth exploring.

If the pilots suggest that FOH do work well for some people, and that they increase access to justice, our expectation would be that FOH might form a useful part of how some courts operate, rather than being the only way of working.



## HMCTS do not listen to feedback

Respondents often stated that previous projects have already shown that FOH cannot work. They do not expect that HMCTS will change course now as a result of feedback, and that they haven't listened in the past (though some appreciated that this is happening now).

e.g.

*we have told you before;*

*you just don't listen;*

*you're just not interested;*

*you're ignoring any lessons learned from previous studies;*

*it's good that you finally ask us*

*FOH has been tried in the past and failed; change is necessary, but this is the wrong approach*

We recognise that all court users – professional and public – have an important role to play in shaping what we do through the reform programme. We acknowledge that we didn't communicate, engage and listen enough in the early days of reform, or more particularly in the early stages of work on FOH (which unfortunately coincided with an election 'purdah' period in which we were not allowed to communicate). We have sought to communicate more widely and effectively since.

We regularly publish updates about the reform programme, and hold events, meetings and workshops where we share information and listen to feedback from people who work in or need to use the justice system; research and test new services or ways of working; and invite legal professionals to give us their feedback directly, as we have done through the Prospectus and listening period on FOH.

We have changed our proposals substantially in response to the feedback we received, as this document sets out.

With regards to previous pilots that have extended the court and tribunal day, we recognise that they were not conclusive, and particularly that evaluations could have been more robust, which is a significant reason for running the current pilots in Civil and Family courts. However, many of the previous pilots did demonstrate interest and appetite from the public in attending court outside the current operating hours; and we have reviewed previous pilots and sought to learn lessons in developing the current proposals so that we test models which have the potential to work, and evaluate them fully and fairly.

## FOH will affect the diversity of the legal profession and the judiciary

An area which has been raised consistently across all our engagement with legal professionals and was reflected as a major theme in the responses was that FOH would reduce diversity in the profession. A large majority of respondents referred to the pilot as being discriminatory and only impacting in a negative way, although some felt that there could be positive aspects.

e.g.

*The scheme is discriminatory and will adversely impact on all court users with childcare responsibilities, namely, judges, magistrates, lawyers, court staff, witnesses, jurors and defendants*

*Even more women will leave the profession;*

*This will reduce diversity in our profession even further;*

*The flexibility might increase diversity*

The FOH pilots could create more opportunities for people to work in different ways. However, we fully accept that changes to hours will not suit everyone, and that it is likely that many of those currently in the profession will have made choices and arrangements around the current pattern of hours. For those using and attending court, it is more likely that there will be more variation in whether existing or different hours fit better with other arrangements, since across the wider population there is, not surprisingly, much more variation in working hours and patterns.

Throughout the pilots, we will work closely with the Bar Council, Law Society and other representative organisations to ensure that we gather the right data to assess the impact of the pilots on all professional groups, as well as on those who use the courts.

Understanding and analysing the advantages and disadvantages to particular groups of people is a priority for the independent evaluation.

