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Where has my justice gone?

**Current issues in access to justice
in England and Wales**

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Executive Summary

Background and context

The justice system in England and Wales, once lauded as “the envy of the world”¹ is now more often described as being “in crisis”². Since 2010, government funding for both the courts³ and for legal advice and representation has been significantly reduced, increasing gaps in the provision of legal information, advice and support for people facing issues with community care, immigration, housing and welfare benefits⁴. More parents now attempt to represent themselves in family court proceedings. Measures introduced to combat the spread of COVID-19 have exacerbated backlogs across the civil, criminal and family courts – leaving victims, defendants, claimants and their families waiting longer to access justice.

The cost-of-living crisis has intensified issues, increasing the number of people experiencing legal problems with debt, housing and domestic abuse. Existing provision of legal advice and representation is inadequate to meet this need. In 2024 the Ministry of Justice (MoJ) was criticised by the National Audit Office for failing to collect the data needed to effectively manage the supplier base for this critical service⁵. Against this backdrop of escalating unmet legal need and a justice system under strain, justice system leaders are increasingly turning to technology with the dual aim of promoting earlier dispute resolution and achieving efficiency savings. There is growing government interest in remote and digital alternatives to face-to-face legal advice provision, creating both new opportunities and challenges. However, an absence of agreed quality standards for digital tools and inadequate regulation of AI-assisted provision exacerbates risks and undermines innovation.

Issues with the leadership, culture and structure of the MoJ undermine attempts to address these issues. Since 2010 there have been 11 changes in Lord Chancellor, equalling the number between 1945 and 2003. The inclusion of responsibility for prisons within the department’s remit when it was created in 2007 has detracted focus and funding from other areas of justice policy – including access to civil justice and the courts. The challenges in delivering the £1.3bn programme of digital court reform, which has been beset by significant delays and multiple reductions in scope⁶, have exposed

¹ Ministry of Justice, Lord Chief Justice of England and Wales and the Senior President of Tribunals (2016) “Transforming Our Justice System”, September 2016, p.3. Available at:

<https://assets.publishing.service.gov.uk/media/5a803d9ae5274a2e8ab4f019/joint-vision-statement.pdf> (accessed 3 Feb 2024).

² See for example, The Law Society (2023) “Further cuts to compound justice crisis”, 27 November 2023. Available at:

<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/further-cuts-to-compound-justice-crisis#:~:text=%E2%80%9CChronic%20shortages%20of%20judges%20and,65%2C000%20in%20August%20this%20year>

³ Institute for Government (2023) “Performance Tracker 2023: Criminal Courts”, 30 October 2023. Available at:

<https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts> (accessed 3 Feb 2024).

Real terms spending on courts in England and Wales declined by 23.4% between 2010/11 and 2017/18. It then increased by 20% between 2017/18 and 2021/22 before falling again by 10% in 2022/23. The Institute for Government states that this decline in funding is “largely explained by a fall in non-cash expenditure – which includes provisions for future spending – with real-terms spending also eroded by high levels of inflation”. The Institute for Government notes that, in contrast to other public services, “criminal justice agencies were not provided with additional funding in the autumn statement of 2022 to account for inflation”.

⁴ See for example, The Law Society (2023) “Further cuts to compound justice crisis”, 27 November 2023. Available at:

<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/further-cuts-to-compound-justice-crisis#:~:text=%E2%80%9CChronic%20shortages%20of%20judges%20and,65%2C000%20in%20August%20this%20year>

⁵ National Audit Office (2024) “Government’s management of legal aid – Ministry of Justice, Legal Aid Agency”, Session 2023–24, 9 February 2024, HC 514, p.31. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

⁶ National Audit Office (2023) “Report: Progress on the courts and tribunals reform programme – HM Courts & Tribunals Service”, Session 2022–23, 23 February 2023, HC 1130, p.6. Available at: <https://www.nao.org.uk/wp-content/uploads/2023/02/progress-on-courts-and-tribunals-reform-programme-1.pdf> (accessed 3 February 2024).

issues with the governance structures created to oversee the operation of HM Courts and Tribunals Service (HMCTS). Experts have questioned the adequacy of the existing framework agreement⁷ and suggested that wider constitutional reforms may be needed to put in place the structures and leadership necessary to effectively manage the courts and tribunals.

Issues with the leadership, structure and culture of the MoJ (and other justice system institutions) are reflected in persistent and systemic issues with the data that is available to system leaders. The absence of joined-up data – structured at the level of people, not cases – prevents justice leaders from taking a whole system view, undermining attempts to identify and resolve challenges. The relative absence of data, and persistent issues with arrangements for accessing the information that does exist⁸, also weaken opportunities for external researchers to undertake robust research. This means that justice, especially civil justice, does not in general benefit from the networks of independent think tanks, researchers and evidence intermediaries that promote effective decision-making in other areas of social policy.

This report sets out what we know about the ways in which the justice system fails to meet people's needs, highlighting existing examples of research on current issues in access to justice. Just as crucially, the report focuses on what we do not know, and draws attention to the gaps in data, evidence and infrastructure that undermine our ability to sustainably address existing challenges.

Defining access to justice – a framework for mapping current issues

The legal definition of access to justice (see Figure 1) is used as a framework to structure the full report, which sets out what we know about the challenges people face at each stage. The penultimate section of the report summarises the cross-cutting issues and themes that impede our collective ability to manage the existing system and institute evidence-based reforms that support people to secure access to justice. A summary of data gaps identified is provided in Table A. The report concludes by summarising the priority evidence gaps and research questions identified in the preceding analysis (reproduced as Table B) and suggests next steps for research funders and the research community.

Figure 1 – Structure for this report, developed from the definition of access to justice as defined by law in England and Wales



Access to legal information and advice (Section 1)

Access to legal information and advice is vital to support people to make informed choices about whether to access the justice system to resolve their disputes. Successive research studies have

⁷ Which agreed that the management of the courts service would be undertaken as a partnership between the Lord Chief Justice, the Lord Chancellor and the Senior President of Tribunals. See: E. Ryder, (202) "The Blackstone Lecture 2020" (available at: https://www.ialsnet.org/wp-content/uploads/2021/01/blackstone_script-Sir-Ernest-Ryder-blackstone-Lecture-012121.pdf); and Sorabji, J. (2023) "Redesigning the framework of judicial and court administration – English and Welsh Courts, UK Tribunals and HMCTS", forthcoming, paper available on request from author.

⁸ Notwithstanding the ADR-UK funded Ministry of Justice Data First programme – see discussion below in Section 4.

found that people's awareness of legal services and their ability to recognise the problem they are experiencing as "legal" in nature both play a critical role in determining the problem resolution strategy⁹ they adopt. Access to legal information and advice is equally crucial for those who find themselves defending legal claims or facing criminal charges, to ensure that they receive a fair and effective hearing (see Section 3). Research has suggested that access to legal advice can have a positive impact on outcomes, whether they are secured through the formal justice system or alternative dispute resolution processes¹⁰. As such, the ability of individuals and communities to access accurate and timely legal information and advice is intimately connected with their ability to secure access to justice.

Cuts to government spending on legal aid introduced in 2013, combined with a reduction in funding available from other sources, have reduced the number of organisations providing legal information and advice, and created "advice deserts" across whole areas of England and Wales (Section 1.2.1). Not-for-profit providers of information and advice have been particularly adversely affected, despite government research recognising the importance of these services in determining problem resolution strategies and supporting access to justice (Section 1.2.2). In 2024, people are forced to travel further to access face-to-face legal advice than ten years ago, and referral pathways between agencies have been disrupted. Providers have reported that a combination of both restricted and inadequate funding have undermined their ability to deliver both early advice and holistic services that meet the full range of people's needs¹¹ (Section 1.2.3).

The MoJ's Legal Support Action Plan¹², introduced both to increase the availability of legal information and support, and to develop the evidence base necessary for future investment, has proved underpowered¹³ to deliver on either of these aims. It is unclear whether government proposals designed to increase access to remote or online legal information and support will prove to be an effective substitute for face-to-face advice, particularly for the most disadvantaged. The absence of agreed quality standards for provision or effective regulation of digital tools exacerbates risks and undermines innovation (Section 1.2.4). The ability to address existing challenges in supporting people to access legal information and advice is in general undermined by a lack of data and evidence to compare the effectiveness of different models of provision or understand what methods of delivery work best for different client groups. Further investment is needed to develop

⁹ Alongside other factors including legal confidence and social norms – see for example, Pleasence, P., Balmer, N. and Denvir, C. (2015) "How people understand and interact with the law", Cambridge, 2015; and also OECD/Open Society Foundations (2019) "Legal Needs Surveys and Access to Justice", OECD Publishing, Paris. Available at: <https://doi.org/10.1787/g2g9a36c-en>

¹⁰ See for example, Hitchings, E., et al. (2021) "Fair Shares? Sorting out money and property on divorce – Executive summary", p.4 (available at: https://www.nuffieldfoundation.org/wp-content/uploads/2021/03/Fair-Shares-Executive-summary_web.pdf) which reported that: "Where divorcees' financial and property arrangements had been finalised through solicitors or with a court order (whether by consent or adjudicated), there was evidence to suggest some difference in outcomes compared with divorcees who did not obtain legal advice. Not using a lawyer made it more likely that the pension position would not be adequately addressed, with men more likely to share their pension if they had received legal advice."

¹¹ House of Commons Justice Committee (2021) "The Future of Legal Aid – Third Report of Session 2021–22", HC70 Published on 27 July 2021 by authority of the House of Commons, p.39. Available at: <https://committees.parliament.uk/publications/6979/documents/72829/default/> (accessed 14 February 2024).

¹² Ministry of Justice (2019) "Legal Support: The Way Ahead – An action plan to deliver better support to people experiencing legal problems", February 2019, CP40. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3a0840f0b676e6ddc6dc/legal-support-the-way-ahead.pdf> (accessed 14 February 2024).

¹³ House of Commons Justice Committee (2021) "The Future of Legal Aid – Third Report of Session 2021–22", HC70, published on 27 July 2021 by authority of the House of Commons, p.47. Available at: <https://committees.parliament.uk/publications/6979/documents/72829/default/> (accessed 14 February 2024).

typologies of legal information and advice interventions, and to identify or create standardised outcome measures that can be used to compare the efficacy of different models (Section 1.2.5).

Access to the formal legal system (Section 2)

Existing case law establishes that access to the formal legal system must be practical and effective and not “theoretical and illusory”¹⁴ for the full run of both individuals and cases. For a formal legal system to be judged practically accessible, it is established that formal mechanisms must exist and that the state has a duty to ensure that these mechanisms are accessible to all individuals within their jurisdiction (not just citizens)¹⁵. Whilst the right of access to the formal legal system is not absolute (it can be limited for example by the imposition of reasonable time limits on bringing a claim, or a requirement to pay court fees) any administrative barriers must be proportionate and not affect the essence of people’s right to access the formal legal system.

It is also established that access to the formal legal system has an attitudinal dimension and that changes to policies and processes for accessing the formal justice system must take account of their likely impact on behaviour in the real world¹⁶. For example, implementing or increasing court fees, or making changes to systems and processes that result in changes to public trust and confidence that deter people from bringing claims, can undermine the right of access to justice.

In 2024, access to the formal legal system for victims and defendants is impeded by the existence of unprecedented case backlogs, with victims of serious sexual offences amongst those worst affected (Section 2.2.1). Defendants, who have not yet been convicted, are spending long periods on remand at a cost to both them and the taxpayer. Attempts made by policymakers to develop solutions are undermined by gaps in the data needed to understand the composition of cases in the backlog (Section 2.2.2). Consequently, little evidence exists to compare the efficacy of the measures that have been introduced to reduce delays across the criminal courts (such as Nightingale Courts or remote hearings), or to understand their impact on users (Section 2.2.3).

Backlogs also exist across the civil and family courts and tribunals, where deficiencies in data and evidence mirror those that persist across the criminal courts (Section 2.2.4). Global indicators suggest that people find it harder in the UK than in other comparable countries to access and afford civil justice (Section 2.2.5)¹⁷. Digital services, designed to reduce both pressure on physical court hearings and the overall cost of accessing justice across the civil and family courts and tribunals have failed to resolve barriers to access for all users, with people from Black and Minoritised Ethnic backgrounds particularly adversely affected (Section 2.2.6). Mechanisms proposed for reducing demand, including alternative dispute resolution tools like mediation are poorly utilised in some areas of law, and their efficacy is not well understood (Section 2.2.7). Finally, an absence of detailed research to understand changes in attitudinal barriers to accessing the formal legal system – such as lack of trust and confidence in the courts – undermines attempts to improve access to justice for all (Section 2.2.8).

¹⁴ See: *R (Gudaniviciene & Ors) v Director of Legal Aid Casework & Lord Chancellor* [2014] EWCA Civ 1622; [2015] 1 W.L.R. 2247 [46].

¹⁵ *Children’s Rights Alliance for England v Secretary of State for Justice* [2013] EWCA Civ 34, [2013] HRLR 17 [38].

¹⁶ See *R (Unison) v Lord Chancellor* [2017] UKSC 51 [96].

¹⁷ World Justice Project (2023) “Rule of Law Index 2023: United Kingdom” (available at: <https://worldjusticeproject.org/rule-of-law-index/country/2023/United%20Kingdom/Civil%20Justice/>). The UK received a regional rank of 30/31 and an income rank of 45/46.

Access to a fair and effective hearing (Section 3)

The existing case law on access to justice emphasises that for an individual to receive a fair and effective hearing, they must be able to put their case effectively. When the issues involved in a case are too factually or legally complex for an individual to present their case effectively the courts have recognised a requirement for representation and legal aid¹⁸. An inquisitorial process does not necessarily negate this requirement. The right to a fair and effective hearing also requires the state to take proactive steps to ensure “equality of arms” between the parties to a case. This means that both parties need to have a reasonable opportunity to set out their legal case in conditions that do not unreasonably disadvantage one of the parties. Those in charge of the formal justice system must make adjustments to support effective participation, for example through providing access to interpreters for people who have English as a foreign language, or making reasonable adjustments to enable people with a disability to participate. An effective hearing requires that individuals are able to present the information necessary to enable a decision-maker to make a determination based on applying the law to the facts of the case *and* that the decision-maker is able to comprehend this information¹⁹, to ensure that decisions reached are made on the grounds of legal merit, and not any other factor.

The decline in public funding for legal representation has led to a reported rise in the number of people who attempt to represent themselves (“Litigants in Person”) in legal proceedings. The scale of this increase is not consistently recorded or reported across the justice system – particular gaps exist in relation to the magistrates’ courts and civil tribunals (Section 3.2.1). Existing research suggests that Litigants in Person experience particular challenges around effective participation, but further studies are needed to generate representative findings (Section 3.2.2).

Changes to court processes including the expansion in use of remote hearings, and the Single Justice Procedure in the magistrates’ courts, have created new barriers to effective participation that may impact disproportionately on those who are vulnerable (Section 3.2.3). User satisfaction metrics adopted by HMCTS fail to track relevant concepts – such as perceptions of procedural fairness – despite assurances that these measures would be amended to align with existing standardised measures (Section 3.2.4). Issues have been raised about the way in which courts and tribunals deal with matters around mental ill-health and capacity, but limited data is collected to verify and address concerns (Section 3.2.5). Finally, concerns have been raised about judicial practice and the conduct of hearings, particularly in the family courts, but these are difficult to investigate due to an absence of published data. A scoping study undertaken by the Domestic Abuse Commissioner’s office to support the development of a Family Court Monitoring Mechanism may identify new approaches that could be replicated across other jurisdictions (Section 3.2.6).

Access to a decision in accordance with law (Section 4)

Access to justice requires not just that individuals are able to access the formal justice system and secure a fair and effective hearing, but that determinations made in respect of their case are in accordance with existing law. There is an established constitutional right of access to the courts, not as an end, but in order that disputes can be determined in accordance with the rights prescribed by

¹⁸ See *R (Howard League for Penal Reform and The Prisoner’s Advice Service) v Lord Chancellor* [2017] EWCA Civ 244 (41).

¹⁹ This issue has been raised in the context of video-hearings: see *R (on the application of Kiarie) (Appellant) v Secretary of State for the Home Department (Respondent)* *R (on the application of Byndloss) (Appellant) v Secretary of State for the Home Department (Respondent)* [2017] UKSC 42 [67].

the legislature²⁰. The constitutional legitimacy of courts is inextricably linked to their ability to demonstrate the correct and impartial application of the substantive law to the facts of individual cases²¹.

Across the justice system in England and Wales concerns persist about bias in decision-making. Access to new data from the magistrates' and Crown Court – provided through Administrative Data Research UK (ADR-UK) and funded by the MoJ Data First programme – is enabling researchers to better understand the extent of issues across the criminal justice system (Section 4.2.1). Despite these positive developments, gaps persist in both the collection of, and access to, data needed to understand bias in decision-making across the civil, family, and administrative courts and tribunals (Section 4.2.2). Whilst there has been progress in making judgments publicly available – most notably through the creation of the Find Case Law service hosted by The National Archives – lack of access to an agreed and complete record of decisions undermines opportunities for research (Section 4.2.3).

Access to remedy and effective enforcement (Section 5)

Having received a decision in accordance with substantive law, it is vital that parties are able to access the remedy specified in that decision. In *R(Unison) v Lord Chancellor* [2017] UKSC 51 [96] it was established that the right of access to justice can be violated if changes to the system render it “futile or irrational to bring a claim”. Failure to put in place mechanisms for effective enforcement of decisions will naturally impact on calculations made by litigants when deciding whether it is rational or not to initiate a claim. As such, failure to ensure that remedies are secured and decisions enforced can undermine access to justice.

Across all jurisdictions, there is a lack of data to understand the scale and impact of non-compliance with orders and decisions (Section 5.2.1). Concerns have been raised that vulnerable litigants or those who are on low incomes experience particular issues in securing access to remedy and effective enforcement (Section 5.2.2). Persistent issues with the efficacy of civil court enforcement processes have been raised that have not been acted upon, and planned changes proposed as part of HMCTS digital court reform programme that would have increased transparency have been delayed (Section 5.2.3). Information on why warrants are requested and granted in the magistrates' courts is not routinely recorded, undermining attempts to ensure that changes in policy are being upheld (Section 5.2.4).

Cross-cutting issues

Three cross-cutting issues undermine attempts to improve people's access to justice in England and Wales. Firstly, problems generated by the structure, culture, leadership and funding of both the MoJ and its component agencies have undermined attempts to put in place solutions to sustainably address access to justice challenges (Sections 6.2.1–6.2.2). The MoJ was created in 2007 as a multi-agency partnership, taking over responsibility for prisons from the Home Office and combining this with the remit of the former Department for Constitutional Affairs. In 2021/22 nearly half of the MoJ's expenditure was dedicated to the prisons and probation services (£5,022m). Over the same period, expenditure on HMCTS stood at £2,612m – just over half of what was spent on prisons.

²⁰ Bogg, A. (2018) “The Common Law Constitution at Work: *R (on the application of UNISON) v Lord Chancellor*”, *Modern Law Review* 81 (3), MLR, 509–538.

²¹ Twining, W. (1993) “Alternative to What? Theories of Litigation, Procedure and Dispute Settlement in Anglo-American Jurisprudence: Some Neglected Classics”, *The Modern Law Review* Vol. 56, No. 3, Dispute Resolution. Civil Justice and Its Alternatives (May, 1993), pp.380–392

In practice, it has been argued that departmental leaders tend to focus on prisons and criminal justice at the expense of other areas of policy, particularly access to civil, administrative and family justice. In particular, the experience of attempting to deliver the £1bn programme of digital court reform, initiated in 2016, has exposed inadequacies in the framework agreement between the judiciary and MoJ that undermine the effective administration of the courts (Section 6.2.3). The reform programme, which has been subject to significant delays and reductions in scope, is being delivered by HMCTS, an executive agency of the MoJ that is formally jointly accountable to both the executive and the judiciary. However, experts have argued that in practice the partnership is weighted more in favour of the executive than the judiciary, due to disparities in responsibility and accountability for funding and resource management.

Despite, or perhaps because of this imbalance, upward stakeholder management occupies a disproportionate amount of the HMCTS Chief Executive's time (around 70%), undermining operational efficiency²². In the context of the delivery of the court reform programme – already extremely ambitious in terms of scale, scope and timeframe – the structural issues created by the framework agreement wasted time, created confusion, reduced transparency, delayed decision-making and undermined the efficient delivery of the programme²³. Further to this, existing structures to support the senior judiciary in delivering their leadership and management functions are not fit for purpose (Section 6.2.4). Existing arrangements concentrate administrative decision-making in the hands of a small group of senior judges which, it is argued, “militates against the creation of efficient system making akin to those in government”²⁴. Those members of the judiciary responsible for delivering leadership functions are required to do so alongside providing judicial case management, adjudication and judgment writing²⁵. In short, under existing arrangements, the senior judiciary are inadequately resourced and supported to deliver the functions they are responsible for.

Secondly, the status of the MoJ as a collection of independent agencies, and the incentives that this structure creates, undermine attempts to address issues with data collection, linkage, sharing and governance. The justice system has more data gaps than other public services²⁶, and persistent issues with both data quality and linkage frustrate attempts to understand people's journeys. Consequently, and even though the MoJ reportedly benefits from some of the most advanced data-science capabilities in government²⁷, data is not being used to its full potential to improve operations and deliver evidence-based solutions to access to justice challenges (Sections 6.3.1–6.3.2). Table A below summarises the key data gaps identified in the course of researching this report.

Thirdly, and despite recent positive initiatives such as the creation of the Nuffield Family Justice Observatory, the justice system does not benefit from a broad network of independent evidence intermediaries and think tanks, with the skills and resources to robustly evaluate changes to the

²² Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme: Independent Review”, 5 February 2016, p.16. Available at: <https://www.transformjustice.org.uk/wp-content/uploads/2023/11/BCG-Report-for-Release.pdf>

²³ Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme”, p.17.

²⁴ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration – English and Welsh Courts, UK Tribunals and HMCTS”, draft paper – available on request from author, p.20.

²⁵ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration” p.20

²⁶ See Pope, T., Freeguard, G., and Metcalfe, S. (2023) “Doing data justice: Improving how data is collected, managed and used in the justice system”, Institute for Government. Available at: <https://www.instituteforgovernment.org.uk/sites/default/files/2023-09/Doing-data-justice.pdf> (accessed 6 Feb 2024).

²⁷ Pope, T., et al. (2023) “Doing data justice”, p.5.

system. Civil and administrative justice are particularly poorly served in this regard (Section 6.4.1). Critical gaps in regulation and infrastructure undermine attempts to ensure that the digital tools and technologies promoted by justice system leaders, and deployed with the aim of increasing access to justice, are effective and fair (Section 6.4.2). Urgent action to address these issues is required, in order to put in place sustainable solutions that address the access to justice challenges identified in this report.

Conclusion – Key evidence gaps and next steps

This report attempts to map, as systematically as possible, both the current issues in access to justice across England and Wales, and the structural issues that undermine our collective ability to address them. In addition to exposing deficiencies in the data that exists to understand peoples journeys to, and through, the justice system, this report has identified over 80 key evidence gaps and priority research questions (see Table B below). Taken as a whole, my report serves as both a call to action and the basis for an agenda, which, if delivered by researchers and implemented by policymakers, would transform the experience of the justice system for those who rely on it.

The scale of the challenge is significant. Addressing the current crisis will require both political will and consistent, credible action on the part of policymakers and justice system leaders, including the senior judiciary. It will also require funders of research to be prepared to invest at scale in developing the infrastructure to support evidence-based policy and practice. This means:

- Funding programmes to support organisations delivering advice services in communities to improve their ability to collect, store, manage, share and use data
 - Continuing to invest in the extension of initiatives such as ADR-UK to improve access to administrative data for research
 - Building the skills and capacity of researchers working in the access to justice space, helping them to deploy methods from quantitative research fields and build multi-disciplinary teams with expertise from disciplines including health services research, economics, computer science, engineering, design and behavioural science
 - Support less traditional activities led by organisations outside academia, including analysis and advocacy to compel changes to regulation or the data collection and sharing practices of justice system agencies
 - Growing the field of evidence intermediary organisations focused on civil and administrative justice, learning from effective initiatives established across other areas of social policy.
- Positive examples on which to build include the Resolution Foundation, the National Centre for Health and Care Excellence and the Nuffield Family Justice Observatory.

The cost of putting in place the infrastructure for evidence-based improvements to the justice system is not insignificant, but neither is the cost of maintaining the status quo. The impact of the crisis in access to justice described in this report can be measured in financial, constitutional and moral terms. The consequences for individuals of failing to access justice are frequently devastating – causing ripple effects across lives and livelihoods – and driving demand for other public services. The issues facing the justice system are now so serious and pervasive that the government has been forced to act, particularly in relation to court backlogs. The issue is that far too frequently, politicians and policymakers are unable to tell whether their responses have worked. Researchers and research funders have a crucial role to play in ensuring that the solutions put in place are sustainable and effective, and moving towards a future where no one is left asking: “Where has my justice gone?”.

Table A – Summary of data gaps identified

This table is a duplication of Table 6.1

All stages
<ul style="list-style-type: none"> • Linked data to understand the journeys of people, not the progress of cases • Data on the demographic and protected characteristics of users • Data to identify vulnerable users (e.g. data on age, mental ill-health or physical impairment) • Data about victims and witnesses
Access to legal information and advice
<ul style="list-style-type: none"> • Data on levels of unmet need for legal information and advice, particularly at regional and local level • Data on the case characteristics of individuals with unmet need for legal information and advice • Data on the demographic characteristics of the people who access advice, to understand the adequacy of existing provision in meeting the needs of particular groups • Data on whether those who are entitled to access legal aid funded advice can access it • Routine financial data to monitor the sustainability of the legal aid provider base • Accurate data to compare the supply of legal aid funded advice with existing demand • Data to understand referral pathways within and between advice providers • Data to understand the scale and impact of public reliance on AI-assisted legal advice and information tools • Data to compare the quality, efficacy and cost benefit of different models of legal advice, disaggregated by demographic and case characteristics of users
Access to the formal legal system
<p><i>Criminal justice</i></p> <ul style="list-style-type: none"> • Data on case type, case duration and case complexity, needed to understand the court backlog • Data to track individual offences or defendants across the criminal justice system • Data on cases by plea type • Data on the reasons for vacated trials • Timeliness data for different offences and courts <p><i>Civil, administrative and family justice</i></p> <ul style="list-style-type: none"> • Data on the composition of cases in the backlog • Data on hearing duration • Data on mode of hearing • Data on defendants who do not engage in civil proceedings • Data on characteristics of users of mediation, and detailed outcomes from mediated processes • Data to understand the impact of mediation to overall timeliness figures for the civil courts • Characteristics of families appearing before the Special Educational Needs and Disability Tribunal • Data on children's living arrangements at the time of application to the family court • Data on allegations of domestic abuse or safeguarding concerns • Data to measure public trust and confidence in civil and family courts and tribunals <p><i>Cross-jurisdiction</i></p> <ul style="list-style-type: none"> • Longitudinal data measuring changes in trust and confidence in the justice system over time, disaggregated by legal jurisdiction, UK region, respondent demographics and level of experience with the justice system
Access to a fair and effective hearing
<p><i>Criminal justice</i></p> <ul style="list-style-type: none"> • Data to monitor levels of legal representation in the magistrates' courts • Routine data on user perceptions of procedural justice across remote and in-person hearings and digital services • Objective data to monitor the procedural fairness of hearings • Data to monitor the quality and performance of technology used to support remote hearings • Data recording technical issues with remote hearings • Data on the Single Justice Procedure – including users, cases, mitigation submitted, mitigation received and outcomes • Sentencing remarks in the magistrates' courts

Civil, administrative and family justice

- Data on legal representation across the tribunals
- Routine data on user perceptions of procedural justice across remote and in-person hearings, and digital services
- Objective data to monitor the procedural fairness of hearings
- Data to monitor the quality and performance of technology used to support remote hearings
- Data recording technical issues with remote hearings
- Data on whether parties have English as a foreign language across the tribunals

Access to a decision in accordance with law

- An agreed complete record of judgments and decisions made across the courts and tribunals in England and Wales

Access to remedy/access to effective enforcement

- Data on the amount of money unpaid each year in relation to family financial orders
- Data on applications for enforcement and warrants linked to previous case data
- Data on compliance with civil preventive orders (e.g. Anti-Social Behaviour Injunctions, Domestic Violence Prevention Notices)
- Data on the subject matter of / reasons why warrants are granted in the magistrates' courts

Table B – Key evidence gaps and priority research questions

This table is a duplication of Table 7.1

I. Access to legal information and advice
<p><i>Journeys and referral pathways</i></p> <ul style="list-style-type: none"> • How can we better understand referral pathways and client journeys between different sources of advice and information? • What challenges are created by the existing landscape of legal information and advice provision, and how do these challenges impact both on people's ability to access legal information and advice, and on the outcomes they secure in relation to their legal problems? • How do advice journeys and experiences vary between people from different demographic groups? • What systems and infrastructure are needed to help frontline agencies better understand client journeys? • How are the changes proposed in the new vision articulated by the Lord Chancellor and senior judiciary for technology-assisted joined-up advice, information and dispute resolution, provided by the private sector, impacting on people's ability to access legal information and advice, and on the outcomes they secure? <p><i>Technology-assisted advice provision</i></p> <ul style="list-style-type: none"> • How might we define quality standards for remote advice provision (advice delivered via platforms such as Zoom or Teams, or by phone)? (See also "Typologies of legal information and advice provision" below.) • What is the impact of remote advice provision on clients' experience, behaviour and outcomes? How does this vary across different demographic groups? • What kinds of people benefit most from remote advice provision? • What is the impact on services of delivering advice remotely? <p><i>Digital information and advice provision (including AI-assisted tools)</i></p> <ul style="list-style-type: none"> • How do people without access to legal advice use general purpose tools like ChatGPT when faced with legal issues? • How well do AI-assisted tools perform when faced with questions relating to the law in England and Wales? • How might we define technical quality standards for digital information and advice provision that can be understood by engineers and developers? (See also "Typologies of legal information and advice provision" below.) • How can we best support people to critically evaluate the benefits and drawbacks of AI-assisted tools? Do "health warnings" and disclaimers work? • How might we gather better data on the risks created by the use of AI-assisted tools, and monitor any harms that occur as a result of these tools? What monitoring mechanisms are needed? • What regulatory standards are needed to support innovation in the interests of access to justice, and prevent harm? • How do gaps in data impact on the potential for AI-assisted tools to meaningfully address access to justice challenges? <p><i>Standardised tools for measuring information and advice outcomes</i></p> <ul style="list-style-type: none"> • What wider health and social outcomes are plausibly linked to the provision of legal information and advice? • How might these outcomes be measured, by who, and at what stage? • What standardised tools (e.g. questionnaires) are needed to better assess outcomes? How might gaps in the standardised tools available be addressed? <p><i>Typologies of legal information and advice provision</i></p> <ul style="list-style-type: none"> • How might we better understand "quality" legal information and advice provision from the perspective of people who seek information and advice? • How can we better articulate and define the different kinds of legal information and advice provision (moving away from metrics like "hours spent with client") so that we can compare the outcomes of different interventions in a more robust way? • What kinds of provision, in what types of setting, work best, when, and for whom?

- How can we routinely and robustly evaluate the cost-efficacy of different approaches to legal information and advice provision?

2. Access to the formal legal system

Reducing court backlogs

- What methods and approaches are most effective in tackling court backlogs? What can be learned from approaches taken in other jurisdictions?
- How do methods introduced to tackle court backlogs (including new fee structures, remote hearings, Nightingale Courts, changes to listing prioritisation criteria and decriminalisation of offences) impact on the experience of, and outcomes for, people from different demographic groups? How do they impact on parties and outcomes in different kinds of cases? What is their impact on the use of remand?
- How do mechanisms introduced for tackling backlogs in the courts and tribunals impact on other agencies across the justice system? How do they impact on wider social outcomes?
- Which approaches are most cost-effective – for the courts and tribunals, and for the wider system?
- How does legal representation impact on case and hearing duration?

Digital court processes

- How has the introduction of digital court processes impacted on practical and attitudinal barriers to accessing the formal legal system? How do these barriers vary across people from different social and demographic backgrounds?
- How has the introduction of digital court processes impacted on the experience of, and outcomes for, people from different demographic groups, and with particular protected characteristics under the Equality Act 2010?
- How can we better understand the impact of digital court processes on default judgments? How might we design digital court processes to increase engagement from defendants from different backgrounds, and with particular protected characteristics under the Equality Act 2010?

Mediation and alternative dispute resolution

- How is an expanded role for private sector dispute resolution providers, as announced by the Lord Chancellor and senior judiciary, impacting access to the formal legal system for people from different demographic backgrounds? How are these services impacting on the outcomes received by people from different backgrounds, and in different types of cases?
- What transparency standards should apply to private sector dispute resolution providers? How can people be supported to make informed choices about whether to use different models and services?
- Is mediation and alternative dispute resolution effective at reducing pressure on the courts and tribunals?
- How might we develop a typology of different models of mediation and alternative dispute resolution in order to robustly compare outcomes from different interventions? What kinds of dispute resolution work when, where and for whom?
- How might we compare the cost-efficacy of different approaches to dispute resolution, including with the courts and tribunals?
- What can we learn from international research?

Public trust and confidence in civil and family courts and tribunals

- How can we develop better methodologies for measuring changes in public trust and confidence in the courts and tribunals?
- How might we better align measures of trust and confidence with standards of procedural justice to measure the attitudes of those with experience of the justice system?
- How is public trust and confidence in the civil and family courts and tribunals changing over time? Are initiatives to improve transparency in the family courts delivering on their aim of improving trust and confidence?
- How have digital reforms to justice system processes impacted on people's confidence in, and willingness to access, the formal justice system?
- What factors are associated with increased public trust and confidence in the justice system, and across particular courts and tribunals?

3. Access to a fair and effective hearing

The impact of legal representation

- How can we generate representative findings on the impact of legal representation on both the fairness and efficacy of hearings and outcomes secured by parties?
- Who benefits the most from legal representation, in what contexts and under what circumstances?
- What is the impact of legal representation on judicial behaviour?
- What is the impact of legal representation on parties' perceptions of the efficacy and fairness of hearings? How does this change when only one party is represented?
- What is the impact of legal representation on cost to both the court service and other justice system agencies?

The impact of changes to court processes

- How can we better understand the experience of remote hearings and their impact on the fairness and efficacy of hearings?
- What minimum standards of performance should technology meet to support fair and effective hearings? What is the threshold for performance beyond which a hearing should be considered ineffective/unfair?
- What are the drivers of perceptions of fairness and efficacy in relation to remote hearings?
- How might we gather representative objective and subjective data on the experience of remote hearings for parties?
- When, and under what circumstances, should remote hearings not be used?
- How do remote hearings impact on decision-maker bias?
- How can we gather representative data on the impact of new processes such as the Single Justice Procedure? What monitoring mechanisms are needed to ensure that hearings are fair and effective?

How effective are measures to support fair and effective participation for litigants?

- How consistently are provisions in the Equal Treatment Bench Book – intended to support the fairness and efficacy of hearings – applied across the courts and tribunals?
- How effective are measures to support parties who are neurodivergent, experiencing mental ill-health, or lacking mental capacity across the courts and tribunals? What is their impact on experience and outcomes?
- How effective are the courts at identifying and providing support to individuals who are lacking mental capacity or experiencing mental ill-health?

Judicial practice

- How might we gather representative data on judicial practice, particularly for cases that are not reported?
- What impact do court observers have on judicial practice? What other mechanisms and approaches show promise in improving the treatment of parties?

4. Access to a decision in accordance with law

Bias in decision-making across the civil and family courts and tribunals

- To what extent are decisions made across the civil and family courts and tribunals biased against parties from different socio-demographic groups?

Judgment publication

- What proportion of judgments are published on the new Find Case Law service, compared to both judgments published by privately owned publishers and total judgments given across the courts and tribunals?
- Are there patterns in the kinds of judgments and decisions that are missing? What is the impact of these missing judgments on research and innovation?
- What does the public consider acceptable in terms of the use and re-use of data contained in judgments?
- How does an increase in the number of decisions and judgments published impact on people's willingness to bring kinds of cases before the courts?

- How effective are current anonymisation techniques at protecting the privacy of children and other vulnerable parties? How do changes in the mode of publication impact on these considerations?
- Does an increase in judgment publication improve public understanding of the courts and tribunals?

5. Access to remedy and effective enforcement

Understanding orders

- For what purpose are orders and warrants issued across the civil and magistrates' courts?
- Are people from particular socio-demographic groups more likely to receive orders against them?

Compliance with orders

- To what extent are orders made by the civil and family courts complied with?
- Are there patterns in non-compliance?
- How effective are different types of orders in promoting positive outcomes?
- What mechanisms are needed for capturing representative data on compliance?

Access to enforcement

- What barriers do people from different socio-demographic backgrounds face in securing effective enforcement of orders and decisions?
- What mechanisms are needed to monitor trends in enforcement over time?

6. Cross-cutting issues

Comparative research exploring different models for managing justice systems

- What types of arrangements for managing courts and tribunals are most effective in terms of increasing access to justice for people?
- What structural arrangements are most effective at supporting efficient management of the justice system as a whole, whilst promoting the independence of the judiciary and prosecutorial function?
- What structures and processes are most effective in supporting evidence-based policy-making in relation to justice systems?

Data collection and linkage

- What are the costs and benefits associated with the introduction of person-level identifiers across the justice system?
- What governance models are needed to build and maintain public trust and confidence in the collection and use of data by justice agencies?
- What mechanisms are needed to support informed discussion with policymakers, professionals and the public about justice data management and use?

A. Background and context

The justice system in England and Wales, once lauded as “the envy of the world”²⁸ is now more often described as being “in crisis”²⁹. Since 2010, government funding for the justice system has been significantly reduced – real-terms spending on courts in England and Wales fell by nearly one-quarter between 2010/2011 and 2017/2018³⁰. Funding for civil legal advice and representation has fallen by one-third since 2010/11, whilst funding for criminal legal aid has declined by nearly half³¹. Measures introduced to combat the spread of the COVID-19 pandemic have exacerbated existing delays, generating significant case backlogs across whole areas of the criminal, family and civil courts and tribunals. Internationally, the United Kingdom’s standing in relation to the rule of law is under threat – the global Rule of Law Index, published annually by the World Justice Project, reports that access to civil justice in the United Kingdom has fallen since 2017³². This deterioration is mirrored by a reported reduction in the efficacy of the UK’s criminal justice system since 2018³³. In response to this confluence of factors, some commentators have characterised the justice system in England and Wales as being in a state of “terminal decline”³⁴.

The decline in justice system funding and performance has not been mirrored by a decrease in the number of people experiencing legal problems. Since 2021, the impact of the COVID-19 pandemic on the UK economy, combined with a significant rise in levels of inflation precipitated by a range of

²⁸ Ministry of Justice, Lord Chief Justice of England and Wales and the Senior President of Tribunals (2016) “Transforming Our Justice System”, September 2016. Available at: <https://assets.publishing.service.gov.uk/media/5a803d9ae5274a2e8ab4f019/joint-vision-statement.pdf> p.3 (accessed 3 Feb 2024).

²⁹ See for example, The Law Society (2023) “Further cuts to compound justice crisis”, 27 November 2023. Available at: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/further-cuts-to-compound-justice-crisis#:~:text=%E2%80%9CChronic%20shortages%20of%20judges%20and,65%2C000%20in%20August%20this%20year> (accessed 3 February 2023).

³⁰ Institute for Government (2023) “Performance Tracker 2023: Criminal Courts”, 30 October 2023. Available at: <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts> (accessed 3 Feb 2024). Real terms spending on courts in England and Wales declined by 23.4% between 2010/11 and 2017/18. It then increased by 20% between 2017/18 and 2021/22 before falling again by 10% in 2022/23. The Institute for Government states that this decline in funding is “largely explained by a fall in non-cash expenditure – which includes provisions for future spending – with real-terms spending also eroded by high levels of inflation”. The Institute for Government notes that, in contrast to other public services, “criminal justice agencies were not provided with additional funding in the autumn statement of 2022 to account for inflation”.

³¹ In 2010/2011 the civil legal aid budget was £1,346m, compared with £873m in 2022/23. The criminal legal aid budget was £1,542m in 2010/11, declining to £926m in 2022/23. Figures derived from D. Clark secondary analysis of MoJ legal aid statistics data, published on statista.com. Available at: <https://www.statista.com/statistics/1098628/legal-aid-spending-in-england-and-wales/> (accessed 3 February 2024).

³² World Justice Project (2023) “Rule of Law Index 2023: United Kingdom”. Available at: <https://worldjusticeproject.org/rule-of-law-index/country/2023/United%20Kingdom/Civil%20Justice/> (accessed 3 Feb 2024).

³³ World Justice Project (2023) “Rule of Law Index 2023: United Kingdom”.

³⁴ Bugel, S., and Pidd, H. (2022) “The system is in crisis: barristers make their case as strike begins”, *The Guardian*, Monday 27 June 2022. Available online at: <https://www.theguardian.com/uk-news/2022/jun/27/the-system-is-in-crisis-barristers-make-their-case-as-strike-begins> (accessed 3 February 2024).

global and domestic factors³⁵, have conspired to create a cost-of-living crisis. The cost-of-living crisis has driven up housing costs and forced more families to rely on borrowing to pay for rent, energy and council tax bills³⁶. The poorest households have fared the worst and are increasingly reliant on borrowing to pay for essentials³⁷— research published by the Joseph Rowntree Foundation in May 2023 found that nearly one-quarter of households in the bottom 40% of income distribution had “run up debt to pay for food”³⁸.

These dire economic circumstances have generated an increase in evictions – in February 2023, official figures showed that rental evictions had risen by 98% in one year³⁹. The national housing charity Shelter reported that between January and March 2023, 79,840 households faced homelessness in England – the highest figure on record⁴⁰. The number of households struggling to repay loans is also rising – research published in 2023 found that 4.5 million low-income households were behind on a household bill or loan, with average arrears totally almost £1,600⁴¹. This has resulted in increased levels of demand for legal advice and assistance – the national advice charity Citizens Advice reported a 12% increase in the number of people seeking help for problems with debt in December 2023, compared with December 2022⁴². The crisis has also precipitated a reported increase in domestic abuse, with frontline staff at the charity Refuge warning that economic circumstances are “creating opportunities for, or is intensifying, economic abuse”⁴³. Experts have also warned that the rising proportion of families in poverty is likely to lead to an upsurge in child neglect and abuse, forcing more children into out-of-home care⁴⁴. Official data suggests that these concerns may be well-founded – in December 2023 the Ministry of Justice (MoJ) reported a 5%

³⁵ Harrari, D., et al. (2024) “Rising cost of living in the UK”, Research Briefing, House of Commons Library, 19 January 2024, p.20. Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9428/CBP-9428.pdf> (accessed 6 February 2024).

³⁶ Joseph Rowntree Foundation (2023) “5.7 million low-income households having to cut down or skip meals, as JRF’s cost of living tracker shows ‘Horrendous new normal’”, 20 June 2023 (accessed 6 February 2024).

³⁷ Harrari, D., et al. (2024) “Rising cost of living in the UK”, Research Briefing, House of Commons Library, 19 January 2024, p.52. Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9428/CBP-9428.pdf> (accessed 6 February 2024).

³⁸ Joseph Rowntree Foundation (2023) “5.7 million low-income households having to cut down or skip meals, as JRF’s cost of living tracker shows ‘Horrendous new normal’”, 20 June 2023 (accessed 6 February 2024).

³⁹ Jones, R. (2023) “Rental evictions in England and Wales surge by 98% in a year”, *The Guardian*, 9 February 2023. Available at: <https://www.theguardian.com/business/2023/feb/09/rental-evictions-england-wales-surge> (accessed 6 Feb 2024).

⁴⁰ Batchelor-Hunt, N. (2023) “Labour warns ‘toxic’ cost of living is driving homelessness at Christmas”, *Politics Home*, 20 December 2023.

⁴¹ Joseph Rowntree Foundation (2023) “5.7 million low-income households having to cut down or skip meals, as JRF’s cost of living tracker shows ‘Horrendous new normal’”, 20 June 2023 (accessed 6 February 2024).

⁴² Harrari, D., et al. (2024) “Rising cost of living in the UK”, Research Briefing, House of Commons Library, 19 January 2024, p.55. Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9428/CBP-9428.pdf> (accessed 6 February 2024).

⁴³ Hall, R. (2023) “Rise in women facing domestic abuse at Christmas, English charities report”, *The Guardian*, 22 December 2023. Available at: <https://www.theguardian.com/society/2023/dec/22/rise-in-women-facing-domestic-abuse-at-christmas-english-charities-report> (accessed 6 January 2024).

⁴⁴ Skinner, G., et al. (2023) “The cost-of-living crisis, poverty, and child maltreatment”, *The Lancet Child & Adolescent Health*, Volume 7 Issue 1, January 2023, pp.5–6. Available at: <https://www.sciencedirect.com/science/article/pii/S2352464222002528#bib5> (accessed 6 February 2024). It is citing Nuffield Foundation funded research.

increase in the number of public law cases initiated in July to September 2023 when compared with the equivalent quarter for 2022⁴⁵. In December 2023, MoJ officials reported that that in the Social Security and Child Support Tribunal, receipts have exceeded disposals in seven of the last eight quarters. This picture of increase demand is mirrored elsewhere – in July to September 2023, appeals made to the Special Educational Needs and Disability Tribunal increased by nearly one-quarter (24%), compared to the same period the previous year⁴⁶.

Existing provision of publicly funded legal advice and representation is inadequate to meet this surge in need – in February 2024, the Law Society of England and Wales reported on the existence of “advice deserts” in relation to community care, education, housing, immigration and welfare rights advice across whole areas of England and Wales⁴⁷. Analysis prepared by the Community Justice Fund predicted a funding deficit of £17.5m across the UK’s not-for-profit specialist legal advice sector in 2022–23, estimating that this would leave 36,800 people without access to specialist legal advice⁴⁸.

In response to this backdrop of escalating unmet need, and a system under strain, justice system leaders are increasingly turning to technology with the dual aim of promoting earlier dispute resolution and achieving efficiency savings through the introduction of digital services for both delivering advice and seeking redress. A £1.3bn programme of digital court reform, initiated in 2016 with the aim of reducing the ongoing cost of the system has been beset by challenges and delays. Parts of the programme, including those proposed with the intention of increasing the accessibility of courts⁴⁹, have been scaled back⁵⁰. The difficulties encountered in delivering the reform programme have exposed issues with the governance structures created to oversee the operation of HM Courts and Tribunals Service (HMCTS)⁵¹. Experts have questioned the adequacy of the existing framework

⁴⁵ Ministry of Justice (2023) “National statistics: Family Court Statistics Quarterly: July to September 2023”, published 21 December 2023. Available at: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023/family-court-statistics-quarterly-july-to-september-2023#children-act---public-law> (accessed 6 February 2024).

⁴⁶ Ministry of Justice (2023) “Tribunal Statistics Quarterly: July to September 2023”, published 14 December 2023. Available at: <https://www.gov.uk/government/statistics/tribunals-statistics-quarterly-july-to-september-2023/tribunal-statistics-quarterly-july-to-september-2023> (accessed 6 February 2024).

⁴⁷ The Law Society (2024) “Legal aid deserts”, Published 7 February 2024. Available at: <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

⁴⁸ Community Justice Fund (2022) “Financial Health of the Not-for-Profit Specialist Advice Sector 2022-23”. Available at: <https://atjf.org.uk/wp-content/uploads/2022/01/Financial-Health-of-the-Not-for-Profit-Specialist-Advice-Sector-2022-23.pdf>

⁴⁹ For example, plans for Briggs Part 1.

⁵⁰ National Audit Office (2023) “Report: Progress on the courts and tribunals reform programme – HM Courts & Tribunals Service”, Session 2022–23, 23 February 2023, HC 1130, p.6. Available at: <https://www.nao.org.uk/wp-content/uploads/2023/02/progress-on-courts-and-tribunals-reform-programme-1.pdf>

⁵¹ Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme: Independent Review”, 5 February 2016, p.15. Available at: <https://www.transformjustice.org.uk/wp-content/uploads/2023/11/BCG-Report-for-Release.pdf>

agreement⁵² and suggested that wider constitutional reforms may be needed to put in place the structures and leadership necessary to effectively manage the courts and tribunals.

Managing existing issues is also rendered more difficult by the status and structure of the MoJ, which has been described as both “an assortment of discrete parts”⁵³ and a “multi-agency partnership”⁵⁴, rather than a single, centralised department. The lack of joined-up coherence between the component agencies has – it is argued – led to fragmentation and the dispersal of responsibilities, and created a culture of competition between leaders in different parts of the department who can “‘speak intellectually about the need for whole system benefits’ but when faced with a need to make trade-offs, ‘would choose their part of the system’”⁵⁵. Concerns have been raised that the inclusion of responsibility for prisons within the Lord Chancellor’s portfolio when the MoJ was created in 2007 has led to “deep rooted and at times absurd problems and conflicts within the department”⁵⁶ which detract focus and funding from other areas of policy, including access to justice and the courts. Political instability, which increased post 2016, has resulted in numerous changes in ministerial leadership – since 2010, there have been eleven Lord Chancellors⁵⁷, equalling the number between 1945 and 2003⁵⁸. This churn has exacerbated existing challenges and undermined effective policy-making.

Issues with the leadership, structure, culture and remit of the MoJ are also reflected in the persistent and systemic issues with the data that is available to system leaders. The dispersal of responsibility for different parts of the justice system between different agencies, whilst important constitutionally, impedes attempts to create and harness joined-up datasets that are structured to support leaders to take a whole system view of the impact of problems and solutions⁵⁹. Consequently, justice is far

⁵² Which agreed that the management of the courts service would be undertaken as a partnership between the Lord Chief Justice, the Lord Chancellor and the Senior President of Tribunals. See: E. Ryder, (202) “The Blackstone Lecture 2020” (available at: https://www.ialsnet.org/wp-content/uploads/2021/01/blackstone_script-Sir-Ernest-Ryder-blackstone-Lecture-012121.pdf); and Sorabji, J. (2023) “Redesigning the framework of judicial and court administration – English and Welsh Courts, UK Tribunals and HMCTS”, forthcoming, paper available on request from author.

⁵³ Annison, H. (2018) “What is Penal Policy? Traditions and Practices in the UK Ministry of Justice”, in: Rhodes, R. (eds) *Narrative Policy Analysis. Understanding Governance*, Palgrave Macmillan, Cham, p.35. https://doi.org/10.1007/978-3-319-76635-5_2

⁵⁴ Gibson, B. (2007) *The New Ministry of Justice: An Introduction*, Winchester: Waterside Press.