<p><b>The evaluation needs to consider a broad range of issues</b></p> <p>Respondents highlighting a variety of areas which they would want to see considered in the pilot evaluation for any conclusions to be meaningful.</p> <p><i>e.g.</i>  <i>you won't be able to prove anything if you don't get the views from everybody working in the system;</i>  <i>will this [a range of issues] be considered in the evaluation?</i></p>	<p>We have reviewed all the feedback we received in this respect and will incorporate this into discussions with the independent evaluator that we have appointed.</p> <p>The independent evaluator will publish the evaluation framework prior to the pilots commencing so that all interested parties have an opportunity to review the evaluation approach and methodology and what metrics will be used. The evaluation framework will also have the input of the Evaluation Advisory Group. Views from participants in the pilots will be sought as part of the evaluation.</p>
<p><b>There will be cost implications</b></p> <p>Responses were often critical of the cost implications of Flexible Operating Hours, both in terms of the cost of the pilots and the cost of any potential scaling up.</p> <p><i>e.g.</i>  <i>have you considered all the extra staff you will need? This will have cost implications for all agencies;</i>  <i>The pilot will cost money which could – and should – be better spent elsewhere</i></p>	<p>We recognise that the pilots will cost money but we have the opportunity in the reform programme to test whether more flexible hours offer benefits to those who use the courts, and to establish the costs and benefits associated with them, both for individual users, for HMCTS, for professionals, and for the wider justice system. Previous pilots have failed to do this effectively by only considering immediate costs associated with the pilots or only capturing costs from some participating organisations.</p> <p>There are some costs – such as additional staffing – which could be offset in other areas – such as better use of buildings, or reductions in delays, inconvenience, and associated concerns, complaints and re-work – when looking at the whole system. The pilots will test whether this could be a sustainable way of working in the future, by looking widely both at the costs and the benefits.</p>
<p><b>Listing is already a problem</b></p> <p>One specific operational area that attracted a lot of commentary was listing and the existing practices of listing in courts which are considered inefficient by the majority.</p> <p><i>e.g.</i>  <i>the list is only confirmed the night before – how do I know whether I'm on an early rota? You need to sort out listing first;</i>  <i>I can never get hold of the scheduling and listing staff.</i>  <i>Would it not be better to try and do something about inefficient listing which sees fee paid judges sent numerous emails asking for them to sit at short notice (...) whilst having actual sittings cancelled on them at the last moment.</i></p>	<p>Through the reform programme we have a project underway to look at improved systems and tools to support the judicial function of scheduling and listing cases.</p> <p>For the purposes of FOH pilots, we are setting up slightly different arrangements, and careful consideration will be given to the decision as to which cases are suitable for listing in FOH pilot slots, always overseen by the resident judiciary (as listing is a judicial function).</p> <p>We have discussed with the judiciary the option to request that a case be relisted if attendance during a pilot slot is not possible. Whilst this will be subject to judicial discretion, it has been agreed that they will be sympathetic to any reasons given which might not have occurred during normal court hours. This issue will also be given attention in the evaluation.</p>

### There will be financial consequences for individuals and the profession

A theme related to but distinct from the personal impact for legal professionals was concern over possible professional and financial consequences of flexible operating hours.

e.g.

*There is travel to and from court to factor in and preparation for hearings every evening.*

*The extension of hours will increase the costs incurred by the firms involved.*

To facilitate the testing of the pilot approach we have also reflected on what could be done in response to the concern raised about the additional costs that publicly funded legal practitioners would incur for working outside regular office hours, particularly when arrangements need to be made for a short pilot, which makes it harder to make longer-term changes.

We have decided to introduce a pilot participation fee for publicly funded legal providers who attend hearings in the pilot courts outside the office hours of 09:00-17:30; this will be funded by HMCTS and administered by the Legal Aid Agency. We are working on the exact detail of this participation fee. Guidance on how to claim the fee will be issued by the Legal Aid Agency once the details have been finalised.

### Courts should not fit round people's lives; they should take precedence and people should fit with them

A small number of respondents refuted the notion that, as society changed, courts should change too. The high status of a court was highlighted and most responses in this category suggested that courts should continue to have priority even in a changing society, with people prioritising attendance even when inconvenient. However, some responses did suggest that perhaps courts should do more to change.

e.g.

*To talk of fitting attendance around everyday lives (almost as if it can be squeezed into the lunch hour) risks reducing participation in the justice system to the mundane and routine, something it should not be;*

*going to court should always take precedence;*

*a court cannot operate like a business;*

*it is time that we become more flexible*

*People arrange their affairs in order to be at court. They are given plenty of notice to do so.*

Our justice system has a world-class reputation. We have an outstanding independent judiciary that is widely admired as an international leader. Our legal sector is globally recognised for excellence and contributes billions of pounds every year to the UK economy.

We cannot afford to trivialise the impact which the experience of courts and tribunals have on people and which sometimes can be life-changing.

While recognising this, we also acknowledge that for many people being in court proceedings is difficult to balance with their other commitments. We continue to believe that our justice system needs to respond to the rapidly changing needs of our society, and keep pace with modern life, so that it works better for everyone, from judges and legal professionals, to court users.

In the civil courts, in particular, we should also bear in mind our international position; and the fact that many other systems internationally offer more flexibility than we do at present.

For these reasons we continue to see a pilot to test the advantages and disadvantages of a more flexible court as worthwhile.



# HM Courts & Tribunals Service

Justice matters