⁵⁵ Annison, H. (2018) “What is Penal Policy? Traditions and Practices in the UK Ministry of Justice”, in: Rhodes, R. (eds) *Narrative Policy Analysis. Understanding Governance*, Palgrave Macmillan, Cham, p.35. https://doi.org/10.1007/978-3-319-76635-5_2

⁵⁶ Cole, H. (2017) “Ministry of Mayhem: Ministers pushing for troubled Ministry of Justice to be broken up because it’s ‘not fit for purpose’”, 5 April 2017, *The Sun*. Available at: <https://www.thesun.co.uk/news/3265852/ministers-pushing-for-troubled-ministry-of-justice-to-be-broken-up-because-its-not-fit-for-purpose/> (accessed 7 February 2023).

⁵⁷ Gee, G., et al. (2015) “The new Lord Chancellors and the executive”, in: *The Politics of Judicial Independence in the UK’s Changing Constitution*, Cambridge University Press, pp.31–63.

⁵⁸ Morton, J (2023) “The lord chancellors who fell from grace before Dominic Raab”, *The Times*. Available at: <https://www.thetimes.co.uk/article/the-lord-chancellors-who-fell-from-grace-before-dominic-raab-6wnrpbzxx>

⁵⁹ See for example, Byrom, N. (2023) “Making Victims Count: Improving the collection and use of data across the criminal justice system – Notes from expert stakeholder workshop”, 25 January 2023, Justice Lab (available at: https://justicelab.org.uk/wp-content/uploads/2023/05/Workshop-note_-Making-Victims-Count_-Improving-the-collection-

behind other public services, such as health and education, when it comes to collecting, sharing and using data⁶⁰. In recent years, those in charge of the system have increasingly recognised that this absence of linked data – structured around people, rather than cases – undermines both operational performance and accountability⁶¹. The relative absence of data, and persistent issues with arrangements for accessing the information that does exist, also weaken opportunities for external researchers to undertake robust research – with the consequence that justice, especially civil justice, does not in general benefit from the networks of independent think tanks, researchers and evidence intermediaries that promote effective decisions in other areas of social policy.

Particular evidence gaps relate to the experience of people as they attempt to access and navigate the justice system. The *Areas of Research Interest* document published by the MoJ acknowledges this, stating that “we need to enrich our understanding of people who access the system and critically, those who do not, so that we can ensure people have swift access to a system that meets their needs”⁶². The following report sets out what we know about the ways in which the justice system fails to meet people’s needs at present, highlighting existing examples of research exploring current issues in access to justice. Just as crucially, this report highlights what we do not know, and calls attention to the gaps in data, evidence and infrastructure that undermine our ability to respond effectively to the question: “Where has my justice gone?”.

B. Defining access to justice: A framework for mapping current issues

The common law in England and Wales sets out a minimum irreducible definition of access to justice⁶³. Under this definition “access to justice” means that all individuals, and a full run of cases, are on an equal basis able to gain:

[and-use-of-data-across-the-criminal-justice-system.pdf](#)); Byrom, N. (2023) “To solve the courts crisis you have to understand it”, *The Times* (available at: <https://www.thetimes.co.uk/article/to-solve-the-courts-crisis-you-have-to-understand-it-zw3rq8grd>); and Pope, T., Freeguard, G., and Metcalfe, S. (2023) “Doing data justice: Improving how data is collected, managed and used in the justice system”, Institute for Government (available at: <https://www.instituteforgovernment.org.uk/publication/doing-data-justice> – accessed 6 February 2024).

⁶⁰ Pope, T., Freeguard, G., and Metcalfe, S. (2023) “Doing data justice”.

⁶¹ See for example, President of the Family Division (2021) “Confidence and confidentiality in the Family Court”, p.8 para 32. Available at: <https://www.judiciary.uk/wp-content/uploads/2021/10/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final.pdf>

⁶² Ministry of Justice (2020) “Areas of Research Interest”, 20 December 2020.

⁶³ For a detailed exposition of this definition please see Byrom, N. (2019) “Developing the detail: Evaluating the impact of court reform in England and Wales on Access to Justice”; and Byrom, N. (2019) “Digital Justice: HMCTS data strategy and delivering access to justice” (available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF). This definition incorporates international Human Rights Treaties and frameworks (including the ECHR framework and ICCPR), which also emphasise timeliness, and the duty on authorities not to take actions or make omissions which unjustifiably hinder access.



Figure BB.1 – The definition of access of justice as defined by law in England and Wales

The components of this definition are interrelated, mutually re-enforcing and indivisible (for example, an observable increase in the number of people accessing the formal legal system is, of itself, insufficient to justify claims that access to justice has improved, unless there has also been a corresponding increase in the number of people accessing decisions in accordance with law, and the remedy set out in those decisions).

Beyond these four elements, access to legal information and advice is often considered a necessary pre-condition of access to justice and is intimately connected with the right of access to the formal legal system. Existing case law establishes that whilst the right of access to the formal legal system is not absolute, it can require the state to take proactive steps to support access, for example funding access to legal advice and representation. States can establish procedures to regulate eligibility for such support, but these procedures must not be arbitrary or disproportionate, or interfere with the essence of the right to access the formal legal system.

The legal definition of access to justice is used as a framework to structure the remainder of this report. Sections 1–5 set out what we know about the current challenges people face at each stage (see Figure B.2), before summarising the key data gaps that obstruct our ability to understand and address the range of issues that people experience in attempting to access justice. The concluding section of the report summarises the cross-cutting issues and themes that impede our collective ability to both manage the existing system, and institute evidence-based reforms that support people to secure access to justice.



Figure B.2 – This report's structure

I Access to legal information and advice

1.1 Overview

Access to legal information and advice is vital to support people to make informed choices about whether to access the justice system to resolve their disputes. Successive research studies have found that people's awareness of legal services and their ability to recognise the problem they are experiencing as "legal" in nature both play a critical role in determining the problem resolution strategy⁶⁴ they adopt. Access to legal information and advice is equally crucial for those who find themselves defending legal claims, or facing criminal charges, to ensure that they receive a fair and effective hearing (see Section 3). Research has suggested that access to legal advice can have a positive impact on outcomes, whether they are secured through the formal justice system or alternative dispute resolution processes⁶⁵. As such, the ability of individuals and communities to access accurate and timely legal information and advice is intimately connected with their ability to secure access to justice.

Cuts to government spending on legal aid introduced in 2013, combined with a reduction in funding available from other sources, have reduced the number of organisations providing legal information and advice, and created "advice deserts" across whole areas of England and Wales. Not-for-profit providers of information and advice have been particularly adversely affected, despite government research recognising the importance of these services in determining problem resolution strategy and supporting access to justice. In 2024, people are forced to travel further to access face-to-face legal advice than ten years ago, and referral pathways between agencies have been disrupted. Providers have reported that a combination of both restricted and inadequate funding have undermined their ability to deliver both early advice and holistic services that meet the full range of people's needs⁶⁶. The Ministry of Justice's (MoJ) Legal Support Action Plan⁶⁷, introduced to both increase the availability of legal information and support, and develop the evidence base necessary

⁶⁴ Alongside other factors including legal confidence and social norms – see for example, Pleasence, P., Balmer, N, and Denvir, C. (2015) "How people understand and interact with the law", Cambridge; and also OECD/Open Society Foundations (2019) "Legal Needs Surveys and Access to Justice", OECD Publishing, Paris. Available at: <https://doi.org/10.1787/g2g9a36c-en>

⁶⁵ See for example, Hitchings, E., et al. (2021) "Fair Shares? Sorting out money and property on divorce – Executive summary", p.4 (available at: https://www.nuffieldfoundation.org/wp-content/uploads/2021/03/Fair-Shares-Executive-summary_web.pdf) which reported that: "Where divorcees' financial and property arrangements had been finalised through solicitors or with a court order (whether by consent or adjudicated), there was evidence to suggest some difference in outcomes compared with divorcees who did not obtain legal advice. Not using a lawyer made it more likely that the pension position would not be adequately addressed, with men more likely to share their pension if they had received legal advice."

⁶⁶ House of Commons Justice Committee (2021) "The Future of Legal Aid – Third Report of Session 2021–22", HC70 Published on 27 July 2021 by authority of the House of Commons, p.39. Available at: <https://committees.parliament.uk/publications/6979/documents/72829/default/> (accessed 14 February 2024).

⁶⁷ Ministry of Justice (2019) "Legal Support: The Way Ahead – An action plan to deliver better support to people experiencing legal problems", February 2019, CP40. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3a0840f0b676e6ddc6dc/legal-support-the-way-ahead.pdf> (accessed 14 February 2024).

for future investment, has proved underpowered⁶⁸ to deliver on either of these aims. It is unclear whether government proposals designed to increase access to remote or online legal information and support will prove to be an effective substitute for face-to-face advice – particularly for the most disadvantaged. The absence of agreed quality standards for provision or effective regulation of digital tools exacerbates risks and undermines innovation. The ability to address existing challenges in supporting people to access legal information and advice is in general undermined by a lack of data and evidence to compare the effectiveness of different models of provision or understand what methods of delivery work best for different client groups. Further investment is needed to develop typologies of legal information and advice interventions, and to identify or create standardised outcome measures that can be used to compare the efficacy of different models.

1.2 Current challenges

1.2.1 There has been a significant reduction in the provider base for legal information and advice

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) dramatically reduced the amount of public funding available to support the provision of legal information and advice – including early legal advice. The MoJ’s own post-implementation review of LASPO, published in 2019 noted concerns that reductions in the scope of legal aid had both reduced opportunities for early intervention and limited providers’ abilities to provide holistic support⁶⁹. A report published by the National Audit Office in February 2024 found that between 2012/2013 and 2022/23 the number of provider offices completing legal aid work fell by 40% for civil law and 22% for criminal law⁷⁰. The MoJ was further criticised for its failure to put in place mechanisms for routinely identifying and assessing both short- and long-term market sustainability risk. The National Audit Office stated that whilst the MoJ relies on the Legal Aid Agency to raise risks to sustainability, the Legal Aid Agency “lacks routine financial and other data to help it raise sustainability risks early. For example, it lacks routine data on the profitability of legal aid work for providers”⁷¹.

For not-for-profit providers of legal advice, the impact of LASPO cuts has been compounded by restrictions placed on local authority funding – previously a key source of income⁷². The National

⁶⁸ House of Commons Justice Committee (2021) “The Future of Legal Aid – Third Report of Session 2021–22”, HC70, published on 27 July 2021 by authority of the House of Commons, p.47. Available at: <https://committees.parliament.uk/publications/6979/documents/72829/default/> (accessed 14 February 2024).

⁶⁹ Ministry of Justice (2019) “Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)”, 7 February 2019.

⁷⁰ National Audit Office (2024) “Government’s management of legal aid – Ministry of Justice, Legal Aid Agency”, Session 2023–24, 9 February 2024, HC 514, p.31. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

⁷¹ National Audit Office (2024) “Government’s management of legal aid”, p.10.

⁷² The Low Commission (2014) “Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales”, Legal Action Group, 2014 Annexe 12 (available at: <https://www.lag.org.uk/about-us/policy/the-low-commission>); and Morris, D., and Barr, W. (2013) The impact of cuts in legal aid funding on charities Journal of Social Welfare & Family Law, 2013 Vol. 35, No. 1, 79–94, pp.81–82. <http://dx.doi.org/10.1080/09649069.2013.774737> (accessed 14 February 2024).

Audit office reported that central government funding to local authorities fell by 37.3% between 2010/11 and 2015/16⁷³, with many local authorities responding by prioritising remaining spending on statutory services⁷⁴. Research published in March 2024 revealed that 63 English councils could declare for bankruptcy in the next year – rising to 127 over the next five years⁷⁵. In 2023, the Law Society of England and Wales reported that the number of advice agencies and law centres providing early legal advice in the areas of family, employment, housing, debt and welfare benefits had fallen by 59% since 2013⁷⁶. The MoJ’s own research which aimed to explore the varying paths to justice for people experiencing civil and family law problems concluded that “the importance of the Citizens Advice Bureau and other third sector services (in improving awareness and accessibility of information) suggests that these organisations need to be supported to facilitate improved access for people experiencing justice issues”⁷⁷. However, the support that has been put in place post LASPO has proved inadequate to prevent agencies from closing or reducing the services they offer.

1.2.2 “Advice deserts” are making it harder for people to access face-to-face advice

The Law Society of England and Wales has published evidence stating that the reductions in the provider base described above have led to “advice deserts” across whole areas of England and Wales (see Box 1.1)⁷⁸.

Box 1.1 – Law Society data on advice deserts

Law Society published data suggests that across England and Wales:

- 53m people (90%) do not have access to a local education legal aid provider
- 49.8m people (84%) do not have access to a local welfare legal aid provider
- 42m people (71%) do not have access to a local community care legal aid provider
- 39m people (66%) do not have access to a local immigration and asylum legal aid provider
- 25.3m people (42%) do not have access to a local legal aid provider for housing advice, a figure that has grown 5% since 2019

⁷³ National Audit Office (2014) “The impact of funding reductions on local authorities”, 19 November 2014. Available at: <https://www.nao.org.uk/wp-content/uploads/2014/11/Impact-of-funding-reductions-on-local-authorities.pdf> (accessed 14 February 2024).

⁷⁴ National Audit Office (2014) “The impact of funding reductions”, p.24.

⁷⁵ ITV News (2024) “Section 114 notices: Which councils in England are at risk of going bankrupt?” Tuesday 5 March 2024. Available at: <https://www.itv.com/news/2024-03-05/section-114-notices-which-councils-in-england-are-at-risk-of-going-bankrupt>

⁷⁶ The Law Society of England and Wales (2023) “A decade of cuts: Legal aid in tatters”, 31 March 2023. Available at: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/a-decade-of-cuts-legal-aid-in-tatters>

⁷⁷ Ministry of Justice (2015) “The Varying Paths to Justice: Mapping problem resolution routes for users and non-users of the civil, administrative and family justice systems”, Ministry of Justice Analytical Series, p.72. Available at: <https://assets.publishing.service.gov.uk/media/5a757131e5274a1242c9e58c/varying-paths-to-justice.pdf>

⁷⁸ Ministry of Justice (2015) “The Varying Paths to Justice”, p.72.

Similarly the National Audit Office reported that in 2024, for most categories of civil law, a smaller proportion of the population are now within 10km of a legal aid office than in 2012/2013⁷⁹. Particular challenges exist in relation to access to housing advice – the National Audit Office state that “the proportion of the population in England and Wales within 10 kilometres of a legal aid office for housing advice, for issues including eviction, fell nine percentage points, from 73% in 2013–14 to 64% in 2022–23. The proportion in 2022–23 falls to 57% when looking only at housing offices that actively took on new cases”⁸⁰. Whilst the MoJ has disputed analysis provided by the Law Society regarding the existing of advice deserts, both the Ministry and the Legal Aid Agency acknowledge that there are some areas of England and Wales where there may be unmet need in certain categories of law, including housing, immigration (see Case Study 1.1) and advice in police stations⁸¹.

Case study 1.1 – Access to legal advice for immigration and asylum issues

In 2022, Refugee Action published findings from the first comprehensive examination of the adequacy of provision of free and low-cost immigration legal advice across the whole of the United Kingdom. The study⁸², conducted by Dr Jo Wilding, combined data from a range of sources including published statistics, Freedom of Information Requests, interviews, surveys and workshops to map both the demand for and supply of immigration advice across both legal aid funded, and free or low-cost non-legal, services.

The study found that across England and Wales, provision of immigration advice was not even adequate for first-time adult asylum applications, with a deficit of at least 6,000 for asylum applications and appeals⁸³, leading to long waiting times for access⁸⁴. The report calculated a primary legal aid deficit in Wales and in every region of England except London – where there is a very small surplus. In this context, the study’s author suggested that remote advice is unlikely to prove a viable solution to the severe shortage of advice in particular regions or sub-regions of England and Wales, due to the absence of significant surplus capacity capable of being re-deployed. Troublingly, the research reports that for all parts of the UK, the number of non-UK nationals referred into the National Referral Mechanism as possible victims of human trafficking outstrips the supply of specialist advice⁸⁵. The practice of “dispersal”, where asylum seekers are moved to

⁷⁹ National Audit Office (2024) “Government’s management of legal aid – Ministry of Justice, Legal Aid Agency”, Session 2023–24, 9 February 2024, HC 514, pp.8 and 33. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

⁸⁰ National Audit Office (2024) “Government’s management of legal aid”, p.33.

⁸¹ National Audit Office (2024) “Government’s management of legal aid”, p.8.

⁸² Wilding, J. (2022) “No access to justice: How legal advice deserts fail refugees, migrants and our communities”, May 2022, Refugee Action. Available at: https://assets.website-files.com/5eb86d8dfb1f1e1609be988b/62a1e16cba8478993c7d512c_No%20access%20to%20justice-%20how%20legal%20advice%20deserts%20fail%20refugees%2C%20migrants%20and%20our%20communities.pdf (accessed 14 February 2024).

⁸³ Wilding, J. (2022) “No access to justice”, p.12.

⁸⁴ Wilding, J. (2022) “No access to justice”, p.12.

⁸⁵ Wilding, J. (2022) “No access to justice”, p.13.

another part of the UK for housing also leads to vulnerable clients with complex cases being “dropped” by their legal aid representative⁸⁶.

The research identified serious issues with the way in which the Legal Aid Agency calculates the adequacy of existing provision. The Legal Aid Agency calculates supply based on the number of “matter starts” or new cases that providers are permitted to open per year. For immigration, the minimum allocation is 150 new cases per provider, and unlike in other areas of legal aid funded law, the number will not be reduced if the provider does not use them all. A survey of providers, conducted as part of the research revealed that the majority of providers do not use all of their matter starts, and do not have capacity to open more. The absence of feedback loops means that the Legal Aid Agency “often assumes that supply exceeds demand because there are unused matter starts in all procurement areas, whereas the opposite is true in practice⁸⁷”

For immigration and nationality matters not associated with an asylum claim, the research concluded that advice and casework is extremely limited, despite this being numerically the greatest area of need. The study found that there is therefore little support for the estimated 809,000 undocumented people living in the UK (including children born here) and further that the impact of this absence of advice is exacerbated by the complexity of the system. In the absence of support to regularise immigration status, people are driven into poverty and excluded from accessing employment and statutory services – with negative consequences for both individuals and communities.

1.2.3 Cuts to funding and reductions in the number of providers have undermined referral pathways and opportunities to provide holistic services

As early as 2014, providers reported that the cuts introduced by LASPO, combined with an increased reliance on restricted funding sources had created a fragmented advice landscape, disrupting referral pathways for clients. The Chief Executive of Citizens Advice, giving evidence to the Justice Select Committee in 2014, reported on a survey of all Bureaux across England and Wales which found that 92% of Bureaux reported difficulties referring eligible clients to providers able to deliver legal aid funded representation in civil law matters. Research published by McKeever et al. in 2018 – based on secondary analysis of data collected as part of the Joseph Rowntree Foundation’s large-scale research into destitution – found evidence of a fragmented landscape of advice provision. The research reported that providers were increasingly limited to assisting only with a subset of issues, or restricted to providing services only to clients resident within a limited geographical area,

⁸⁶ Wilding, J. (2022) “No access to justice”, p.13.

⁸⁷ Wilding, J. (2022) “No access to justice”, p.12.

or with particular characteristics – leaving many individuals “at the end of pathway with no idea where they could go next”⁸⁸. Evidence provided the House of Commons Justice Committee inquiry into the Future of Legal Aid further emphasised the impact of civil legal aid funding cuts on the ability of providers to offer early, holistic advice services. Consequently, providers reported that they were unable to address client’s issues in the round or put in place sustainable solutions to support resolution before problems escalate⁸⁹.

In relation to advice for criminal law matters, researchers reported that whilst the provision of publicly funded legal advice and support for criminal law matters tends to be delivered by private providers and specialist charities, cuts to funding for legal aid have impacted negatively on the network of third sector organisations who act as gateways to support people to access this specialist legal support. As such, successive cuts to funding had undermined access to information and advice for offenders, prisoners and their dependants, and impacted negatively on welfare and rehabilitation outcomes⁹⁰. Decline in government expenditure on criminal legal aid has impacted negatively on the ability of suspects to access pre-charge information and advice, which is not means tested and is delivered by a network of duty solicitors and police station representatives. The Independent Review of Criminal Legal Aid’s data compendium showed that between 2017 and 2019, the number of duty solicitors on the rota fell by 12% from 5,240 to 4,600⁹¹.

1.2.4 Remote and online alternatives to face-to-face provision create new challenges and opportunities

During the COVID-19 pandemic, providers of some providers of legal information and advice pivoted to delivering services remotely⁹². The MoJ, via the Legal Aid Agency, has tendered for digital-only contracts for delivering legal aid where it has been unable to maintain face-to-face provision – for example in Cornwall and parts of the Midlands⁹³. Evidence submitted by The Law Society to the

⁸⁸ McKeever, G., Simpson, M., and Fitzpatrick, C. (2018) “Destitution and paths to justice”, Joseph Rowntree Foundation and The Legal Education Foundation. Available at:

https://pure.ulster.ac.uk/ws/files/12406992/Destitution_Report_Final_Full_.pdf

⁸⁹ House of Commons Justice Committee (2021) “The Future of Legal Aid – Third Report of Session 2021–22”, HC70 Published on 27 July 2021 by authority of the House of Commons, p.38. Available at:

<https://committees.parliament.uk/publications/6979/documents/72829/default/> (accessed 14 February 2024).

⁹⁰ Corcoran, M.S. (2021) “The access to justice crisis in England and Wales: The state of the legal and advisory third sector”, Proceedings from an international and pluri-disciplinary symposium: *The third sector in the United Kingdom and in France: welfare state decline or improvement?* Paris: Éditions Panthéon-Assas.

⁹¹ Ministry of Justice (2021) “Summary information on publicly funded criminal legal services”, p.11. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960290/data-compendium.pdf

⁹² Creutzfeldt, N., and Sechi, D. (2021) “Social welfare [law] advice provision during the pandemic in England and Wales: A conceptual framework”, *Journal of Social Welfare and Family Law* 43:2, 153–174.

<https://doi.org/10.1080/09649069.2021.1917707>

⁹³ National Audit Office (2024) “Government’s management of legal aid – Ministry of Justice, Legal Aid Agency”, Session 2023–24, 9 February 2024, HC 514, p.34. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

ongoing civil legal aid review in February 2024⁹⁴ has called for a removal of the 50% limit on remote working. However, despite the growing ubiquity of, and support for, remote advice delivery, there is limited empirical evidence exploring the impact of a shift to remote provision on the characteristics of clients reached. Research published by the Legal Services Board (LSB) and submitted to the Justice Select Committee in 2021 suggests that those clients eligible (or formerly eligible) for legal aid funded advice may be least well served by remote provision. The LSB's evidence states that prior to the pandemic, legal aid clients were more likely to access services face-to-face than other users of legal services. The LSB's survey found that 68% of legal aid users received the service face-to-face in comparison to 41% of the overall sample. As a result, they stressed that "the opportunities afforded by technological innovation need to be balanced against the risks posed to consumers and the risks of digital exclusion"⁹⁵. Research conducted during the pandemic with providers who had shifted to remote-delivery models reported on concerns that the most vulnerable clients were excluded from accessing services during this time – due to lack of access to mobile phone data and low levels of digital capability⁹⁶. Similar evidence gaps exist in relation to the impact of remote-delivery models on advice outcomes. Previous research comparing the outcomes achieved from telephone advice provision with face-to-face alternatives reported that services users who received face-to-face services were far more likely to secure tangible outcomes from the advice than those who accessed support via telephone⁹⁷.

In relation to online legal information and advice, concerns have been raised about the ability of online resources to meet the need created by reduced funding for face-to-face advice, given the degree of overlap between the characteristics of people who report experiencing serious legal issues in areas of law formerly funded by legal aid, and those who are digitally excluded. Successive research has identified socio-economic status as a key predictor of digital exclusion, with those households from the lowest socio-economic backgrounds most likely to be unable to use the internet at home or classed as narrow users – having undertaken no more than four of a list of thirteen given online activities⁹⁸. The cost-of-living crisis has exacerbated existing issues – with 1 million people cutting back or cancelling their internet packages in 2022/23 due to affordability issues⁹⁹.

⁹⁴ Fouzder, M. (2024) "Civil legal aid review: MoJ deluged with evidence", *Law Society Gazette*, 1 March 2024. Available at: <https://www.lawgazette.co.uk/news/civil-legal-aid-review-moj-deluged-with-evidence/5118924.article#>

⁹⁵ House of Commons Justice Committee (2021) "The Future of Legal Aid – Third Report of Session 2021–22", HC70 Published on 27 July 2021 by authority of the House of Commons, p.59. Available at: <https://committees.parliament.uk/publications/6979/documents/72829/default/> (accessed 14 February 2024).

⁹⁶ House of Commons Justice Committee (2021) "The Future of Legal Aid", Part 4.

⁹⁷ Patel, A., Balmer, N. J., and Smith, M. (2014), "Geographical barriers to education law advice", *The Geographical Journal* 180, 211–223. <https://doi.org/10.1111/geoj.12031>

⁹⁸ House of Lords Communications and Digital Committee (2023) "Digital Exclusion", 20 June 2023, HL Paper 219, p.9. Available at: <https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/219/219.pdf>

⁹⁹ House of Lords Communications and Digital Committee (2023) "Digital Exclusion", p.6.

Even where digital exclusion is not a factor, numerous research studies have highlighted issues with existing online legal information provision. Successive reports exploring the experiences of users as diverse as young people in the family courts¹⁰⁰, separating parents¹⁰¹ and individuals attempting to seek redress in relation to problems with housing and special educational needs¹⁰² have identified broadly similar issues with the existing online legal information landscape. Broadly speaking, people experiencing legal issues find existing resources confusing, bewildering and difficult to navigate. Concerns have also been raised about the issues people experience identifying accurate and trustworthy resources. In 2019 a study exploring how homeless people use the internet to access legal support found that too often, people in crisis find it difficult to locate relevant information. The study's authors reported that far from being a source of trusted support, users came to regard the internet as a tool "by means of which information is intentionally hidden"¹⁰³.

The government has expressed a keen interest in exploring the potential for online information services to address demand for early legal advice and support. As part of the Legal Support Action Plan, the government invested in the development of an online housing disrepair tool, hosted on GOV.UK, to provide access to information and signposting, with the aim that users would be able to "self-serve to resolve their issues before they escalate". However, the evaluation¹⁰⁴ of this tool was extremely limited and based on google analytics data and a user survey that captured responses from only 56 visitors to the site (out of a total of 35,553 visitors between September 2021 and August 2023). In November 2023, the Lord Chancellor and senior judiciary announced a new vision for the future of civil and family courts and tribunals¹⁰⁵. Their published statement set out a bold ambition to harness AI and technology to create a joined-up process for people attempting to navigate third and private sector providers of information, advice and dispute resolution, and facilitate seamless transfer to the courts where necessary. This vision represents a significant departure from previous proposals, which focused on building public sector tools to support

¹⁰⁰ Family Solutions Group (2020) "What about me? Reframing support for families following parental separation", Report of the Family Solutions Group Subgroup of The Private Law Working Group. Available at: https://www.judiciary.uk/wp-content/uploads/2020/11/FamilySolutionsGroupReport_WhatAboutMe_12November2020-2.pdf-final-2.pdf

¹⁰¹ Barlow et al. (2017) "Creating paths to family justice: Briefing paper and report on key findings". Available at: [https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/Creating_Paths_briefing_paper_final_for_website_02.10.17_isbn_\(003\)_05-03-18.pdf](https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/Creating_Paths_briefing_paper_final_for_website_02.10.17_isbn_(003)_05-03-18.pdf)

¹⁰² Creutzfeldt, N., et al. (2023) "How has the pandemic changed the way people access justice? Digitalisation and reform in the areas of housing and SEND", March 2023. Available at: https://www.ucl.ac.uk/jill-dando-institute/sites/jill_dando_institute/files/access_to_justice_and_pandemic_-_mar_2023.pdf

¹⁰³ Harris, J. (2019) "The digitization of advice and welfare benefits services: reimagining the homeless user", Housing Studies. <https://doi.org/10.1080/02673037.2019.1594709>

¹⁰⁴ Ministry of Justice (2023) "Housing Disrepair Online Signposting Tool: Summary of Monitoring Data and Stakeholder Interviews". Available at: https://assets.publishing.service.gov.uk/media/6555e142046ed400d8b99ce/MOJ_HousingDisrepairOST.pdf

¹⁰⁵ Ministry of Justice, HM Courts & Tribunals Service, and Chalk, A. (2023) "Vision for the future of civil and family courts and tribunals". Available at: <https://www.gov.uk/government/news/vision-for-the-future-of-civil-and-family-courts-and-tribunals>

problem identification and resolution, creating a digital “front-door” to the courts which would be designed, developed and managed by the courts and tribunals service¹⁰⁶. A speech delivered by the Deputy Head of Civil Justice, Lord Justice Birss, in December 2023¹⁰⁷ further elaborated on this vision, describing the future digital justice system as a “public private partnership”¹⁰⁸ that would signal a move “away from state controlled centralised systems – to the appropriate specialists in the pre-action space”¹⁰⁹. As part of this vision, centrally imposed data standards would support the seamless transfer of client data between digital information, advice and dispute resolution providers, and eventually onto the courts for those cases where earlier resolution had not been achieved¹¹⁰. Further research is needed to understand the impact of these proposed changes on access to justice, particularly for the most vulnerable.

The rapid expansion in the use of tools such as ChatGPT – generative AI applications based on large language models that have not been trained specifically on legal data – is likely to exacerbate, rather than ameliorate existing issues. In terms of increasing access to justice, applications such as ChatGPT offer crucial benefits for those in need of legal advice over traditional online resources which are hosted on legal specific sites (e.g. Citizens Advice and Shelter). As described above, existing research has demonstrated that many people who experience legal issues fail to recognise that the problem they are experiencing is legal in nature or might admit of a legal solution. As such, they fail to access online (or indeed offline) information, advice and support that might help them. Consumers using tools such as ChatGPT do not need to identify the problem they are experiencing as “legal” or define the problem in legal terms to access information. Users can insert plain language prompts and in return, receive seemingly authoritative, clear and comprehensible information about what to do next, at no cost. Studies in the US led by Professor Margaret Hagan, Director of the Stanford Legal Design Lab have identified strong consumer appetite for using these tools that only increases once people have tried them. The free, instantaneous, cleanly formatted and seemingly credible nature of the information provided is enough to command confidence – even when the information proves not to be accurate. The findings of this research have led Professor Hagan to conclude that when it comes to people using these tools to resolve legal problems, “the genie is out of the bottle”.

The primary risk to individuals who rely on generative AI applications based on large language models to access legal information is that these tools that have not been trained specifically on legal

¹⁰⁶ See Briggs, L. J. (2016) “Civil Courts Structure Review: Final Report”, Judiciary of England and Wales, July 2016, p.36. Available at: <https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.p>

¹⁰⁷ Birss, L. J. (2023) “The 24th Competition Law Association Burrell Lecture: Is a focus on data the way to improve access to justice in a multifaceted world?” December 6 2023. Available at: <https://www.judiciary.uk/speech-by-lord-justice-colin-birss-is-a-focus-on-data-the-way-to-improve-access-to-justice-in-a-multifaceted-world/>

¹⁰⁸ Birss, L. J. (2023) “The 24th Competition Law Association Burrell Lecture”, per para 72.

¹⁰⁹ Birss, L. J. (2023) “The 24th Competition Law Association Burrell Lecture”, per para 69.

¹¹⁰ Birss, L. J. (2023) “The 24th Competition Law Association Burrell Lecture”, per para 49.

data. In this context, these tools are more likely to “hallucinate” cases or return non-jurisdictionally relevant or otherwise inaccurate information. In England and Wales, examples have emerged of cases where parties who were unable to access legal advice representation have relied on information provided by generative AI applications in litigating their case – information that has proven to be inaccurate¹¹¹. A recent study published by the Stanford RegLab in 2024¹¹² has raised wider concerns about the reliability of large language models in legal contexts, finding that the risks of using applications like ChatGPT for legal research are especially high for: i.) litigants in lower courts or less prominent jurisdictions, ii.) individuals seeking detailed or complex legal information, iii.) users formulating questions based on incorrect premises, and iv.) those uncertain about the reliability of responses. In summary the study’s authors conclude that “the users who would benefit the most from legal LLM [large language models] are precisely those who the LLMs are least well-equipped to serve”¹¹³.

Experts in legal technology are clear that that training generative AI on relevant documents, such judgments and court decisions, can dramatically improve the accuracy of the responses that applications like ChatGPT provide¹¹⁴. However, in England and Wales, access to judgments and decisions is hard to come by – the most comprehensive collections of judgments and decisions belong to commercial publishers, such as Thomson Reuters, Lexis Nexis and Justis, who charge substantial fees for access. The content held behind these companies’ paywalls vastly outstrips that which is available to the public – a study in 2022 reported that only half of judicial review judgments are available on BAILLI, a free website¹¹⁵. Whilst the government has now invested in a service to make judgments available online¹¹⁶, the decision to publish only those cases that judges deem to be legally significant has led to issues with coverage. Research published in January 2023 found that only three-quarters of judgments given between May and July 2022 were available on the new, free to access website¹¹⁷. Unless urgent action is taken to address this situation, the asymmetry between the

¹¹¹ See for example, *Harber v Commissioners for His Majesty’s Revenue & Customs*, as reported here: <https://www.lawgazette.co.uk/news/ai-hallucinates-nine-helpful-case-authorities/5118179.article>; and a case involving a Litigant in Person in the county court, reported here: <https://www.lawgazette.co.uk/news/lip-presents-false-citations-to-court-after-asking-chatgpt/5116143.article>

¹¹² Dahl, M., et al. (2024) “Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models”. Preprint accessible at: <https://arxiv.org/abs/2401.01301>

¹¹³ See: Dahl et al. (2024) “Hallucinating Law: Legal mistakes with Large Language Models are pervasive”. Available at: <https://hai.stanford.edu/news/hallucinating-law-legal-mistakes-large-language-models-are-pervasive>

¹¹⁴ Prompt Engineering Guide: <https://www.promptingguide.ai/techniques/rag>

¹¹⁵ Hoadley, D., et al. (2022) “How Public is Public Law? Approximately 55%” UK Constitutional Law Association Blog <https://ukconstitutionallaw.org/2022/02/25/daniel-hoadley-joe-tomlinson-editha-nemsic-and-cassandra-somers-joe-how-public-is-public-law-approximately-55/>

¹¹⁶ See Ministry of Justice, HM Courts & Tribunals Service, and Cartledge, J. (2022) “Court judgments made accessible to all at The National Archives”. <https://www.gov.uk/government/news/court-judgments-made-accessible-to-all-at-the-national-archives>

¹¹⁷ Magrath, P. (2023) “Publication of listed judgments: towards a new benchmark of digital open justice”, 24 January 2023. Available at: <https://www.iclr.co.uk/blog/news-and-events/publication-of-listed-judgments-towards-a-new-benchmark-of-digital-open-justice/>

information that is available to those who can pay for it, and those who cannot, is likely to persist indefinitely. In parallel to taking action to address inequalities in access to legal data, better evidence is needed to understand the risks and benefits of increased public reliance on these tools in the context of England and Wales. Such research is vital to support the development of both quality standards and effective regulation¹¹⁸.

1.2.5 Lack of robust research to define and compare models of information and advice provision

Addressing the challenge of ensuring that people can access effective legal information and advice provision is undermined by the lack of robust evidence demonstrating the impact of different approaches on outcomes for individuals from different backgrounds. In 2014, a global systematic review of research into the effectiveness of face-to-face community legal education identified only two studies, both undertaken in North America, which were capable of causally linking interventions to relevant outcomes, for example improved legal knowledge and behaviour change¹¹⁹. The MoJ's strategy for improving access to legal support, published in 2019, stated that "there is limited comprehensive research as to what works best, when and for whom"¹²⁰. A review of the effectiveness of public legal education published by the LSB in 2021 highlighted the continuing dearth of research to demonstrate the impact of public legal education initiatives, highlighting the lack of evidence linking interventions to outcomes¹²¹. Whilst some standardised tools have been developed to measure changes in legally relevant outcomes, such as legal confidence¹²², these are not yet widely in use, and there is a lack of consensus on the range of broader social outcomes that the provision of access to legal information contributes to.

The evidence base to compare the quality, impact and cost-efficacy of different legal advice delivery models also requires development. A scoping review conducted in 2022 with the aim of better understanding how young people might be supported to access social welfare legal advice concluded that "evidence for interventions to enhance access to and uptake of advice is limited and

¹¹⁸ See Byrom, N. (2023) "Unregulated AI legal advice puts the public at risk", *Law Society Gazette*, 27 December 2023. Available at: <https://www.lawgazette.co.uk/commentary-and-opinion/unregulated-ai-legal-advice-puts-the-public-at-risk/5118241.article>

¹¹⁹ Forell, S., et al. (2014) "The outcomes of community legal education: a systematic review", The Law and Justice Foundation of New South Wales. Available at: https://www.researchgate.net/publication/277558601_The_outcomes_of_community_legal_education_a_systematic_review (accessed 14 February 2024).

¹²⁰ Ministry of Justice (2019) "Legal Support: The Way Ahead – An action plan to deliver better support to people experiencing legal problems", February 2019, CP40, p.9. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3a0840f0b676e6ddc6dc/legal-support-the-way-ahead.pdf> (accessed 14 February 2024).

¹²¹ Wintersteiger, L., et al. (2021) "Effectiveness of Public Legal Education initiatives: A literature review", The Legal Services Board. Available at: <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PLE-systematic-review-report-Feb-2021.pdf> (accessed 14 February 2024).

¹²² Pleasence, P., and Balmer, N. (2019) "Development of a General Legal Confidence Scale: A first implementation of the Rasch Measurement Model in Empirical Legal Studies", *Journal of Empirical Legal Studies* 16:1, March 2019. Available at: <https://doi.org/10.1111/jels.12212> (accessed 14 February 2024).

methodologically weak”¹²³. The absence of agreed typologies of legal advice interventions further undermines the ability to compare different models. A 2018 review of social welfare legal services based in health settings concluded that whilst the “bottom-up” development of healthcare-based legal services had created opportunities for innovation, the lack of agreed, clearly defined approaches to delivery had prompted various issues at a national strategic level including: “uncoordinated services and patchy coverage, fragile funding arrangements and a lack of collective approaches to evaluation”¹²⁴. Particular gaps exist even in relation to cost-efficacy – a rapid review of the economic returns to society of promoting access to legal advice found only three studies that reported on the cost-effectiveness of the interventions, highlighting the current evidence gap in research to demonstrate the cost-effectiveness of providing access to free legal welfare advice¹²⁵. At present, the most promising examples of research exploring the impact of legal advice provision on both legal and broader social outcomes have been generated as part of attempts to evaluate the impact of the provision of welfare rights advice in primary healthcare settings. A systematic scoping review published in 2021 identified a quasi-experimental study which demonstrated that the provision of advice resulted in “significant reductions in rates of common mental disorders among women and participants of a Black/Black British ethnicity, and improvements in stress levels”¹²⁶. The same review identified two studies that utilised a comparison group design to explore the impact of welfare rights interventions in UK primary healthcare settings: these studies identified improvements in financial strain and financial vulnerability for those patients who had received advice¹²⁷. It is vital that these approaches to evidence generation are supported, replicated and scaled.

¹²³ Woodhead, C., et al. (2022) “Social welfare advice and health among young people: a scoping review”, *Journal of Social Welfare and Family Law* 44:1, 103–123. <https://doi.org/10.1080/09649069.2022.2028409>

¹²⁴ Beardon, S., and Genn, H. (2018) “The Health Justice Landscape in England and Wales – Social welfare legal services in health settings”, UCL Centre for Access to Justice, p.8. Available at: https://www.ucl.ac.uk/access-to-justice/sites/access-to-justice/files/lef030_mapping_report_web.pdf

¹²⁵ Granger, R. Genn, H., and Tudor Edwards, R. (2022) “Health economics of health justice partnerships: A rapid review of the economic returns to society of promoting access to legal advice”, *Front. Public Health* volume 10 – 2022. Available at: <https://doi.org/10.3389/fpubh.2022.1009964> (accessed 14 February 2024).

¹²⁶ Beardon, S., et al. (2021) “International Evidence on the Impact of Health-Justice Partnerships: A Systematic Scoping Review”, *Public Health Reviews* 42:1603976. Available at: <https://www.ssph-journal.org/articles/10.3389/phrs.2021.1603976/full>

¹²⁷ Beardon, S., et al. (2021) “International Evidence”.

2 Access to the formal legal system

2.1 Overview

Existing case law establishes that access to the formal legal system must be practical and effective and not “theoretical and illusory”¹²⁸ for the full run of both individuals and cases. For a formal legal system to be judged practically accessible, it is established both that formal mechanisms must exist and that the state has a duty to ensure that these mechanisms are accessible to all individuals within their jurisdiction (not just citizens)¹²⁹. Whilst the right of access to the formal legal system is not absolute (it can be limited for example by the imposition of reasonable time limits on bringing a claim, or a requirement to pay court fees) any administrative barriers must be proportionate and not affect the essence of people’s right to access the formal legal system.

It is also established that access to the formal legal system has an attitudinal dimension and that changes to policies and processes for accessing the formal justice system must take account of their likely impact on behaviour in the real world¹³⁰. For example, implementing or increasing court fees, or making changes to systems and processes that result in changes to public trust and confidence that deter people from bringing claims, can undermine the right of access to justice.

In 2024, access to the formal legal system for victims and defendants is impeded by the existence of unprecedented case backlogs. Attempts made by policymakers to develop solutions are undermined by gaps in the data needed to understand the cases in the backlog. As a consequence, little evidence exists to compare the efficacy of the measures that have been introduced across the criminal courts, or to understand their impact on users.

Backlogs also exist across the civil and family courts and tribunals, where deficiencies in data and evidence mirror those that persist across the criminal courts. Global indicators suggest that people find it harder in the UK than in other comparable countries to access and afford civil justice. Digital services, designed to reduce both pressure on physical court hearings and the overall cost of accessing justice across the civil and family courts and tribunals, have failed to resolve barriers to access for all users – with users from Black and Minoritised Ethnic backgrounds particularly adversely affected. Mechanisms proposed for reducing demand, including alternative dispute resolution tools like mediation, are poorly utilised in some areas of law, and their efficacy is not well understood. Finally, an absence of detailed research to understand changes in attitudinal barriers to

¹²⁸ See: *R (Gudaniviciene & Ors) v Director of Legal Aid Casework & Lord Chancellor* [2014] EWCA Civ 1622; [2015] 1 W.L.R. 2247 [46].

¹²⁹ *Children’s Rights Alliance for England v Secretary of State for Justice* [2013] EWCA Civ 34, [2013] HRLR 17 [38].

¹³⁰ See *R (Unison) v Lord Chancellor* [2017] UKSC 51 [96].

accessing the formal legal system – such as lack of trust and confidence in the courts – undermines attempts to address these issues.

2.2 Current challenges

2.2.1 Serious backlogs exist across the criminal courts

Measures introduced to curb the spread of COVID-19 exacerbated existing pressures on the criminal justice system which had already generated backlogs in the magistrates' and Crown Court¹³¹. In quarter 4 of 2019 the backlog in the magistrates' courts stood at 299,831 cases, whilst the government's decision to reduce funding for sitting days in the Crown Court had contributed to a backlog of 37,964 cases by the same period (see Table 2.1 below). As early as October 2020, researchers warned the government that the likely rise in long-term unemployment precipitated by the economic impact of the pandemic, and the 20,000 increase in police officer numbers, could lead the criminal justice system to "the brink of a 'tipping point', beyond which it may cease to function in a meaningful sense"¹³². By 2021, research published by the National Audit Office indicated that this grim prediction may be being borne out – the National Audit Office reported that by 30 June 2021, the backlog of Crown Court cases stood at 60,692, an increase of 48% from March 2020. The National Audit Office stated that the backlog had led to 27% increase in the number of defendants held on remand in custody between 31 March 2020 and 30 June 2021¹³³.

By October 2023, the Institute for Government 2023 Performance Tracker reported that changes to procedures in the magistrates' courts (the expansion in the use of remote hearings, and the adoption of the Single Justice Procedure – whereby cases are heard by a single magistrate and legal adviser) have led to a reduction in the backlog of 18.2%, between Q2 2020 and Q2 2023, coming to a level that is 15.2% higher than Q4 2019. In contrast, the situation in the Crown Court has worsened significantly – the Institute for Government cite a combination of industrial action taken by the criminal bar and government failure to put in place effective measures to address delays as leading to a 50.4% increase in outstanding caseload between Q2 2020 and Q2 2023. Further to this, the authors argue that the true backlog "may be even worse than the headline figures suggest". The measures introduced to combat the spread of COVID-19 disproportionately impacted on the ability of courts to support the conduct of jury trials. As a result, the Institute for Government argue, the composition of cases in the backlog has shifted, to include "a much higher proportion of cases requiring jury trials". Cases requiring jury trials are in general more complex, but the official figures

¹³¹ CREST Advisory (2020) "Impact and legacy of COVID-19 on the CJS – Modelling overview", October 2020, p.2. Available at: https://64e09bbc-abdd-42c6-90a8-58992ce46e59.usrfiles.com/ugd/64e09b_4cc295922af94e6e9fbf35dc84c949cb.pdf

¹³² CREST Advisory (2020) "Impact and legacy of COVID-19 on the CJS", p.3.

¹³³ National Audit Office (2021) "Reducing the backlog in criminal courts", Ministry of Justice and HM Courts & Tribunals Service", Report by the Comptroller and Auditor General Session 2021–22, 22 October 2021, p.4.

fail to capture this (see Table 2.1). Adjusting for case complexity results in a figure for the total backlog that is nearly 40% higher than that reported in official statistics¹³⁴.

Table 2.1 – Case backlogs in the Crown Court and magistrates’ courts – figures taken from the Institute for Government Performance Tracker 2023: Criminal Courts¹³⁵

Quarter	Magistrates’ courts case backlog	Crown Court case backlog	Complexity adjusted cases ¹³⁶
Q4 2019	299,831	37,964	-
Q2 2020	422,156	43,013	50,447
Q2 2023	345,285	64,709	89,937

The backlog creates serious practical barriers to accessing the formal justice system for both victims and defendants. The Institute for Government reports that the backlog has led to the worst waiting times on record. Between 2020 and 2023 there has been a dramatic increase in the number of cases that take over a year to reach trial – there are now over six times as many cases taking more than a year to reach trial than in March 2020. These delays impact both on victim’s experience of the system and on criminal justice agencies beyond the courts – placing additional pressure on prisons as defendants spend longer in custody awaiting trial¹³⁷. The long waiting times reported in coverage of the backlog also undermines public trust and confidence in the system – creating attitudinal barriers to accessing the formal system for victims that may result in increased withdrawals from prosecution.

2.2.2 There are persistent gaps in the data needed to understand nature and composition of cases in the backlog

Despite the imperative to take effective action to tackle the backlog in the Crown Court, there is a lack of robust data to understand the nature and composition of cases in the backlog. In the absence of routine data on case type, duration and complexity it is difficult to understand the true scale of the challenge or put in place approaches to address it. The National Audit Office highlighted these issues and their impact in their 2021 report¹³⁸, stating:

¹³⁴ Institute for Government (2023) “Performance Tracker 2023: Criminal Courts”, October 2023, pp.203–215. Available at: <https://www.instituteforgovernment.org.uk/sites/default/files/2024-01/performance-tracker-2023.pdf>

¹³⁵ Institute for Government (2023) “Performance Tracker 2023”, pp.203–215.

¹³⁶ Calculated by the Institute for Government, see detailed description of methodology: Institute for Government (2023) “Performance Tracker 2023”, p231.

¹³⁷ Institute for Government (2023) “Performance Tracker 2023”, pp.203–215.

¹³⁸ National Audit Office (2021) “Reducing the backlog in criminal courts”, Ministry of Justice and HM Courts & Tribunals Service”, Report by the Comptroller and Auditor General Session 2021–22, 22 October 2021, p.4.

“In 2019, the HMCTS-commissioned report, Digital Justice set out wide-ranging findings on the extent of HMCTS’s data limitations. HMCTS has yet to implement the recommendations in full. The pandemic has exacerbated these long-standing data challenges, bringing into focus the data the Ministry and HMCTS need to develop to better understand and manage flow through the system... The Ministry recognises that it will need substantial investment in analytical capability to resolve other data issues, including disjointed data across the system.”¹³⁹

In response, the government took the decision to publish what it then referred to as “criminal justice scorecards”¹⁴⁰, which aimed to publish data to drive up timeliness and performance across three areas: crime recorded to police decision, police referral to Crown Prosecution Service, and Crown Prosecution Service charge to case completion in court¹⁴¹. However, these scorecards – which have subsequently been rebranded as the “Criminal justice system delivery data dashboard” – have failed to address issues, due to deficiencies in the underlying data upon which they are based¹⁴². The explanatory notes, published by the Ministry of Justice (MoJ) alongside the dashboard, state that “it is not currently possible to accurately track individual offences or defendants across the criminal justice system for the purposes of reporting”¹⁴³ which means that “there are no cross-criminal justice system metrics included in the current dashboard”¹⁴⁴. The note also highlights issues created by the fact that each department “collects, collates and publishes metrics differently”¹⁴⁵ and that timings do not align to case progression – undermining the ability to examine the timing and movement of cases through the system. Whilst the explanatory notes state that “Work to better link the administrative data held across the criminal justice system is ongoing and is a high priority for enabling more joined up reporting and analysis of the drivers that impact the system as a whole”, by 2023 the position had not significantly improved. A report published by the Centre for Public Data examining data gaps as they relate to the criminal court backlog identified a lack of data on the types of cases that take the longest, timeliness at individual courts and timeliness for specific offences. There is also an absence of data to understand the types of cases that are in the backlog (i.e. data on offences), the number of guilty pleas in the backlog or the reasons for vacated trials¹⁴⁶.

¹³⁹ National Audit Office (2021) “Reducing the backlog”, p.10.

¹⁴⁰ Fouzder, M. (2021) “First criminal justice scorecards published”, 9 December 2021, *Law Society Gazette*. Available at: <https://www.lawgazette.co.uk/news/first-criminal-justice-scorecards-published/5110891.article>

¹⁴¹ Fouzder, M. (2021) “First criminal justice scorecards published”.

¹⁴² See Ministry of Justice Criminal Justice Delivery Data Dashboard – “Understanding the data”. Available at: <https://criminal-justice-delivery-data-dashboards.justice.gov.uk/understanding-data>

¹⁴³ Ministry of Justice Criminal Justice Delivery Data Dashboard – “Understanding the data”.

¹⁴⁴ Ministry of Justice Criminal Justice Delivery Data Dashboard – “Understanding the data”.

¹⁴⁵ Ministry of Justice Criminal Justice Delivery Data Dashboard – “Understanding the data”.

¹⁴⁶ The Centre for Public Data (2023) “Data gaps on the court backlog in England and Wales”. Available at: <https://static1.squarespace.com/static/5ee7a7d964aeed7e5c507900/t/642306165f93d41d5b905b54/1680016918532/CFPD+Court+Backlog+Data+Gaps.pdf> (accessed 14 February 2024).

2.2.3 Little evidence exists to compare the effectiveness of the existing measures introduced to reduce the backlog across criminal courts, or their impact on users

Despite the additional £63m spent by HM Courts and Tribunals Service (HMCTS) on pandemic response and recovery in the criminal courts in 2020–21¹⁴⁷ little evidence exists to compare the effectiveness of the various measures introduced to reduce the backlog, such as Nightingale Courts, remote hearings or increasing magistrates' sentencing powers¹⁴⁸. This is deeply concerning given that these measures were continued as part of a £2.2bn criminal justice action plan, which was delivered between 2022–23 and 2023–24¹⁴⁹. Little evidence exists to understand the impact of measures on defendants, witnesses and victims from different backgrounds or with different needs. Despite making a series of commitments to ensure that recovery plans across the criminal courts support users who are vulnerable because of their age, mental disorder or physical impairment, the National Audit Office found that the MoJ and HMCTS had made “slow progress in collecting data and evaluating evidence on how vulnerable users have been affected by, for example, remote access to justice”¹⁵⁰. The National Audit Office also reported that they had found “no evidence that the Ministry and HMCTS have any data on users' ethnicity to carry out meaningful analysis on whether ethnic minority groups have been disadvantaged by the pandemic or the recovery programme” concluding that, as a result, the Ministry is “unable to assure itself that it is meeting its objective to ‘build back fairer’”¹⁵¹.

2.2.4 Backlogs also exist across the civil and family courts and tribunals and wider deficiencies with data mirror those that persist across the criminal courts

Significant backlogs have also been reported across the civil and family courts and tribunals. In the civil courts – particularly the county courts, which disproportionately deal with the most vulnerable users – it has been reported the average time for small claims, fast track and multi-track cases had increased by over one-third from 2019 to 2023¹⁵². MoJ data shows that the average time taken for a small claims case to go to trial has risen by 36% from 2019 to 2023 (38.1 weeks in 2019 to 51.9 weeks in 2023). Multi- and fast track claims have been similarly affected, with the time taken to go to

¹⁴⁷ National Audit Office (2021) “Reducing the backlog in criminal courts”, Ministry of Justice and HM Courts & Tribunals Service”, Report by the Comptroller and Auditor General Session 2021–22, 22 October 2021, p.4.

¹⁴⁸ The Centre for Public Data (2023) “Data gaps on the court backlog in England and Wales” <https://static1.squarespace.com/static/5ee7a7d964aedd7e5c507900/t/642306165f93d41d5b905b54/1680016918532/CFPD+Court+Backlog+Data+Gaps.pdf> (accessed 14 February 2024).

¹⁴⁹ National Audit Office (2021) “Reducing the backlog in criminal courts”, Ministry of Justice and HM Courts & Tribunals Service”, Report by the Comptroller and Auditor General Session 2021–22, 22 October 2021, p.4.

¹⁵⁰ National Audit Office (2021) “Reducing the backlog”, p.4.

¹⁵¹ National Audit Office (2021) “Reducing the backlog”, p.8

¹⁵² Hilborne, N. (2023) “Justice secretary must ‘get to grips’ with escalating civil court delays”, Legal Futures, 6 September 2023 (available at: <https://www.legalfutures.co.uk/latest-news/justice-secretary-must-get-to-grips-with-escalating-civil-court-delays>). See also figures compiled by the Association of Consumer Support Organisations, referenced here: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/county-court-users-face-growing-delays-and-crumbling-buildings>

trial rising by 34.5% over the same period (59.4 weeks in 2019 to 79.9 in 2023)¹⁵³. The National Residential Landlords Association has reported unacceptable delays in housing possession proceedings, stating that some landlords are “having to wait more than 6 months to take back their properties”¹⁵⁴. This is reflected in mean average timeliness figures, which show 40 weeks between initial landlord claim and outcome. Median figures – which are not skewed by outlying cases – are much lower, at around 23 weeks; this is an increase of less than a week from the same period in 2022 (although these figures are still higher than the legal guidelines)¹⁵⁵. Delays have also been reported in the family court – official statistics published in December 2023 demonstrate that between July and September 2023, it took on average 45 weeks for private law cases to reach a final order, an increase of 15 weeks from Q1 of 2020¹⁵⁶. Timeliness figures are not reported for public family law cases, but statistics show a 5% increase in the number of case starts compared to the equivalent quarter in 2022¹⁵⁷.

Across the tribunals, backlogs have also been reported – open cases across the Social Security and Child Support, First Tier Immigration and Asylum, Employment, and Special Educational Needs and Disability tribunals increased by nearly 7% (6.59%) between Q4 of 2019/20 and Q4 2022/23 – rising to a total of 633,119 open cases (from 593,939). By September 2023, this figure had risen further, with MoJ statisticians reporting an interim open caseload of 649,000¹⁵⁸. The Employment Tribunals face the highest outstanding caseloads – 438,000 cases were outstanding at the end of September 2023¹⁵⁹.

Similarly to the position across the criminal courts, there is an absence of authoritative data to understand the composition of cases in the backlog and the characteristics of users, and a lack of linked data to understand individuals’ pathways once they enter the civil and family courts and tribunals. Data is inconsistently published across the different courts and tribunals, and between different types of cases. There is a lack of accurate data on hearing duration to understand the impact of different modes of hearing on delays. Levels of legal representation are only published for

¹⁵³ Hilborne, N. (2023) “Justice secretary must ‘get to grips’ with escalating civil court delays”.

¹⁵⁴ Property 118 (2023) “Backlog of possession cases causing chaos in courts”, 19 September 2023. Available at: <https://www.property118.com/backlog-of-possession-cases-causing-chaos-in-courts/#:~:text=The%20NRLA%20is%20calling%20on,to%20take%20back%20their%20properties.>

¹⁵⁵ Ministry of Justice (2023) “National Statistics: Mortgage and landlord possession statistics: July to September 2023”, published 9 November 2023. Available at: <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-july-to-september-2023/mortgage-and-landlord-possession-statistics-july-to-september-2023#landlord-possession-timeliness>

¹⁵⁶ Ministry of Justice (2023) “National Statistics: Family Court Statistics Quarterly: July to September 2023”, published 21 December 2023. Available at: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023/family-court-statistics-quarterly-july-to-september-2023#children-act---public-law>

¹⁵⁷ Ministry of Justice (2023) “National Statistics: Family Court Statistics Quarterly: July to September 2023”.

¹⁵⁸ Ministry of Justice (2023) “Tribunal Statistics Quarterly: July to September 2023”, published 14 December 2023. Available at: <https://www.gov.uk/government/statistics/tribunals-statistics-quarterly-july-to-september-2023/tribunal-statistics-quarterly-july-to-september-2023> (accessed 6 February 2024).

¹⁵⁹ Ministry of Justice (2023) “Tribunal Statistics Quarterly: July to September 2023”.

the civil and family courts¹⁶⁰. Research published into the Special Educational Needs and Disability Tribunal highlighted the dearth of data on the characteristics of families who raise appeals, or the issues facing young people beyond their primary need. This undermines the ability to assess whether the tribunal is accessed equitably¹⁶¹. Some positive progress has been made in relation to the family courts, where the Nuffield Family Justice Observatory has supported the linkage of data held by Cafcass with other sources of administrative data, to understand the characteristics of adults and children in private family law proceedings¹⁶². However, even within this work, data gaps were identified, particularly in relation to children’s living arrangements at the time of application, allegations of domestic abuse and other safeguarding concerns¹⁶³.

2.2.5 Global indicators suggest that people find it harder in the UK than in other comparable countries to access and afford civil justice

The World Justice Project Rule of Law Index reports that the UK is now ranked below the global average in terms of people’s ability to access and afford civil justice. The research further reports that the accessibility and affordability of UK civil justice compares unfavourably with comparable countries – both those in the region and those with similar levels of income¹⁶⁴. Despite this, the government is proposing to reintroduce fees for the Employment Tribunal to both “relieve costs to the general taxpayer” and “incentivise parties to settle their disputes earlier”¹⁶⁵. The consultation has been published seven years after a previous fee regime was withdrawn, following a decision in the Supreme Court which found that the level of fees imposed had prevented thousands of employees, particularly those on low incomes, from accessing justice¹⁶⁶. Empirical research, published by Adams and Prassl in 2017, was extremely valuable in establishing the case that the Employment Tribunal fee structures imposed in 2013 had created payoff structures that were negative for the majority of successful claimants¹⁶⁷. Their findings also demonstrated that fees had

¹⁶⁰ Ministry of Justice (2023) “National Statistics: Family Court Statistics Quarterly: July to September 2023”, Published 21 December 2023 (available at: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023/family-court-statistics-quarterly-july-to-september-2023#children-act---public-law>); and National Audit Office (2024) “Government’s management of legal aid – Ministry of Justice, Legal Aid Agency”, Session 2023–24, 9 February 2024, HC 514, p.22 (available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>).

¹⁶¹ Isos Partnership (2022) “Agreeing to disagree? Research into arrangements for avoiding disagreements and resolving disputes in the SEND system in England”, p.3. Available at: https://static1.squarespace.com/static/5ce55a5ad4c5c500016855ee/t/6221ee346c97bb4c0c754891/1646390841226/220222_LGA_SEND+disputes_report_FINAL.pdf (accessed 14 February 2024).

¹⁶² Cusworth, L., et al. (2021). “Uncovering private family law: Who’s coming to court in England?” London: Nuffield Family Justice Observatory. Available at: https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/nfjo_whos_coming_to_court_England_full_report_FINAL-I-.pdf

¹⁶³ Cusworth, L., et al. (2021). “Uncovering private family law”, p.4.

¹⁶⁴ The UK received a regional rank of 30/31 and an income rank of 45/46.

¹⁶⁵ Ministry of Justice (2024) “Proposal for reform: Introducing feeds in the employment tribunal and employment appeal tribunal”, 29 January 2024. Available at: <https://www.gov.uk/government/consultations/introducing-fees-in-the-employment-tribunals-and-the-employment-appeal-tribunal>

¹⁶⁶ See *R (Unison) v Lord Chancellor* [2017] UKSC 51 [96].

¹⁶⁷ Adams, A., and Prassl, J. (2017) “Vexatious Claims: Challenging the Case for Employment Tribunal Fees”, *The Modern Law Review* 80: 412–442. <https://doi.org/10.1111/1468-2230.12264>

failed to encourage early dispute resolution. Recent research, published in 2023 by the Resolution Foundation, suggests that the re-introduction of fees, even at a reduced level, may compound existing barriers to access to the formal legal system. The Resolution Foundation's research identified that those groups of workers who are most vulnerable to labour market abuses (the youngest workers, those on a temporary contract, those working in the smallest businesses and the lowest paid workers) are at present the least likely to take a case to an Employment Tribunal¹⁶⁸. Low paid workers are also the least likely to be able to afford even marginal fees, due to the low value of their claims. Further research of this kind is needed to establish whether existing and proposed fee regimes interfere with the essence of the right to access to the formal justice system.

2.2.6 Digital services designed to reduce pressure on physical court hearings across civil and family courts and tribunals have failed to resolve barriers to access for all users

A principal aim of the £1bn programme of digital court reform led by HMCTS was to reduce pressure on the physical court estate and make the justice system more efficient by replacing existing paper-based processes with end-to-end online systems¹⁶⁹. It was argued that these digitised reformed processes would also make the justice system more accessible “for everyone who needs it”¹⁷⁰. However, the findings of access to justice impact assessments, conducted by HMCTS and published in December 2023¹⁷¹, suggest that the new digital services have failed to resolve barriers to access for all users on an equal basis. The access to justice impact assessments – which were designed to identify, fix and monitor barriers to access to justice – have been completed for digital services dealing with divorce, probate, social security and child support, and online civil money claims. The impact assessment for the Online Civil Money Claims process found consistently low levels of defendant engagement – reporting that between September 2020 and January 2021, 70% of cases received no formal response to the court from the defendant. The impact assessment for the probate service found that cases filed by users from Black and Minoritised Ethnic groups were more likely to be stopped than those filed by White applicants. HMCTS reports that it is conducting further research to understand the reasons for these findings, and address the issues identified; however, the lack of data on the characteristics of defendants who do not engage is likely to render this task more difficult.

¹⁶⁸ Judge, L., and Slaughter, H. (2023) “Enforce for good: Effectively enforcing labour market rights in the 2020's and beyond”, April 2023, pp.62–64. Available at: <https://www.resolutionfoundation.org/app/uploads/2023/04/Enforce-for-good.pdf>

¹⁶⁹ Ministry of Justice, Lord Chief Justice of England and Wales, and the Senior President of Tribunals (2016) “Transforming Our Justice System”, September 2016. Available at: <https://assets.publishing.service.gov.uk/media/5a803d9ae5274a2e8ab4f019/joint-vision-statement.pdf> (accessed 3 Feb 2024).

¹⁷⁰ Ministry of Justice, et al. (2016) “Transforming Our Justice System”, p.16.

¹⁷¹ HM Courts & Tribunals Service (2023) “Assessing Access to Justice in HMCTS Services – Summary Report”, updated 12 December 2023. Available at: <https://www.gov.uk/government/publications/assessing-access-to-justice-in-hmcts-services/assessing-access-to-justice-in-hmcts-services-summary-report>

2.2.7 Mechanisms proposed for reducing demand, including alternative dispute resolution approaches such as mediation, are poorly utilised in some areas and their efficacy is not well understood

In response to backlogs and delays across the civil and family courts and tribunals, the government has been keen to promote forms of alternative dispute resolution (including mediation), with the aim of resolving disputes before they reach the formal legal system. However, uptake varies significantly across different parts of the system. In October 2023, the Law Society of England and Wales reported that mediation in private family law cases has “collapsed over the last decade”, drawing on figures published by the Legal Aid Agency which show that assessments are down by 62%, case starts down by 46% and successful agreements down by 53%¹⁷².

In addition, the efficacy of tools such as mediation in reducing pressure on the formal justice system is not well understood. A study published by the ISOS Partnership in February 2022 identified the growing proportion of mediation cases that are followed by an appeal to the Tribunal – a number that has increased year on year since reforms intended to encourage mediation were introduced in 2014 (rising from 22.1% in 2014 to 26.7% in 2020)¹⁷³. An evaluation conducted to examine the impact of changing from an opt-in to an opt-out process for accessing mediation as part of the Online Civil Money Claims process reported significant levels of defendant non-attendance at mediation appointments – with researchers reporting rates as high as 30%¹⁷⁴. Further to this, the evaluation, which was published in March 2023, found settlement rates of only 29% for those cases where both parties did attend¹⁷⁵. Despite this, in July 2023, the government announced plans to make mediation compulsory for claims valued up to £10,000¹⁷⁶, stating that this measure would “create valuable court capacity, freeing up time for judges and reducing pressure on the courts”¹⁷⁷ – seemingly in defiance of its own evidence base. Further to this, since the changes were introduced, management information systems have not been adapted to ensure that cases that are mediated are

¹⁷² The Law Society of England and Wales (2023) “Mediation in freefall due to lack of legal aid”, 25 October 2023. Available at: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/mediation-in-freefall-due-to-lack-of-legal-aid> (accessed 14 February 2024).

¹⁷³ ISOS Partnership (2022) “Agreeing to disagree? Research into arrangements for avoiding disagreements and resolving disputes in the SEND system in England”, p.24. Available at: https://static1.squarespace.com/static/5ce55a5ad4c5c500016855ee/t/6221ee346c97bb4c0c754891/1646390841226/220222_LGA_SEND+disputes_report_FINAL.pdf (accessed 14 February 2024).

¹⁷⁴ HM Courts & Tribunals Service (2023) “Research and analysis: HMCTS opt-out mediation evaluation report”, published 21 March 2023. Available at: <https://www.gov.uk/government/publications/hmcts-opt-out-mediation-evaluation/hmcts-opt-out-mediation-evaluation-report#settlement-at-mediation>

¹⁷⁵ HM Courts & Tribunals Service (2023) Research and analysis.

¹⁷⁶ Fouzder, M. (2023) “Moj confirms compulsory mediation for civil claims up to £10,000”, 25 July 2023, *Law Society Gazette*. Available at: <https://www.lawgazette.co.uk/news/moj-confirms-compulsory-mediation-for-civil-claims-up-to-10000/5116759.article> (accessed 14 February 2024).

¹⁷⁷ Fouzder, M. (2023) “Moj confirms compulsory mediation”.

captured in timeliness calculations, making it difficult to assess the impact of changes on court backlogs¹⁷⁸.

2.2.8 Absence of research to understand change in attitudinal barriers to accessing the formal legal system

As outlined above, case law¹⁷⁹ has established that people's ability to access the formal legal system can be impacted by attitudinal, as well as practical, barriers. People's trust and confidence in the courts impacts both on their willingness to bring cases and the likelihood that they will comply with any decisions reached¹⁸⁰. If people perceive that the justice system is unfair, or inaccessible to them (or to people like them) this perception can have a detrimental impact on access to justice. In criminal justice, low levels of trust and confidence can negatively affect the decisions taken by defendants – for example, whether to comply with legal advice – resulting in harsher outcomes and generating costs for the state¹⁸¹. Despite the importance of understanding how various changes to the courts system have impacted on public trust and confidence, there is little robust longitudinal research exploring these issues. There is a particular absence of research exploring public trust and confidence in the civil and family courts and tribunals. Where research does exist, it tends to focus on the criminal justice system as a whole (incorporating public attitudes to both police and courts).

Recent research, initiated by the Organisation for Economic Cooperation and Development (OECD), has sought to examine population levels of trust in government and public institutions, including courts across 22 OECD countries¹⁸². The UK survey, conducted by the Office for National Statistics, found that 68% of the UK population trust the courts and legal system¹⁸³, exceeding the OECD reported average of 57%¹⁸⁴. For public trust in the courts and legal system, the UK was in the top five of participating countries, ranking only below Norway, Denmark, Luxembourg and the Netherlands. In examining drivers of trust, the OECD reports that the perceived independence of the courts (from political influence) is positively correlated cross-nationally with trust in courts and

¹⁷⁸ Ministry of Justice (2023) "Civil Justice Statistics Quarterly: April to June 2023", published 7 September 2023. Available at: <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-april-to-june-2023/civil-justice-statistics-quarterly-april-to-june-2023#money-claims>

¹⁷⁹ See *R (Unison) v Lord Chancellor* [2017] UKSC 51 [96].

¹⁸⁰ Wallace, A., and Goodman-Delahunty, J. (2021) "Measuring Trust and Confidence in Courts", *International Journal for Court Administration* 12(3), p.2. DOI: <https://doi.org/10.36745/ijca.418>

¹⁸¹ See Lammy, D. (2017) "The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System". London: Lammy Review, p.27. Available at: <https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>

¹⁸² OECD (2022) "Building Trust to Reinforce Democracy: Key findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions". Available at: https://www.oecd-ilibrary.org/governance/building-trust-to-reinforce-democracy_b407f99c-en

¹⁸³ ONS (2022) "Trust in government, UK: 2022", 13 July 2022 release. Available at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/trustinggovernmentuk/2022>

¹⁸⁴ OECD (2022) "Building Trust to Reinforce Democracy: Key findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions". Available at: https://www.oecd-ilibrary.org/governance/building-trust-to-reinforce-democracy_b407f99c-en

the legal system. Trust in the courts and legal system was also found to be higher than other public services, with the exception of the NHS. Whilst the research provides a broad indication of public trust in the courts and legal system at a population level, the drivers of trust in the courts and legal system are not examined in detail in the UK context, and findings are not disaggregated by UK region, type of court, respondent demographics, or respondent experience with the courts and legal system.

A YouGov tracker poll – conducted bi-annually since October 2019 and based on a sample of between 1,623 and 1,802 British adults per wave – reports on public confidence in the British judicial system¹⁸⁵. The findings are capable of being disaggregated by age, gender, politics, region and social grade (although the question does not require people to distinguish between the judicial systems across the four nations of the UK, or between criminal, civil and family courts and tribunals). When the poll was conducted in January 2024, it found that 48% of respondents overall expressed a lot or a fair amount of confidence in the British judicial system, compared to 45% of respondents who expressed “not very much confidence” or “no confidence at all”. Reported levels of confidence were highest in Scotland (50% of respondents expressing a lot or a fair amount of confidence), and lowest in Wales (41% expressing a lot or a fair amount of confidence). The proportion of respondents who expressed that they had no confidence at all, or not very much confidence in the British judicial system was highest in Wales (55%), 11% higher than England or Scotland (see Table 2.2).

Table 2.2 – Confidence in the British judicial system by nation at 1 January 2024

	% of respondents confident in the British judicial system	% of respondents not confident in the British judicial system
Overall	48%	45%
England (average)	48.5%	44%
Scotland	50%	44%
Wales	41%	55%

Across England, respondents based in London were most confident (55%), whilst those in the North reported the lowest proportion of those expressing confidence (44%) in the British judicial system (see Table 2.3).

¹⁸⁵ YouGov (2024) “Confidence in the British judicial system October 2019 – January 2024”. Available at: <https://yougov.co.uk/topics/society/trackers/confidence-in-the-british-judicial-system?crossBreak=north>

Table 2.3 – Confidence in British judicial system across England at 1 January 2024

	% of respondents confident in the British judicial system	% of respondents not confident in the British judicial system
England (average)	48.5%	44%
London	55%	40%
Rest of South	48%	46%
Midlands	48%	44%
North	43%	46%

Disaggregating the data by gender, social grade and age reveals that amongst respondents, more women than men express “no confidence” or “not very much confidence at all” in the British judicial system (46% vs 43%). Similarly a higher proportion of respondents in social grades C2, D and E expressed no or not very much confidence than those in social grades A, B and C1 (48% vs 42%). Surprisingly, 49% of respondents aged 50–64 and 65 and above expressed no or not very much confidence in the British judicial system, compared with 43% of respondents aged 25–49 and 35% of respondents aged 18–24. The biggest difference was found between respondents who reported that they voted “leave” in the Brexit referendum and those who reported that they voted to “remain”: 59% of respondents who reported that they voted “leave” expressed no or not very much confidence in the British judicial system, compared to 35% of those who voted to “remain” (see Table 2.4).

Table 2.4 – Confidence in the British judicial system by reported voting decision in the Brexit referendum at January 2024

	% of respondents confident in the British judicial system	% of respondents not confident in the British judicial system
Reported voting to leave the European Union	38%	59%
Reported voting to remain in the European Union	61%	35%

Other studies have sought to explore public trust and confidence in the judiciary specifically. In 2022, research commissioned by campaigning organisation the Good Law Project found that 28% of respondents to a survey of 5,000 adults across Great Britain did not trust judges at all/very much, and 31% of respondents stated that their trust had declined in recent years. The survey also found that trust in judges was the lowest amongst “people aged 18–24 (56% trust a lot/a fair amount), those in ‘lower’ social classes (56%) and trans people (46%), 133 of whom participated in the survey”¹⁸⁶. In publishing the survey, Jolyon Maugham, the Director of the Good Law Project, stated that the

¹⁸⁶ Siddique, H. (2022) “People who do not ‘look like’ typical judge have lowest trust in judiciary”, *The Guardian*, 10 November 2022. Available at: <https://www.theguardian.com/law/2022/nov/10/people-who-do-not-look-like-typical-judge-have-lowest-trust-in-judiciary>

findings “point to a need for scrutiny of why these differential levels of trust in judges exist and how they can be addressed” in order for “the law to maintain its moral legitimacy”¹⁸⁷.

Whilst the studies that do exist provide some interesting insights, there is a clear need to develop a longitudinal research agenda that is capable of robustly interrogating the various factors that contribute to trust and confidence in different parts of the justice system amongst both court users (see Section 3) and the wider public. Researchers have highlighted that a combination of a “diversity of approaches, some inherent limitations of survey methodology and a lack of a clear conceptual framework” make it difficult to make meaningful interpretations or useful comparisons from the survey data that does exist¹⁸⁸. Standardised tools should be developed and used to measure key concepts¹⁸⁹ and questions tailored to interrogate perceptions of the civil, family and administrative justice system as well as the criminal courts, to address attitudinal barriers to accessing the formal legal system.

¹⁸⁷ Siddique, H. (2022) “People who do not ‘look like’ typical judge”.

¹⁸⁸ Wallace, A., and Goodman-Delahunty, J. (2021) “Measuring Trust and Confidence in Courts”, *International Journal for Court Administration* 12(3), p.2. DOI: <https://doi.org/10.36745/ijca.418>

¹⁸⁹ See, for example, work developed by Pleasence and Balmer to measure concepts such as the “Perceived Inequality of Justice” in relation to civil justice. Available at: <https://research.thelegaleducationfoundation.org/wp-content/uploads/2019/02/Legal-Confidence-and-Attitudes-to-Law-Developing-Standardised-Measures-of-Legal-Capability-web-version-1.pdf>

3 Access to a fair and effective hearing

3.1 Overview

The existing case law on access to justice emphasises that for an individual to receive a fair and effective hearing, they must be able to put their case effectively. When the issues involved in a case are too factually or legally complex for an individual to present their case effectively, the courts have recognised a requirement for representation and legal aid¹⁹⁰. An inquisitorial process does not necessarily negate this requirement. The right to a fair and effective hearing also requires the state to take proactive steps to ensure “equality of arms” between the parties to a case. This means that both parties need to have a reasonable opportunity to set out their legal case in conditions that do not unreasonably disadvantage one of the parties. Those in charge of the formal justice system must make adjustments to support effective participation, for example through providing access to interpreters for people who have English as a foreign language, or making reasonable adjustments to enable people with a disability to participate. An effective hearing requires both that individuals are able to present the information necessary to enable a decision-maker to make a determination based on applying the law to the facts of the case *and* that the decision-maker is able to comprehend this information¹⁹¹, to ensure that decisions reached are made on the grounds of legal merit, and not any other factor.

The decline in public funding for legal representation has led to a reported rise in the number of people who attempt to represent themselves (“Litigants in Person”) in legal proceedings. The scale of this increase is not consistently recorded or reported across the justice system – particular gaps exist in relation to the magistrates’ courts and civil tribunals. Existing research suggests that Litigants in Person experience particular challenges around effective participation, but further studies are needed to generate representative findings,

Changes to court processes – including the expansion in use of remote hearings and the Single Justice Procedure in the magistrates’ courts – have created new barriers to effective participation that may impact disproportionately on those who are vulnerable. User satisfaction metrics adopted by HM Courts and Tribunals Service (HMCTS) fail to track relevant concepts – such as perceptions of procedural fairness – despite assurances that these measures would be amended. Issues have been raised about the way in which courts and tribunals deal with issues around mental ill-health and capacity, but limited data is collected to verify and address concerns. Finally, concerns have been

¹⁹⁰ See *R (Howard League for Penal Reform and The Prisoner’s Advice Service) v Lord Chancellor* [2017] EWCA Civ 244 (41).

¹⁹¹ This issue has been raised in the context of video-hearings: see *R (on the application of Kiarie) (Appellant) v Secretary of State for the Home Department (Respondent)* *R (on the application of Byndloss) (Appellant) v Secretary of State for the Home Department (Respondent)* [2017] UKSC 42 [67].

raised about judicial practice and the conduct of hearings, particularly in the family courts – these are difficult to investigate due to an absence of published data.

3.2 Current challenges

3.2.1 The decline in public funding for legal representation has resulted in a reported increase in self-represented litigants, the scale of which is not consistently reported across the courts

The decline in public funding for legal advice and representation (described in detail above in Section 1) has led to a reported increase in the number of people attempting to represent themselves in proceedings. Despite this, routine figures on levels of representation are not published consistently across the court system as a whole. In particular, there is an absence of routine data to track levels of representation at hearings in the magistrates' courts¹⁹². An ad-hoc data release, secured in response to a parliamentary question tabled in September 2023, suggested that the number of defendants charged with summary only, imprisonable non-motoring offences, appearing in the magistrates' courts had risen to nearly 50% (48%) – a 13% rise from 2022¹⁹³. Data on levels of legal representation across the tribunals is not routinely published, although some limited insight can be deduced from legal aid statistics. Across the family courts, between July and September 2023, the proportion of private family law cases where neither the applicant nor the respondent had legal representation was 40% (compared to 14% for the same period in 2013)¹⁹⁴. Evidence submitted by Coram Children's Legal Centre as part of the ongoing review of civil legal aid stated that matters that have always been in scope, such as child abuse, often fall foul of evidence restrictions or the means threshold, leaving vulnerable children without access to legal aid¹⁹⁵. Across the civil county courts, levels of representation vary according to case type. Official statistics demonstrate that of those claims defended in July to September 2023, 47% had legal representation for both claimant and defendant, 32% had representation for claimant only, and 4% for defendant only. Almost all (92%)

¹⁹² See Centre for Public Data (2023) "Unrepresented defendants in the Magistrates Courts: Why better data is urgently needed and how the government can publish it" (available at: <https://static1.squarespace.com/static/5ee7a7d964aeed7e5c507900/t/641ae6bdbd6edd48d43e09e9/1679484606127/CFPD+Legal+Representation+Data+Gaps.pdf>). The issue was also raised in the Lammy Review (2017) – see Lammy, D. (2017) "The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System". London: Lammy Review, p.33. Available at: <https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>

¹⁹³ Baksi, C. (2023) "'Shock' over rise in defendants appearing solo – Concerns that thousands of accused are being left unrepresented by lawyers", *The Times*, 14 September 2023. Available at: <https://www.thetimes.co.uk/article/shock-over-rise-in-defendants-appearing-solo-0h1hg6hcr>

¹⁹⁴ Ministry of Justice (2023) "National Statistics: Family Court Statistics Quarterly: July to September 2023", published 21 December 2023. Available at: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023/family-court-statistics-quarterly-july-to-september-2023#children-act---public-law>

¹⁹⁵ Fouzder, M. (2024) "Civil legal aid review: MoJ deluged with evidence", *Law Society Gazette*, 1 March 2024. Available at: <https://www.lawgazette.co.uk/news/civil-legal-aid-review-moj-deluged-with-evidence/5118924.article#>

damages claim defences had legal representation for both the defendant and claimant, compared with only 30% of money claim defences¹⁹⁶ (see Figure 3.1).

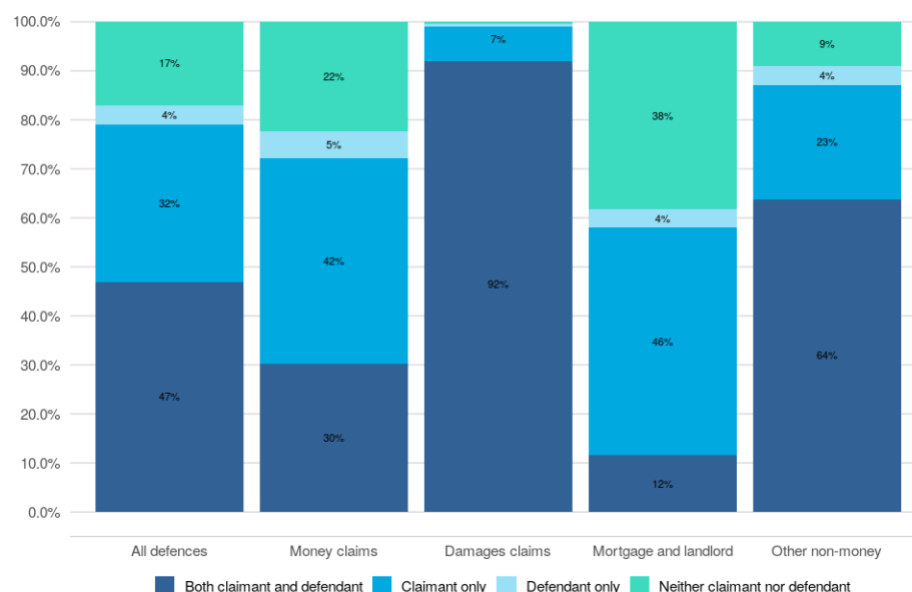


Figure 3.1 – Proportion of civil defences and legal representation status July to September 2023. Source: Ministry of Justice Civil Justice Statistics Quarterly.

3.2.2 Existing research suggests that Litigants in Person experience particular challenges around effective participation, but further work is needed to generate representative findings

Existing qualitative research suggests that people who attempt to represent themselves in legal proceedings experience challenges in relation to effective participation. Research conducted in Northern Ireland by Professor Grainne McKeever found that individuals who take or defend civil or family law cases without legal representation face barriers that can impact on their right to a fair trial (see Case Study 3.1). Research conducted into the impact of legal representation in the criminal courts has linked lack of representation to challenges with effective participation and harsher justice outcomes¹⁹⁷ – particularly where defendants are accused of high to very-high severity offences¹⁹⁸. Research exploring the experience of women appellants in the immigration and asylum tribunal has concluded that “experienced, well-funded and skilful legal representation was fundamental to

¹⁹⁶ Ministry of Justice (2023) “National Statistics: Civil Justice Statistics Quarterly: July to September 2023”, published 7 December 2023. Available at: <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-july-to-september-2023/civil-justice-statistics-quarterly-july-to-september-2023#defences-including-legal-representation-and-trials>

¹⁹⁷ Transform Justice (2016) “Justice denied? The experience of unrepresented defendants in the criminal courts” (available at: https://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf); see also Ministry of Justice (2019) “Unrepresented Defendants: Perceived effects on the Crown Court in England and Wales – practitioners perspectives”, Ministry of Justice Analytical Series 2019, p.10. Available at: <https://assets.publishing.service.gov.uk/media/5d0a0e1ee5274a0661cafce8/unrepresented-defendants.pdf>; and Snell, E. (2023) “Remand Decision-Making in the Magistrates Court: A Research Report”, Justice, November 2023. Available at: <https://files.justice.org.uk/wp-content/uploads/2023/11/16103002/Remand-Decision-Making-in-the-Magistrates-Court-November-2023-1.pdf>

¹⁹⁸ Snell, E. (2023) “Remand Decision-Making”, p.35.

securing proper presentation of appeals”¹⁹⁹ and critical to ensuring that hearings are fair and effective. Particular concerns have been raised about the impact of reduced funding for legal representation in family court proceedings where allegations of domestic abuse occur and the abused Litigant in Person is not entitled to legal aid. In this circumstance, the abused Litigant in Person is forced to cross-examine the allegedly abusive parent and be cross-examined by him or her. Research has reported that the level of intimidation experienced in these circumstances can prevent both parties from participating effectively in hearings²⁰⁰. Despite this, HMCTS has not looked at the impact of self-representation in family courts since 2018²⁰¹.

Case study 3.1 – Litigants in Person in Northern Ireland: Barriers to legal participation

From 2016–2017, researchers gathered data on the experience of 179 people who represented themselves (Litigants in Person) in civil and family cases in Northern Ireland, through a combination of surveys, interviews and court observations.

The study identified intellectual, practical, emotional and attitudinal barriers experienced by Litigants in Person that undermined their ability to participate effectively in hearings and threatened their right to a fair hearing. In relation to intellectual barriers, the researchers found that Litigants in Person did not understand the legal language used in court proceedings and associated documentation, how legal rules might apply to their case, or how the court would reach a decision. The study found “strong evidence that Litigants in Person reached the limits of their knowledge or understanding of the legal issues, sometimes regardless of how much preparation they had done”²⁰².

Practical barriers – such as “not knowing where to get information from, who to direct queries to, what to expect, when to sit or speak or stand during the hearing” – were exacerbated by lack of access to legal representation and trusted sources of advice. The researchers also found that Litigants in Person struggled to keep track of what was said, or what they were expected to do next – issues that were exacerbated by the absence of a court record. Lack of advance

¹⁹⁹ Clayton, G., et al. (2017) “Through her eyes: Enabling women’s best evidence in UK asylum appeals”, Migrants Resource Centre, Asylum Aid and NatCen Social Research, p.44. Available at: https://www.asylumaid.org.uk/sites/default/files/2021-07/2017_Through-Her-Eyes_Enabling%20Women's%20Best%20Evidence.pdf

²⁰⁰ Barry, K. (2020) “The barriers to effective access to justice encountered by litigants in person in private family matters post LASPO”, *Journal of Social Welfare and Family Law* Volume 42, 2020, 416–440.

²⁰¹ National Audit Office (2024) “Government’s management of legal aid – Ministry of Justice, Legal Aid Agency”, Session 2023–24, 9 February 2024, HC 514, p.7. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

²⁰² McKeever, G., et al. (2018) “Litigants in Person in Northern Ireland: Barriers to legal participation – Briefing Paper 3: Can litigants in person participate in court proceedings?” Available at: https://www.ulster.ac.uk/_data/assets/pdf_file/0004/316678/BriefingReport3.pdf

communication meant that the court service did not know whether litigants would be represented until the day of the hearing, undermining opportunities to prepare and offer support²⁰³.

Emotional barriers to participation can include frustration, anger, confusion, anxiety and fear. Where these emotions were experienced by Litigants in Person, the researchers found that they resulted in some Litigants in Person becoming “alienated or despairing of their situation” whilst others became incredulous and suspicious that they were being treated unfairly²⁰⁴. Lack of objectivity about their own case could undermine their ability to present their case effectively and engage productively with the court. These issues were heightened when Litigants in Person experienced mental health problems. The research team measured the general mental health and well-being of Litigants in Person who participated in the study using a standardised validated tool (GHQ-12). The findings revealed that 59% of Litigants in Person who participated in the study had a high GHQ-12 score, which could indicate the presence of mental health difficulties²⁰⁵ (see also Section 3.2.5).

Finally, the study found that Litigants in Person faced attitudinal barriers created by the approach adopted towards them by court actors and staff. The researchers found evidence that court actors tended to stereotype Litigants in Person, automatically assuming that they will be difficult to deal with. Negative attitudes towards Litigants in Person meant that court actors were unwilling to accommodate their needs²⁰⁶ (see also Section 3.2.6) .

3.2.3 Changes to court processes have created new barriers to effective participation

Research suggests that changes to court processes – for example, the introduction of remote hearings, and the creation of new processes for dealing with certain kinds of offences in the magistrates’ courts – have created new barriers to effective participation. However, the absence of publicly available data, and representative research, makes it impossible to understand the true nature and extent of these issues, or institute measures to address them.

Remote hearings were introduced at scale across the criminal, civil and family courts and tribunals in 2020 as part of measures intended to allow cases to proceed whilst combatting the spread of

²⁰³ McKeever, G., et al. (2018) “Litigants in Person in Northern Ireland”, p.5.

²⁰⁴ McKeever, G., et al. (2018) “Litigants in Person in Northern Ireland”, p.6.

²⁰⁵ McKeever, G., et al. (2018) “Litigants in Person in Northern Ireland”, p.6.

²⁰⁶ McKeever, G., et al. (2018) “Litigants in Person in Northern Ireland”, p.7.

COVID-19. Early research conducted across the civil²⁰⁷ and family²⁰⁸ courts and tribunals²⁰⁹ identified a number of challenges created by the shift to remote proceedings that could undermine the efficacy and fairness of hearings. These included issues with communication between parties and their legal representatives, issues with the performance of the technology used by the courts and tribunals, and problems relating to the ability of parties to access remote hearings at all (due to digital exclusion or lack of access to reliable internet and phone data). Research conducted with the tribunals judiciary identified particular concerns relating to the impact of proceeding remotely on appellants experiencing mental ill-health or other cognitive difficulties – with emerging evidence that the mode of hearing could exacerbate symptoms for appellants in the mental health tribunal²¹⁰. Research conducted by the Equality and Human Rights Commission exploring the impact of video hearings on effective participation for defendants who are disabled, found that video hearings “[do] not enable defendants or accused people to participate effectively, and reduce opportunities to identify if they have a cognitive impairment, mental health condition and/or neuro-diverse condition [...] partly due to poor sound and image quality”²¹¹. When HMCTS conducted their own report into the experience of remote hearings during the pandemic – based on a representative survey of lay court users who had participated in a remote hearing – they found that less than half of users found it easy to communicate with their legal representative in the hearing. Vulnerable individuals who accessed their hearings remotely were “particularly less likely to have found it easy to communicate with their lawyer (41% disagreed that was easy compared with 29% of those not classed as vulnerable)”²¹². Despite these findings, HMCTS has failed to put in place data collection strategies to routinely monitor the quality and performance of technology used to support remote hearings, or understand the impact of the use of these measures for parties with different demographic characteristics or who may be considered vulnerable²¹³. They also have not taken forward the Equality and Human Rights Commissions’ recommendation that oversight structures should be put

²⁰⁷ Byrom, N., Beardon, S., and Kendrick, A. (2020) “The impact of COVID-19 measures on the civil justice system”, Civil Justice Council, pp.63–68. Available at: <https://www.judiciary.uk/wp-content/uploads/2022/07/CJC-Rapid-Review-Final-Report-f-1.pdf>

²⁰⁸ Ryan, M., Harker, H., Rothera, S. (2020) “Remote hearings in the family justice system: A rapid consultation”. Nuffield Family Justice Observatory: London, p.12. Available at: https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/nfjo_remote_hearings_20200507-2-.pdf

²⁰⁹ Byrom, N., and Beardon, S. (2021) “Understanding the Impact of COVID-19 on Tribunals – The experience of Tribunal Judges”. Available at: <https://justicelab.org.uk/wp-content/uploads/2021/05/FINAL-Tribunal-Judges-Survey-Report-02-June-2021-.pdf>

²¹⁰ Byrom, N., and Beardon, S. (2021) “Understanding the Impact of COVID-19 on Tribunals”, p.63.

²¹¹ Equality and Human Rights Commission (2020) “Inclusive justice: a system designed for all – Findings and recommendations”. Available at:

https://www.equalityhumanrights.com/sites/default/files/ehrc_inclusive_justice_a_system_designed_for_all_june_2020.pdf

²¹² Clark, J. (2021) “Evaluation of remote hearings during the COVID-19 pandemic – Research Report”, December 2021, p.55. Available at:

https://assets.publishing.service.gov.uk/media/61b71ebd8fa8f5037b09c7b1/Evaluation_of_remote_hearings_v23.pdf

²¹³ National Audit Office (2023) “Report: Progress on the courts and tribunals reform programme – HM Courts & Tribunals Service”, Session 2022–23, 23 February 2023, HC 1130, p.6. Available at: <https://www.nao.org.uk/wp-content/uploads/2023/02/progress-on-courts-and-tribunals-reform-programme-1.pdf>

in place to monitor the effective participation of defendants and accused people across the criminal courts²¹⁴.

A recent investigation into the Single Justice Procedure, led by a journalist at The Standard, has identified serious issues with effective participation, impacting on outcomes for children, the elderly and those with physical or mental health conditions. The Single Justice Procedure is a process for dealing with a subset of criminal cases (such as speeding, not paying for a train fare, TV license evasion and anti-social behaviour). Under the Single Justice Procedure, the defendant is notified of their charge by post and does not attend court unless they plead not guilty or ask for a hearing. A guilty plea and any mitigation can be submitted in writing (by post or online) and the case is decided by a single magistrate. If the defendant does not respond to the written charge, the case can be decided by the magistrate without their say²¹⁵. Since the procedure was introduced in 2015, it has been criticised for its secrecy – as decisions are not made in open court, there are limited opportunities for external observers to scrutinise them. Despite this criticism, use of the procedure has increased rapidly – with nearly 10 times as many cases dealt with under the Single Justice Procedure in 2022 as 2017²¹⁶. By 2023, at least 4,000 prosecutions per week were brought through this process²¹⁷. Pressure to reduce the court backlog has been cited as a contributing factor in driving increased use of the process.

In September 2022, The Telegraph reported that the Ministry of Justice (MoJ) had identified errors in 10% of more than 5,000 cases dealt with in Autumn 2020. In December 2023, The Standard reported that the procedure was being used unlawfully to prosecute children²¹⁸, and that mitigation letters submitted by defendants (including the elderly and those with serious physical and mental health conditions) were going unread by prosecutors, due to issues with the design of the process²¹⁹. Limited data is published on the process – whilst daily listings are available to view publicly online,

²¹⁴ Equality and Human Rights Commission (2020) “Inclusive justice: a system designed for all – Findings and recommendations”, p.14. Available at: https://www.equalityhumanrights.com/sites/default/files/ehrc_inclusive_justice_a_system_designed_for_all_june_2020.pdf

²¹⁵ Equality and Human Rights Commission (2020) “Inclusive justice”, p.14

²¹⁶ Hymas, C. (2022) “Secret justice fears as record number of cases heard behind closed doors”, *The Telegraph*, 3 September 2022. Available at: <https://www.telegraph.co.uk/news/2022/09/03/secret-justice-fears-record-number-cases-heard-behind-closed/>

²¹⁷ Kirk, T. (2023) “Pressure mounts for rethink on ‘fast track’ justice after more outcry over cases”, *The Standard*, 12 February 2024. Available at: <https://www.standard.co.uk/news/crime/single-justice-procedure-fast-track-criticism-lady-carr-alex-chalk-b1138615.html>

²¹⁸ Kirk, T. (2023) “Children unlawfully handed criminal convictions in fast-track justice system”, *The Standard*, 21 December 2023.

²¹⁹ Kirk, T. (2023) “Where’s the justice? Heart-rending letters from vulnerable are ignored under broken court system”, *The Standard*, 15 December 2023. Available at: <https://www.standard.co.uk/news/uk/single-justice-procedure-letters-ignored-court-system-uk-ministry-of-justice-b1127227.html>

information on case results is only sent routinely to press and media contacts²²⁰ (although outcomes are available on request to members of the public) – making representative research challenging. In the face of mounting concern, on 7 February 2024 the Lady Chief Justice, Lady Justice Carr, promised to investigate the process, and in particular to examine how mentally ill defendants are supported in the procedure.

3.2.4 User satisfaction measures adopted to fail to track relevant concepts, for example subjective and objective measures of procedural fairness

The factors conducive to supporting effective participation cited in case law mirror the criterion identified in the academic literature that are commonly cited as determining perceptions of procedural fairness. Designing processes that meet standards of procedural fairness has been held to be important for a number of reasons. Firstly, successive studies have indicated that “people are more willing to accept decisions when they feel that those decisions are made through decision-making procedures they view as fair”²²¹. Secondly, user perceptions of procedural justice have been found to be linked to public trust and confidence in legal authorities and institutions, including courts²²² (see Section 2.2.8). As a consequence the International Consortium for Court Excellence²²³ recommends that data to measure perceptions of procedural justice is captured and published at the level of both individual courts and justice systems as a whole²²⁴.

The literature on procedural justice is extensive, dating back to 1975; however, in summary, it is widely accepted that four factors are critical to the way individuals evaluate procedural fairness: “whether there are opportunities to participate (voice); whether the authorities are neutral; the degree to which people trust the motives of the authorities; and whether people are treated with dignity and respect during the process”²²⁵. Validated instruments have been produced to assess these dimensions of procedural justice, and tested in a wide range of settings including experimental and survey work²²⁶, and deployed in assessing user experience on some Online Dispute Resolution platforms²²⁷. However, the user satisfaction metrics adopted by HMCTS to measure the

²²⁰ HM Courts & Tribunal Service (2023) “Fact sheet: Single Justice Service”. Available at: <https://www.gov.uk/government/publications/hmcts-reform-crime-fact-sheets/fact-sheet-single-justice-service#further-information>

²²¹ Tyler, T. (2000) “Social Justice: Outcome and Procedure”, *International Journal of Psychology* 35:2, 117–125, p.117.

²²² Tyler, T. (2001) “Public Trust and Confidence in Legal Authorities: What do majority and minority group members want from the law and legal institutions?” *Behavioural Sciences and the Law* 19, 215–235, p.216.

²²³ International Consortium for Court Excellence (2020) *Global Measures of Court Performance*, third edition. Sydney, Australia: Secretariat for the International Consortium for Court Excellence. Available at: <http://www.courtexcellence.com>

²²⁴ International Consortium for Court Excellence (2020) *Global Measures*.

²²⁵ Tyler, T. (2000) “Social Justice: Outcome and Procedure”, *International Journal of Psychology* 35:2, 117–125, p.117.

²²⁶ MacCoun, R. (2005) “Voice, Control and Belonging: The Double Edged Sword of Procedural Fairness”, *Annu. Rev. Law Soc. Sci.* 2005 1, 171–201, p.171.

²²⁷ Sela, Ayelet (2018) “Can Computers Be Fair? How Automated and Human-Powered Online Dispute Resolution Affect Procedural Justice in Mediation and Arbitration”, *Ohio State Journal on Dispute Resolution* 33:1, p.122.

performance of reformed digital services do not align with procedural justice measures, despite the fact that in 2019 HMCTS “committed to adopting this as part of our long-term approach”²²⁸.

3.2.5 Issues have been raised about the way that courts and tribunals deal with issues around mental ill-health and capacity but limited data exists to verify and address concerns

Defendants and parties who are neurodivergent or otherwise suffering from poor mental health or issues with mental capacity experience acute challenges when attempting to participate effectively in hearings. Despite this, concerns have been raised that current practices adopted across the courts and tribunals are failing to ensure that vulnerabilities are identified, and appropriate support measures put in place. Research published in 2022 reported that the absence of a permanent presence for Liaison and Diversion schemes in the magistrates’ courts undermines the prospects of mentally vulnerable defendants receiving appropriate support²²⁹, particularly in the context of existing pressures to process cases at speed.

Similar issues exist across the civil courts and tribunals. Research instigated by the Civil Justice Council into the experience of vulnerable parties and witnesses across the civil courts identified the existence of a “data desert at the heart of the civil justice system”²³⁰, stating further that “as a result, there is no evidence to assess the extent to which the civil justice system is assisting or failing users”²³¹. The report’s authors recommended the introduction of a requirement to raise issues of vulnerability when commencing or responding to proceedings, or acknowledging service of proceedings. Most recently, the Civil Justice Council has launched a consultation²³² to explore the way in which the civil courts approach dealing with parties who may be lacking in capacity. Whilst the Equal Treatment Bench Book states that “courts should always investigate the question of capacity at any stage of proceedings when there is any reason to suspect it may be absent”²³³, the current Civil Procedure Rules “make no provision for cases in which a party’s capacity is in doubt:

²²⁸ HM Courts & Tribunals Service (2019) “Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations”, p.5. Available at: https://assets.publishing.service.gov.uk/media/5f801732e90e07741a3913c2/HMCTS_Making_the_most_of_HMCTS_data_v2.pdf

²²⁹ Howard, H. (2022) “Effective participation of mentally vulnerable defendants in the English magistrates’ courts: The crucial role of liaison and diversion”, *The Howard Journal of Crime and Justice* 61:2, June 2022, 203–220. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/hojo.12470>

²³⁰ Fouzder, M. (2020) “‘Data desert’ on vulnerable individuals in civil justice system”, *Law Society Gazette*, 20 February 2020. Available at: <https://www.lawgazette.co.uk/news/data-desert-on-vulnerable-individuals-in-civil-justice-system/5103153.article>

²³¹ Fouzder, M. (2020) “‘Data desert’”.

²³² Civil Justice Council (2023) “Procedure for Determining Mental Capacity in Civil Proceedings Working Group: Consultation Paper – December 2023”. Available at: <https://www.judiciary.uk/wp-content/uploads/2023/12/CJC-Capacity-Consultation.pdf>

²³³ Judicial College (2023) “Equal Treatment Bench Book – February 2021 edition”, p.155. Available at: <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>

how the issue is to be identified, investigated or resolved” – undermining attempts to secure effective participation.

3.2.6 Concerns have been raised about judicial practice and the conduct of hearings that are difficult to investigate due to an absence of published data

In recent years and months, concerns have been raised about judicial practice and treatment of parties during hearings, and the barriers that this might pose to effective participation. Particular concerns have been raised across areas of the justice system where court proceedings are not normally open to the public (e.g. the family courts) or where judgments are not routinely published. Research into the experience of appellants within the First Tier Immigration and Asylum Tribunal, published in 2021, reported that the atmosphere at many asylum hearings did not reflect the intentions expressed in the Equal Treatment Bench Book – that judges should create courtrooms that feel inclusive, understandable, comfortable, safe and respectful²³⁴. Instead, the study’s authors reported that across the 390 hearings they observed that “disorientation, distrust and disrespect often characterise asylum seekers’ court experiences” – undermining effective participation²³⁵. Efforts to understand and improve the experience of victims of crime during hearings have been hampered by the fact that most published research is based on relatively small cohorts²³⁶. Researchers and open justice advocates have argued that the decline in local court reporting has further undermined opportunities to scrutinise and challenge the conduct of proceedings – with the magistrates’ courts particularly badly impacted²³⁷. Issues relating to public access to transcripts, judgments, decisions and sentencing remarks also undermine the prospects of representative research into effective participation and the procedural justice of hearings. In 2022, the House of Commons Justice urged the government to take action to improve public access to judgments, enhance access to transcripts, record sentencing remarks in the magistrates’ courts and publish all Crown Court sentencing remarks in audio or written form²³⁸.

Issues have also been identified with the treatment of victims of domestic violence in private family law cases. In 2020, the MoJ published findings of research exploring the approach taken to assessing

²³⁴ Gill, N., et al. (2021) “The tribunal atmosphere: On qualitative barriers to access to justice,” *Geoforum* 119, 2021, 61–71. <https://doi.org/10.1016/j.geoforum.2020.11.002>

²³⁵ Gill, N., et al. (2021) “The tribunal atmosphere”.

²³⁶ Munro, V. E. (2022) “A Circle That Cannot Be Squared? Survivor Confidence in an Adversarial Justice System”, in: Horvath, M., and Brown, J., *Rape: Challenging contemporary thinking—10 years on*, Routledge, London.

²³⁷ Chamberlain, P., et al. (2021) “It is criminal: The state of magistrates’ court reporting in England and Wales”. *Journalism*, 22:9, 2404–2420. <https://doi.org/10.1177/1464884919868049>

²³⁸ House of Commons Justice Committee (2022) “Open justice: Court reporting in the digital age”, HC 339, 1 November 2022. Available at: <https://committees.parliament.uk/publications/31426/documents/176229/default/>

the risk of harm to children and parents in private family law children cases (the “Harm Report”²³⁹). The report found that family court proceedings “do not always adequately provide for the physical safety of victims of domestic abuse and frequently disregard their psychological well-being”²⁴⁰. Submissions from professionals further suggested that “the family courts have fallen behind the criminal courts in recognising and addressing the risks for victims of abuse and the barriers to victims giving their best evidence”²⁴¹. The report highlighted the paucity of “comprehensive and consistent data on cases raising issues of domestic abuse, child sexual abuse, and other safeguarding concerns” and recommended the creation of a national monitoring team within the office of the Domestic Abuse Commissioner to maintain oversight of the family courts’ performance²⁴². In 2021, the Domestic Abuse Commissioner together with the Victims Commissioner launched proposals for the creation of a new monitoring mechanism to improve the family court response to domestic abuse²⁴³. These proposals acknowledged that “the administrative data currently collected by HMCTS [...] as well as by Cafcass, contains very little of the data needed”²⁴⁴. A scoping study, to specify the data needed, identify where it is held and influence the development of solutions to support collection – for example through the new HMCTS Core Case Data system, or through creating a network of Domestic Abuse Champions to observe the conduct of hearings – is currently underway. In parallel, The President of the Family Division, Sir Andrew McFarlane, has also proposed improvements to the data that exists and is shared across the family justice system, launching a court reporting pilot and sponsoring a data mapping study.

²³⁹ Ministry of Justice (2020) “Assessing risk of harm to children and parents in private law children cases – Final Report”, June 2020. Available at: <https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>

²⁴⁰ Ministry of Justice (2020) “Assessing risk of harm to children and parents”, p.108.

²⁴¹ Ministry of Justice (2020) “Assessing risk of harm to children and parents”, p.108

²⁴² Ministry of Justice (2020) “Assessing risk of harm to children and parents”, p.11.

²⁴³ Domestic Abuse Commissioner and the Victims Commissioner (2021) “Improving the family court response to domestic abuse – Proposal for a new monitoring mechanism to monitor and report on domestic abuse in private law children proceedings”, November 2021. Available at: <https://domesticabusecommissioner.uk/wp-content/uploads/2021/11/Improving-the-Family-Court-Response-to-Domestic-Abuse-final.pdf>

²⁴⁴ Domestic Abuse Commissioner and the Victims Commissioner (2021) “Improving the family court response”, p.13.

4 Access to a decision in accordance with law

4.1 Overview

Access to justice requires not just that individuals are able to access the formal justice system and secure a fair and effective hearing, but that determinations made in respect of their case are in accordance with existing law. There is an established constitutional right of access to the courts, not as an end, but in order that disputes can be determined in accordance with the rights prescribed by the legislature²⁴⁵. The constitutional legitimacy of courts is inextricably linked to their ability to demonstrate the correct and impartial application of the substantive law to the facts of individual cases²⁴⁶.

Across the justice system in England and Wales concerns persist about bias in decision-making – access to new linked datasets from the magistrates’ and Crown Court is supporting research to better understand these issues across the criminal justice system. Despite these positive developments, gaps persist in both the collection of, and access to, data needed to understand bias in decision-making across the civil, family and administrative courts and tribunals. Whilst there has been progress in making judgments publicly available – most notably through the creation of the Find Case Law service hosted by The National Archives – lack of access to an agreed and complete record of decisions undermines opportunities for research.

4.2 Current challenges

4.2.1 Concerns persist about bias in decision-making – access to new linked datasets is supporting work to understand these issues better in criminal justice

Concerns about bias in both judicial office holder and jury decision-making persist. In 2017 the Lammy Review presented evidence of racial and ethnic disparities in decision-making in sentencing²⁴⁷. In 2022, the Centre on the Dynamics of Ethnicity published a report into “Racial Bias and the Bench”, which drew on research with 373 legal professionals. The study reported that “95% of the legal-professional survey respondents said that racial bias plays some role in the processes/and or the outcomes of the justice system”²⁴⁸, and that over half (52%) stated that they had witnessed one of more judges acting in a racially biased way in their judicial rulings, summing up, sentencing, bail,

²⁴⁵ Bogg, A. (2018) “The Common Law Constitution at Work: R (on the application of UNISON) v Lord Chancellor”, *Modern Law Review* 81:3, MLR, 509–538.

²⁴⁶ Twining, W. (1993) “Alternative to What? Theories of Litigation, Procedure and Dispute Settlement in Anglo-American Jurisprudence: Some Neglected Classics”, *The Modern Law Review* 56:3, Dispute Resolution. Civil Justice and Its Alternatives (May, 1993), 380–392.

²⁴⁷ See Lammy, D. (2017) “The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System”. London: Lammy Review, p.27. Available at: <https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>

²⁴⁸ Monteith, K., et al. (2022) “Racial bias and the bench – A response to the Judicial Diversity and Inclusion Strategy (2020–25)” Centre on the Dynamics of Ethnicity, University of Manchester.

comments and/or directions²⁴⁹. People from Black communities were most commonly cited as the targets of racial discrimination by judges. The researchers highlighted the almost “wholesale scholarly neglect” of the topic of racism in the English and Welsh judiciary – observing that in contrast to the other jurisdictions (including the US) “judicial racial bias and racism seem to be ‘off limits’ for researchers”²⁵⁰. Partial explanation for this dearth of research may be found in the fact that until recently, there has been an almost complete absence of linked datasets containing information that would support robust assessment of bias in judicial and jury decision-making. In criminal justice, however, investment made by the Economic and Research Council as part of the Ministry of Justice (MoJ) Data First programme²⁵¹ is being used to make available datasets that can support such analysis. Early analysis, led by academic researchers, is producing findings that appear to verify concerns (see Case Study 4.1).

Case study 4.1 – Ethnic inequalities in sentencing in the Crown Court: Evidence from the MoJ Data First criminal justice datasets²⁵²

Researchers from Manchester Metropolitan University combined four years of Data First datasets (2017–20) for the magistrates’ and Crown Court to explore ethnic disparities in the likelihood of a custodial sentence. The researchers adopted the 16+1 self-identified ethnic group classification from the 2001 census and used the Relative Rate Index (RRI) to examine disproportionality in court outcomes for defendants from Black and Minoritised Ethnic groups.

The researchers were able to control for factors relating to both the defendant (such as age, gender and deprivation) and their legal case (including plea, remand status, offence type and severity). Following their analysis, they concluded that “legally relevant factors do not fully explain disparities in sentencing between Black and Minoritised Ethnic groups and the White British group”. They found an independent association between ethnicity and the likelihood of imprisonment after controlling for other factors – reporting that: “A custodial sentence is 41% more likely for Chinese defendants than the White British, while a custodial sentence is between 16% and 21% more likely for defendants in the Asian groups compared with White British defendants. Similarly, a custodial sentence is between 9% and 19% more likely for defendants in the Black groups, and 22% more likely for White and Black African defendants than White British defendants after adjusting for other characteristics.”

²⁴⁹ Monteith, K., et al. (2022) “Racial bias”, p.6.

²⁵⁰ Monteith, K., et al. (2022) “Racial bias”, p.6.

²⁵¹ Lympelopoulou, K. (2022) “Ethnic Inequalities in sentencing in the Crown Court – Evidence from the MoJ Data First Criminal Justice datasets”, Data Insight – September 2022, ADR UK. Available at: https://www.adruk.org/fileadmin/uploads/adruk/Documents/Data_Insights/Data-Insight-Ethnic-Inequalities-Sentencing-Crown-Court.pdf

²⁵² Lympelopoulou, K. (2022) “Ethnic Inequalities”.

The analysis is now being extended to better understand differentials in remand and sentencing outcomes – with a focus on exploring the contribution of each of the factors identified in the model in explaining ethnic gaps in outcomes²⁵³.

The MoJ and the judiciary have also entered into bespoke data sharing agreements with individual academics to support analysis of bias in decision-making amongst jurors in cases involving allegations of rape. Research published by Professor Cheryl Thomas in 2023, based on 15 years of data from the Crown Court, found that the jury conviction rate for all rape charges increased by 75% between 2007 and 2021 (from 58% in 2007 to 75% in 2021)²⁵⁴. Thomas reported that “the finding that juries convict more often than they acquit defendants in rape cases was true regardless of the age or sex of the complainant” – countering concerns that juries are more reluctant to convict young men for rape than older men.

4.2.2 Despite these positive developments, gaps persist in both the collection of, and access to, data needed to understand bias in decision-making across other jurisdictions

Despite these positive developments, data needed to repeat such analysis for the civil and family courts and tribunals is not currently available through the Data First programme. The data made available for the family court does not include information on the ethnicity of children or families²⁵⁵. Although initiatives led by the Nuffield Family Justice Observatory using Cafcass data to better understand the demographic profiles of children and families in private family law proceedings²⁵⁶ have filled critical gaps in understanding, further work is needed. The Nuffield Family Justice Observatory therefore recommends the use of large-scale linked data (health, welfare and further demographic data) to better understand both the profiles of users of the family court and the decisions reached in their cases²⁵⁷. Data published from civil court databases (Caseman and PCOL) does not include data on ethnicity, and for Caseman, data on gender is inferred. As noted above – data to assess vulnerability (e.g. mental or physical ill-health) is not recorded, and neither is data to indicate whether a party has English as a foreign language (with the exception of parties who have requested communication in Welsh)²⁵⁸. At present, no data on the tribunals is available through the Data First programme.

²⁵³ Lympieropoulou, K. (2022) “Ethnic Inequalities”.

²⁵⁴ Thomas, C. (2023) “Juries, Rape and Sexual Offences in the Crown Court 2007-21”, Criminal Law Review, Issue 3, 2020

²⁵⁵ See Ministry of Justice (2022) “Guidance – Ministry of Justice: Data First”, updated 14 October 2022. Available at: <https://www.gov.uk/guidance/ministry-of-justice-data-first#datasets>

²⁵⁶ Cusworth, L., et al. (2021) “Uncovering private family law: Who’s coming to court in England? Summary”, London: Nuffield Family Justice Observatory. Available at: https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/nfjo_whos-coming-to-court_england_summary.pdf

²⁵⁷ Cusworth, L., et al. (2021) “Uncovering private family law”.

²⁵⁸ See: <https://datacatalogue.adruk.org/browser/dataset/811492/1/1358128>

4.2.3 Whilst there has been progress in making judgments available, lack of access to published decisions undermines opportunities for research

Judgments and decisions are a vital record of the operation of the courts and tribunals, and can yield important insights into judicial decision-making. Researchers have argued that “judicial decisions are the key public record of how law is applied in practice”²⁵⁹. However, successive reports have raised concerns about the lack of publicly available information about the decisions that are made by the courts.

This lack of transparency is a function of the opaque and ad-hoc arrangements that have developed over time to support the dissemination of information from the courts to the public. Historic under-investment in a publicly funded system for storing judgments and decisions and making them available for research and publication has led to the development of inefficient, manual workarounds. BAILII, the leading provider of free access to case law in the UK, has been forced to rely on direct feeds of information from individual judges and courts. In the absence of a complete record of decisions, with agreed criteria for determining publication, arrangements for providing free public access have necessarily privileged publishing only those judgments that are legally significant or deemed by judges to be of particular interest. Judgments in the county courts and decisions from the Employment Tribunal²⁶⁰ and Special Educational Needs and Disability Tribunal are not routinely published²⁶¹. The Registry Trust – the body responsible for maintaining the official statutory Register of Judgments, Orders and Fines – is prohibited by law from publishing the details of claimants²⁶². Consequently, a report published by the European Commission in 2018²⁶³ placed the UK bottom of a table ranking EU countries in terms of public access to judgments online.

These arrangements have also led to growing concerns about disparities in coverage between free to access publishers and subscription-only services. A study in 2022 found that only half of judicial review judgments are available via the British and Irish Legal Information Institute, compared with those available on Justis, a for-profit publisher²⁶⁴. This disparity matters at a fundamental level

²⁵⁹ Blackham, A. (2022) “When law and data collide: the methodological challenge of conducting mixed methods research in law”, *J. Law Soc.* 49 (Suppl. 1), S87–S104. <https://doi.org/10.1111/jols.12373>

²⁶⁰ Vols, M. (2019) “European law and evictions: property, proportionality and vulnerable people”, *Eur Rev Priv Law* 27:4, 719–752.

²⁶¹ See Ministry of Justice (2020) “Ministry of Justice: Data First”. Available at: <https://www.gov.uk/guidance/ministry-of-justice-data-first>

²⁶² McAteer, M. (2022) “Why creditors should back inclusion of claimant data”, Registry Trust. Available at: <https://registry-trust.org.uk/blog/credit-week-awareness-week-2022-why-creditors-should-back-call-inclusion-claimant-data-register-judgments-orders-and-fines/>

²⁶³ European Commission, Directorate-General for Justice and Consumers (2018) “The 2018 EU justice scoreboard”, Publications Office. Available at: <https://data.europa.eu/doi/10.2838/546593>

²⁶⁴ Byrom, N. (2023) “AI risks deepening unequal access to legal information”, *Financial Times*. Available at: <https://www.ft.com/content/2aba82c0-a24b-4b5f-82d9-eed72d2b1011>

because it means that those who are able to pay to access subscription-only services are able to access more complete and accurate information about the law and how it operates – creating additional barriers to research.

In this context, the announcement²⁶⁵ in June 2021 of the creation of a new repository and publication service for judgments, hosted by The National Archives, is of vital significance. The truly radical potential of the transfer of responsibility for the retention and publication of judgments to The National Archives lies in the opportunity that it provides to create an agreed, complete record of judgments and decisions made in courts and tribunals across England and Wales. A complete agreed record is vital to support informed debate and evidence-based policy development. One example of the negative impact of the absence of this complete record can be found in debates surrounding the introduction of the Judicial Review and Courts Bill. The lack of agreed, accurate data on the success rate of Court judicial reviews led to five different statistics being put forward and prompted intervention from the statistics regulator²⁶⁶.

The decision to create a new repository for the publication of judgments hosted by The National Archives provides a solid foundation but there is more to be done. Efforts led by the President of the Family Division to support the publication of a greater volume of family court judgments are a further positive step, but funding is needed to support the creation of mechanisms to assist with anonymisation. Further, to fully address issues, the MoJ must work with the judiciary to ensure that the transfer to The National Archives of responsibility for preservation and publication of judgments leads to comprehensive coverage of judgments and decisions, available in one place for the purposes of research. The Ministry should also reform existing transcription contracts to ensure that copies of judgments delivered orally are sent to the new repository.

²⁶⁵ Ministry of Justice and HM Courts & Tribunals Service (2021) “Boost for open justice as court judgments get new home”, 16 June 2021. Available at: <https://www.gov.uk/government/news/boost-for-open-justice-as-court-judgments-get-new-home>

²⁶⁶ Siddique, H. (2021) “Law Society sounds warning against judicial review bill”, *The Guardian*, Wednesday 21 July 2021. Available at: <https://www.theguardian.com/law/2021/jul/21/law-society-sounds-warning-against-judicial-review-bill>

5 Access to remedy and effective enforcement

5.1 Overview

Having received a decision in accordance with substantive law, it is vital that parties are able to access the remedy specified in that decision. In *R(Unison) v Lord Chancellor* [2017] UKSC 51 [96] it was established that the right of access to justice can be violated if changes to the system render it “futile or irrational to bring a claim”. Failure to put in place mechanisms for effective enforcement of decisions will naturally impact on calculations made by litigants when deciding whether it is rational or not to initiate a claim. As such, failure to ensure that remedies are secured, and decisions enforced, can undermine access to justice.

Across all jurisdictions, there is a lack of data to understand the scale and impact of non-compliance with orders and decisions. Concerns have been raised that vulnerable litigants or those who are on low incomes experience particular issues in securing access to remedy and effective enforcement. Persistent concerns about the efficacy of civil court enforcement processes have been raised that have not been acted upon, and planned changes proposed as part of the HM Courts and Tribunals Service (HMCTS) digital court reform programme have been delayed. Information on why warrants are requested and granted in the magistrates’ courts is not routinely recorded – undermining attempts to ensure that changes in policy are being complied with.

5.2 Current challenges

5.2.1 There is a lack of data to understand the scale and impact of non-compliance with orders

In 2016, the Law Commission of England and Wales led an inquiry into the enforcement of financial orders in the family court. The Law Commission’s research identified significant gaps in the data available about enforcement, including the absence of data on the total amount of money that goes unpaid each year through non-compliance with family financial orders²⁶⁷. The Law Commission observed that data on the number of enforcement cases is likely to underestimate the true scale of orders not complied with, as this does not account for the number of individuals who do not receive what they are owed, but do not take enforcement action due to the complexity and expense associated with the process²⁶⁸. Further, the Law Commission’s Research highlighted the ways in

²⁶⁷ The Law Commission (2016) “Enforcement of Family Financial Orders”. Available at: https://cloud-platform-e218f50a4812967ba1215eaece923f.s3.amazonaws.com/uploads/sites/30/2016/12/lc370_enforcement_family_financial_orders_summary.pdf

²⁶⁸ The Law Commission (2016) “Enforcement of Family Financial Orders”.

which the lack of information about debtors and their circumstances undermines attempts by creditors and the courts to identify the most effective options for enforcement. Research published by Hitchings et al. (2021) further highlighted the lack of data to understand compliance with arrangements made in respect of ongoing child maintenance, stating that the extent of compliance with the duty to support one's dependent children has remained "patchy and contested"²⁶⁹. Across the civil courts, whilst statistics are published about applications for warrants and enforcement on a standalone basis, this is not linked to previous case data. As such, it is difficult to understand trends and patterns in non-compliance with orders that generate enforcement action.

5.2.2 Concerns have been raised that vulnerable litigants or those who are on low incomes experience particular issues securing effective enforcement of orders

Researchers have identified issues with the ability of victims of domestic violence to secure police enforcement of civil protection orders issued by the family courts²⁷⁰. Empirical research, published in 2020, suggested that breaches of Non-Molestation Orders were less likely to be acted upon by police than Restraining Orders, and further, that poor police data was preventing the enforcement of civil orders. The researchers reviewed 400 police domestic violence incident files and found that in 77% of these files it was not known whether a Domestic Violence Protection Order was in place. This contrasted with accounts provided by survivors whose cases were reported in the files. Since this research was undertaken, a series of practice directions have been put in place to support better reporting of the existence of orders to the police, but a promised evaluation of the efficacy of these practice directions in improving data quality and increasing enforcement has not been published.

Further to this, a recent systematic review of the effectiveness of civil preventive orders, including Anti-Social Behaviour Injunctions, found limited evidence to support their efficacy and further highlighted the absence of a reporting mechanism for data on the use of, and compliance with, these orders as undermining of research²⁷¹. In the tribunals, issues with enforcement have been reported

²⁶⁹ Hitchings, E., et al. (2021) "Fair Shares? Sorting out money and property on divorce: Report", p.236. Available at: <https://www.nuffieldfoundation.org/wp-content/uploads/2021/03/Fair-Shares-report-final.pdf>

²⁷⁰ Bates, L., and Hester, M. (2020) "No longer a civil matter? The design and use of protection orders for domestic violence in England and Wales", *Journal of Social Welfare and Family Law* 42:2, 133–153, p.139. <https://doi.org/10.1080/09649069.2020.1751943>

²⁷¹ Rodgers, Z. (2023) "Understanding the policing practices associated with civil preventive orders and notices in England and Wales to regulate the conduct of society's perceived deviant others: A systematic review", *Policing: A Journal of Policy and Practice* 17, 2023, paad033. <https://doi.org/10.1093/police/paad033>

in the Employment Tribunal – research conducted by the Resolution Foundation and published in 2023 revealed that 51% of awards are not paid²⁷².

5.2.3 Persistent concerns about the efficacy of civil court enforcement processes have been raised that have not been acted upon, and planned changes contemplated as part of the HMCTS digital court reform programme that would have improved the transparency of the process have been delayed

In 2015, an Interim Review of the structure of the Civil Courts, led by Lord Justice Briggs, described enforcement as “the Achilles heel, of the civil courts, or at least of the County Court”²⁷³ – highlighting both the expense associated with the process and the significant delays experienced by those seeking to enforce judgments. Plans to institute significant reforms to improve people’s access to enforcement were announced as part of the HMCTS change portfolio in 2016²⁷⁴. The Transforming Compliance and Enforcement Programme was intended to address issues with enforcing court orders and collecting historic criminal debt across the whole of the justice system. A two-year contract for a supplier to deliver reforms to civil enforcement, worth nearly £10m, was awarded to Solirius Consulting in October 2018²⁷⁵. A summary of the work described the project as delivering “a transformed Civil Enforcements service for all users seeking to implement judgements”²⁷⁶ across civil, family and tribunals proceedings. In addition to supporting claimants to access debts from third parties, the solution was intended to support defendants to understand their options and what was expected of them should bailiffs seek to undertake physical enforcement. Crucially the project was also intended to improve the information available to bailiffs and court staff, giving HMCTS staff “visibility of previous interactions with claimants and defendants” plus access to “relevant information from other government departments” to help them decide on next steps²⁷⁷. However, by January 2019, HMCTS announced that it was suspending the Transforming Compliance and Enforcement Programme as part of efforts to remove costs of £58m from the overall cost of the court reform programme, and to deliver remaining change projects by 2023²⁷⁸. At February 2024, it is unclear what, if any, reforms will be delivered to civil enforcement by the time

²⁷² Judge, L., and Slaughter, H. (2023) “Enforce for good: Effectively enforcing labour market rights in the 2020’s and beyond”, April 2023, p.13. Available at: <https://www.resolutionfoundation.org/app/uploads/2023/04/Enforce-for-good.pdf>

²⁷³ Briggs, L. J. (2015) “Civil Courts Structure Review Interim Report”, p.67.

²⁷⁴ National Audit Office (2023) “Report: Progress on the courts and tribunals reform programme – HM Courts & Tribunals Service”, Session 2022–23, 23 February 2023, HC 1130, p.17. Available at: <https://www.nao.org.uk/wp-content/uploads/2023/02/progress-on-courts-and-tribunals-reform-programme-1.pdf>

²⁷⁵ Digital Marketplace (2018) “HM Courts and Tribunals Service (HMCTS) Digital Change Programme – HMCTS Reform – Civil Enforcements”. Available at: <https://www.digitalmarketplace.service.gov.uk/digital-outcomes-and-specialists/opportunities/7139>

²⁷⁶ Digital Marketplace (2018) “HM Courts and Tribunals Service”.

²⁷⁷ Digital Marketplace (2018) “HM Courts and Tribunals Service”.

²⁷⁸ National Audit Office (2023) “Report: Progress on the courts and tribunals reform programme – HM Courts & Tribunals Service”, Session 2022–23, 23 February 2023, HC 1130, p.17. Available at: <https://www.nao.org.uk/wp-content/uploads/2023/02/progress-on-courts-and-tribunals-reform-programme-1.pdf>

HMCTS is intended to conclude in March 2024. A blog²⁷⁹, published by the Chief Executive of HMCTS in March 2023, stated that “delivery of remaining services in online civil money claims, civil enforcement, bulk claims and damages” will be completed over the next year. Detailed information on the scope of changes to civil enforcement was not published alongside this update.

5.2.4 Information on the reasons why warrants are requested or granted in the magistrates’ courts is not routinely recorded

An investigation published by the *i* newspaper in May 2023 revealed serious issues with the data that is available about warrants requested and granted in the magistrates’ courts. In December 2022 the *i* reported that court warrants were being used at scale by energy companies to forcibly install pre-payment meters in homes where people are in debt. Pre-payment meters are a more expensive way of paying for energy, and fuel poverty campaigners raised concerns that this practice of forcible switching would put vulnerable people at risk. The *i* found evidence that debt collection agents were applying for, and being granted, applications for warrants in bulk in a matter of minutes, without the court having oversight of any vulnerability or health issues that might provide mitigation under the Ofgem code of practice²⁸⁰. In February 2023, the presiding judge for England and Wales told courts to stop issuing warrants that enabled the force-fitting of pre-payment meters in homes with “immediate effect”. However, when the *i* issued a Freedom of Information request in May to find out whether the practice had stopped, they were told that data on the reasons why warrants were granted was not recorded in the magistrates’ courts management information system, meaning that the Ministry of Justice could not supply the data.

²⁷⁹ Goodwin, N. (2023) “HMCTS reform: achievements, challenges and next steps”, Blog – Inside HMCTS. Available at: <https://insidehmcts.blog.gov.uk/2023/03/20/hmcts-reform-achievements-challenges-and-next-steps/>

²⁸⁰ Kirby, D. (2023) “Energy firms are still forcing entry into homes, but Government officials don’t know why”, *The i*. Available at: <https://inews.co.uk/news/energy-firms-warrants-forced-entry-moj-officials-2333669>

6 Cross-cutting issues

6.1 Overview

Three cross-cutting issues undermine attempts to improve people's access to justice in England and Wales:

Firstly, problems generated by the structure, culture, leadership and funding of both the Ministry of Justice (MoJ) and its component agencies have undermined attempts to put in place solutions to sustainably address access to justice challenges. In particular, the experience of attempting to deliver the £1bn programme of digital court reform, initiated in 2016, has exposed inadequacies in the framework agreement between the judiciary and MoJ that undermine the effective administration of the courts.

Secondly, the status of the MoJ as a collection of independent agencies, and the incentives that this structure creates, undermine attempts to address issues with data collection, linkage, sharing and governance. The justice system has more data gaps than other public services²⁸¹, and persistent issues with both data quality and linkage frustrate attempts to understand people's journeys. Consequently, and even though the MoJ reportedly benefits from some of the most advanced data-science capabilities in government²⁸², data is not being used to its full potential to improve operations and deliver evidence-based solutions to access to justice challenges.

Thirdly, and despite recent positive initiatives such as the creation of the Nuffield Family Justice Observatory, the justice system does not benefit from a broad network of independent evidence intermediaries and think tanks, with the skills and resources to robustly evaluate changes to the system. Civil and administrative justice are particularly poorly served in this regard. Critical gaps in regulation and infrastructure undermine attempts to ensure that the digital tools and technologies promoted by justice system leaders, and deployed with the aim of increasing access to justice, are effective and fair.

6.2 Issues relating to the structure, culture, leadership and funding of the MoJ and its agencies

²⁸¹ Pope, T., Freeguard, G., and Metcalfe, S. (2023) "Doing data justice: Improving how data is collected, managed and used in the justice system", Institute for Government. Available at:

<https://www.instituteforgovernment.org.uk/sites/default/files/2023-09/Doing-data-justice.pdf> (accessed 6 Feb 2024).

²⁸² Pope, T., et al. (2023) "Doing data justice", p.5.

6.2.1 The MoJ's overall expenditure is low, relative both to its size and to other departments, with prison and probation services accounting for the majority of expenditure

Despite the fact that the MoJ has been described as “one of the UK’s largest and most complex departments” it is one of the smaller central government departments by expenditure. In 2021/22 its total expenditure was reported as £12.4bn²⁸³, far behind health and welfare. The MoJ was created in 2007 as a “multi-agency partnership” – taking over responsibility for prisons and probation from the Home Office and combining this with the remit of the former Department for Constitutional Affairs²⁸⁴. The MoJ delivers its objectives through numerous public bodies covering criminal, civil and family justice systems in England and Wales. In 2021/22 nearly half of the MoJ’s expenditure was dedicated to the prisons and probation services (£5,022m). Over the same period, expenditure on HM Courts and Tribunals Service (HMCTS) stood at £2,612m – just over half of what was spent on prisons. In practice, it has been argued that departmental leaders tend to focus on prisons and criminal justice, at the expense of other areas of policy, particularly access to civil, administrative and family justice. Research consisting of interviews with over 100 stakeholders across the MoJ, published in 2018, characterised the department as not one department but four, each with a different culture and set of priorities focus: “a liberal department centred upon fairness and justice, one determined to achieve the rehabilitation of offenders, one obsessed with public protection and one steeped in new managerialism”²⁸⁵.

6.2.2 The structure of the department can lead to competition between agencies and create perverse incentives that undermine the ability to set and deliver effective access to justice policy

The structure of the department, which has been described as “fragmented”²⁸⁶, siloed and a “byzantine bureaucracy”²⁸⁷ has, it is argued, created internal tensions and a delivery environment in which different parts of the department “co-exist and clash; complement and compete”²⁸⁸. Primary responsibility for monitoring, maintaining and improving access to justice is spread across multiple

²⁸³ Gibson, B. (2007) *The New Ministry of Justice: An Introduction*, Winchester: Waterside Press.

²⁸⁴ Gash, T., and McCrae, J. (2010) “Transformation in the Ministry of Justice – 2010 interim evaluation report”, Institute for Government. Available at: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Transformation%20in%20the%20Ministry%20of%20Justice%201st%20Interim%20Report.pdf>

²⁸⁵ Annison, H. (2018) “What is Penal Policy? Traditions and Practices in the UK Ministry of Justice”, in: Rhodes, R. (eds) *Narrative Policy Analysis. Understanding Governance*, Palgrave Macmillan, Cham, p.35. https://doi.org/10.1007/978-3-319-76635-5_2

²⁸⁶ Pope, T., Freeguard, G., and Metcalfe, S. (2023) “Doing data justice: Improving how data is collected, managed and used in the justice system”, Institute for Government, p.5. Available at: <https://www.instituteforgovernment.org.uk/sites/default/files/2023-09/Doing-data-justice.pdf> (accessed 6 Feb 2024).

²⁸⁷ Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme: Independent Review”, 5 February 2016, p.17. Available at: <https://www.transformjustice.org.uk/wp-content/uploads/2023/11/BCG-Report-for-Release.pdf>

²⁸⁸ Annison, H. (2018) “What is Penal Policy? Traditions and Practices in the UK Ministry of Justice”, in: Rhodes, R. (eds) *Narrative Policy Analysis. Understanding Governance*, Palgrave Macmillan, Cham, p.35. https://doi.org/10.1007/978-3-319-76635-5_2

agencies and teams – including the Legal Aid Agency, various teams within MoJ policy and HMCTS. Researchers have argued that this structure encourages cost-shifting between agencies and reduces opportunities for developing a coherent approach to access to justice. One example of this may be found in the approach to legal aid cuts – in 2019, Richardson and Speed argued that reforms to the scope of legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2013 (LASPO) have “seemingly only succeeded in passing the burden from one publicly funded agency, the Legal Aid Agency, to another, HM Courts and Tribunals Service”²⁸⁹. In 2024 the findings of the National Audit Office review of the MoJ’s management of legal aid appeared to endorse this view – the National Audit Office concluded that the MoJ still does not know the full costs and benefits of LASPO as it has not made progress in understanding how reforms may have affected costs across the wider justice system, including costs borne by HMCTS²⁹⁰. The HMCTS-led court reform programme also highlighted the existence of tensions between MoJ and its agencies – an independent review led by the Boston Consulting Group reported that the greatest challenges to the delivery of reforms lay in the structural and cultural environment that the reform programme operated in²⁹¹. The Boston Consulting Group report specifically highlighted the following as detrimental to the effective delivery of the court reform programme: complex working relationships, issues with senior stakeholder alignment and decision-making, lack of cooperation and lack of trust between HMCTS and MoJ, and failure to act as a joined-up team across MoJ and HMCTS senior leadership²⁹².

6.2.3 The experience of the delivery of the HMCTS digital reform programme has exposed deficiencies in the framework agreement between the judiciary and MoJ intended to support the effective administration of the courts

The Constitutional Reform Act 2005, the Tribunals and Court Enforcement Act 2007 and the framework agreement between the Lord Chief Justice, the Senior President of Tribunals and the MoJ that followed, established the administration of the courts and tribunals as an explicitly partnership-based system. Under this model, HMCTS is formally jointly accountable to both the executive and

²⁸⁹ Richardson, K. L., and Speed A. K. (2019) “Restrictions on legal aid in family law cases in England and Wales: creating a necessary barrier to public funding or simply increasing the burden on the family courts?” *Journal of Social Welfare and Family Law* 41:2, 135–152. <https://doi.org/10.1080/09649069.2019.1590898>

²⁹⁰ National Audit Office (2024) “Government’s management of legal aid – Ministry of Justice, Legal Aid Agency”, Session 2023–24, 9 February 2024, HC 514, p.6. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

²⁹¹ Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme: Independent Review”, 5 February 2016, p.15. Available at: <https://www.transformjustice.org.uk/wp-content/uploads/2023/11/BCG-Report-for-Release.pdf>

²⁹² Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme”, pp.16–17.

the judiciary²⁹³ for the delivery of its functions. In practice, however, it has been argued that the partnership is “weighted more in favour of the executive than the judiciary”²⁹⁴. This imbalance is partly a function of funding arrangements – the Lord Chancellor is responsible for providing resources, buildings and administration for the courts, and is accountable to Parliament (and therefore the electorate) for the exercise of that function²⁹⁵. The MoJ therefore “has the ultimate say, following negotiations with HM Treasury, over the funding to be provided from general taxation, to finance HMCTS”²⁹⁶. Under the framework agreement, the judiciary are neither responsible for the provision of resources, buildings or administration, or accountable to Parliament for the decisions taken in managing HMCTS.

In addition, the status of HMCTS as an executive agency of the MoJ means that it is structurally integrated into the MoJ, subject to central government procurement processes, reliant on MoJ for certain capabilities (including estates management, Human Resources and IT)²⁹⁷. Further, the administrative staff of HMCTS are civil servants who, under statute, owe their primary duty to the government of the day²⁹⁸. As a consequence, in practice, greater weight is given to the priorities of government – reducing the cost of the system – than those of the judiciary²⁹⁹. This has led expert commentators to conclude that HMCTS publicly operates on a basis “that could be reasonably argued to mask the reality”³⁰⁰. Despite, or perhaps because of, this imbalance, upward stakeholder management occupies a disproportionate amount of the HMCTS Chief Executive’s time (around 70%), undermining operational efficiency³⁰¹. In the context of the delivery of the HMCTS reform programme – already extremely ambitious in terms of scale, scope and timeframe – the structural issues created by the framework agreement wasted time, created confusion, reduced transparency, delayed decision-making and undermined the efficient delivery of the programme³⁰². In this context, some have argued that shifting towards an administratively autonomous system, led by the judiciary,

²⁹³ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration – English and Welsh Courts, UK Tribunals and HMCTS”, draft paper – available on request from author. The author of this paper is hugely grateful to Professor Sorabji for his generosity, insight and support in drafting this section of the paper.

²⁹⁴ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration”, p.1.

²⁹⁵ Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration”, p.21.

²⁹⁶ Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration”, p.22.

²⁹⁷ Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration”, p.22. See also Gee, G. (2016) “Judicial Policy in England and Wales: a new regulatory space”, in Devlin, R., and Dodek, A. (2016) *Regulating Judges – Beyond Independence and Accountability*, Elgar, pp.157–158; and Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme: Independent Review”, 5 February 2016, p.17 (available at: <https://www.transformjustice.org.uk/wp-content/uploads/2023/11/BCG-Report-for-Release.pdf>).

²⁹⁸ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration – English and Welsh Courts, UK Tribunals and HMCTS”, draft paper – available on request from author, p.22.

²⁹⁹ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration”, p.23.

³⁰⁰ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration”, p.23.

³⁰¹ Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme: Independent Review”, 5 February 2016, p.16. Available at: <https://www.transformjustice.org.uk/wp-content/uploads/2023/11/BCG-Report-for-Release.pdf>

³⁰² Boston Consulting Group (2016) “HM Courts and Tribunals Service Reform Programme”, pp 17

would address these issues and increase innovation, transparency and accountability (as has been the case in South Australian courts, American state courts and Singaporean courts)³⁰³.

6.2.4 Existing judicial leadership and management structures are not fit for purpose

Under the Constitutional Reform Act 2005 and the Tribunals, Courts and Enforcement Act 2007, the Lord Chief Justice and Senior President of Tribunals were given significant responsibilities for a range of leadership and management functions³⁰⁴. These responsibilities include: representing the judiciary's views to Parliament and the government; putting in place structures to secure the well-being, training and guidance of the judiciary; creating structures for the effective deployment of judges; and the allocation of work in the courts³⁰⁵. The Senior President of Tribunals is also responsible for ensuring that the tribunals are accessible, fair and efficient, and developing innovative methods for dispute resolution, alongside supporting the retention of expert tribunal members³⁰⁶. The Lord Chief Justice and Senior President of Tribunals also bear responsibility for issuing Practice Directions, making judicial appointments and judicial discipline, alongside their role in overseeing HMCTS outlined above. Additionally, the Lord Chief Justice is responsible for promoting judicial diversity.

The power to deliver these responsibilities is vested in the Lord Chief Justice and Senior President of Tribunals, and is modelled on arrangements established for government ministers³⁰⁷. However, unlike government ministers, who can operate through their senior civil servants under the *Carltona* doctrine³⁰⁸, only those judges who are expressly provided with delegated functions can exercise functions ascribed to the Lord Chief Justice and Senior President of Tribunals. Whilst since 2007 the Lord Chief Justice, Heads of Division and Senior President of Tribunals have been provided with a small group of civil servants to support them to deliver their functions, they cannot delegate responsibility or decision-making to them in the way that government ministers can. Sir Ernest Ryder, the then Senior President of Tribunals, summarised the means through which the judiciary give effect to their responsibilities as follows:

- The Judicial Office provides executive, management, human resources policy and legal support for the senior judiciary to help enable them to carry out their duties effectively.

³⁰³ See Canadian Justice Council (2006) "Alternative Models of Court Administration", September 2006. Available at: https://cjc-ccm.ca/cmslib/general/news_pub_other_Alternative_en.pdf

³⁰⁴ See Ryder, E. (2018) "The duty of leadership in judicial office", Centre for Contemporary Coronal Law, 22 October 2018. Available at: <https://www.pmb.ox.ac.uk/sites/default/files/inline-files/speech-by-spt-leading-judiciary-sept2018-v1.pdf>

³⁰⁵ Ryder, E. (2018) "The duty of leadership", p.2.

³⁰⁶ Ryder, E. (2018) "The duty of leadership", p.2.

³⁰⁷ See Sorabji, J. (2023) "Redesigning the Framework of Judicial and Court Administration – English and Welsh Courts, UK Tribunals and HMCTS", draft paper – available on request from author, p.20.

³⁰⁸ *Carltona v Commissioner of Works* [1943] 2 ALL ER 560.

- The various duties and leadership functions are carried out by a wide-range of members of the judiciary, identified on the basis of their specific expertise or interest, either under express delegation or via arrangements put in place by the Lord Chief Justice and Senior President.
- High level policy decisions are considered by the Judicial Executive Board or Tribunals Executive Board, with ultimate decision-making being undertaken by the Lord Chief Justice or Senior President³⁰⁹.

The net effect of these arrangements is to concentrate administrative decision-making in the hands of a small group of senior judges which, it is argued, “militates against the creation of efficient system-making akin to those in government”³¹⁰. Those members of the judiciary responsible for delivering leadership functions are required to do so alongside providing judicial case management, adjudication and judgment writing³¹¹. Overseeing delivery of the HMCTS digital reform programme placed further burdens on judicial time. In short, under existing arrangements, the senior judiciary are inadequately resourced and supported to deliver the functions they are responsible for.

Existing arrangements also undermine transparency and accountability, which are vital to support the development and delivery of solutions to the access to justice challenges identified in Sections 1–5 of this report. Under current arrangements, the judiciary are exempt from Freedom of Information legislation and therefore from public examination of their administrative and management arrangements. This undermines opportunities for ongoing evidence-based scrutiny, which – it has been argued – is critical both to the delivery of effective reforms³¹² and the vital task of escaping from the current cycle whereby reforms are only reviewed periodically³¹³ – if at all.

³⁰⁹ See Ryder, E. (2018) “The duty of leadership in judicial office”, Centre for Contemporary Coronal Law, 22 October 2018, p.5. Available at: <https://www.pmb.ox.ac.uk/sites/default/files/inline-files/speech-by-spt-leading-judiciary-sept2018-v1.pdf>

³¹⁰ See Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration – English and Welsh Courts, UK Tribunals and HMCTS”, draft paper – available on request from author, p.20.

³¹¹ Sorabji, J. (2023) “Redesigning the Framework of Judicial and Court Administration”, p.20.

³¹² See Ryder, E. (2018) “The duty of leadership in judicial office”, Centre for Contemporary Coronal Law, 22 October 2018, p.11. Available at: <https://www.pmb.ox.ac.uk/sites/default/files/inline-files/speech-by-spt-leading-judiciary-sept2018-v1.pdf>

³¹³ See Ryder, E. (2018) “The duty of leadership in judicial office”, p.11.

6.3 Data collection and use

6.3.1 Issues with the MoJ's leadership and structure impede the creation and delivery of a cross-system data strategy.

The challenges identified above in relation to the structure of the MoJ are reflected in the way the department collects, stores, uses and shares data. The “fragmented” system of multiple data owners created by the department’s structure pose a “unique” challenge to linking relevant data to understand people’s experience of the justice system³¹⁴. Each agency has its own set of priorities and objectives, and collects data in different ways, making it difficult to understand the challenges experienced by different users of the justice system and to make changes to improve them (see Figure 6.1 below, which describes the issues in linking data across the justice system to understand the experience of victims of crime). Issues with leadership and the culture of competition between different agencies impede attempts to put in places processes and systems that would enable a “system-wide” view of the challenges people face in accessing the justice system. Leaders of operational agencies failed to establish data collection as a priority, or developed approaches that meet only their needs, rather than the needs of users or the system as a whole. Developing and agreeing a system-wide data strategy, modelled on the National Data Strategy agreed by the senior leadership of each agency, is critical to meeting this challenge. A 2023 report, published by the Institute for Government, argued that the process of agreeing cross-system-wide strategy could help to reveal and resolve tensions between agencies³¹⁵.

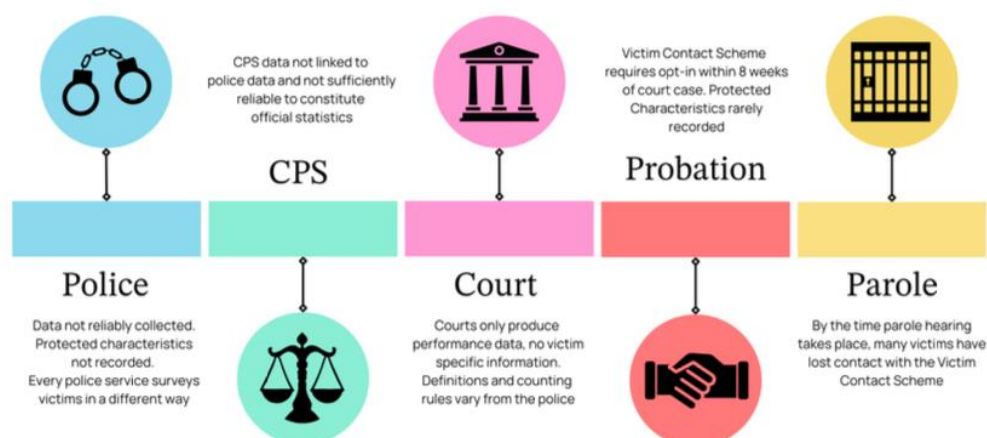


Figure 6.1 – Issues with data about victims across the Criminal Justice System

³¹⁴ Pope, T., Freeguard, G., and Metcalfe, S. (2023) “Doing data justice: Improving how data is collected, managed and used in the justice system”, Institute for Government. Available at: <https://www.instituteforgovernment.org.uk/sites/default/files/2023-09/Doing-data-justice.pdf> (accessed 6 Feb 2024).

³¹⁵ Pope, T., et al. (2023) “Doing data justice”.

Whilst the MoJ is proud of the flagship data linking programmes it supports – including the UK Prevention Research Partnership’s Vision programme, the ADR-UK Data First programme, the Justice Data Lab (with New Philanthropy Capital) and the Better Outcomes through Linked Data (BOLD) programme – each of these programmes has limited scope and capacity. The Data First programme only links and shares historic data – it is not clear whether data from reformed case management systems developed as part of HMCTS will be added. Crucially, these programmes are not funded in perpetuity – and only the BOLD programme is fully funded by the department. Other programmes rely significantly for funding from research councils and charitable organisations and as such, are vulnerable to changes in priorities.

The lack of sustained investment in data sharing and linking is symptomatic of a wider challenge – that the MoJ has failed to embed a culture of learning and evidence into the design and delivery of either its policy programmes or operational services. The Institute for Government observed in 2023: “insights from analysis fail to feed into policy action”, adding further that policy teams often fail to communicate their priorities to analysts³¹⁶. Work to communicate the benefits of existing data linking and sharing initiatives, and mechanisms for feeding the insights generated from this work to policy professionals, the judiciary, senior leaders and operational staff should be prioritised, to grow support for initiatives of this kind. Investing in trustworthy data governance that is respectful of any constitutional issues raised by work to link and share data across agencies, is vital to ensure continued support. The role of the Senior Data Governance Panel (SDGP)³¹⁷ should be extended and the panel properly resourced to support this work. The SDGP should be complemented by a Justice Data Advisory Group, as suggested by the Institute for Government in their 2023 report – this group should consist primarily of users of justice data and representatives of communities and organisations impacted by justice system data use. The Justice Data Advisory Group should function as a forum for raising issues with justice data – which can then be examined by the SDGP and addressed by the department.

6.3.2 Systemic data gaps persist, undermining the potential of investments in data sharing initiatives

Recent years have seen the MoJ focus on projects to improve their ability to link and share the data that they already hold. This focus is welcome and important, but just as crucial is action to address the systemic gaps that exist in the data that is currently collected and used. Table 6.I summarises the data gaps identified whilst researching this report – the fact that this list is indicative, rather than

³¹⁶ Pope, T., et al. (2023) “Doing data justice”.

³¹⁷ HM Courts & Tribunals Service and Ministry of Justice (2023) “Data governance panel formed to improve use of court and tribunals data”. Available at: <https://www.gov.uk/government/news/data-governance-panel-formed-to-improve-use-of-court-and-tribunals-data>

exhaustive, is instructive as to the scale of the problem. Urgent and concerted action is required to address these gaps – this includes providing support for, and building the capacity of, not-for-profit agencies and legal advice organisations to collect, manage and use data. Unless these steps are taken, researchers, policymakers, justice system leaders, professionals and the public will continue to be impeded in their attempts to understand and address barriers to access to justice.

Table 6.1 – Summary of data gaps identified at Sections 1–5

All stages
<ul style="list-style-type: none"> • Linked data to understand the journeys of people, not the progress of cases • Data on the demographic and protected characteristics of users • Data to identify vulnerable users (e.g. data on age, mental ill-health or physical impairment) • Data about victims and witnesses
Access to legal information and advice
<ul style="list-style-type: none"> • Data on levels of unmet need for legal information and advice, particularly at regional and local level • Data on the case characteristics of individuals with unmet need for legal information and advice • Data on the demographic characteristics of the people who access advice, to understand the adequacy of existing provision in meeting the needs of particular groups • Data on whether those who are entitled to access legal aid funded advice can access it • Routine financial data to monitor the sustainability of the legal aid provider base • Accurate data to compare the supply of legal aid funded advice with existing demand • Data to understand referral pathways within and between advice providers • Data to understand the scale and impact of public reliance on AI-assisted legal advice and information tools • Data to compare the quality, efficacy and cost benefit of different models of legal advice, disaggregated by demographic and case characteristics of users
Access to the formal legal system
<p><i>Criminal justice</i></p> <ul style="list-style-type: none"> • Data on case type, case duration and case complexity, needed to understand the court backlog • Data to track individual offences or defendants across the criminal justice system • Data on cases by plea type • Data on the reasons for vacated trials • Timeliness data for different offences and courts <p><i>Civil, administrative and family justice</i></p> <ul style="list-style-type: none"> • Data on the composition of cases in the backlog • Data on hearing duration • Data on mode of hearing • Data on defendants who do not engage in civil proceedings • Data on characteristics of users of mediation, and detailed outcomes from mediated processes • Data to understand the impact of mediation to overall timeliness figures for the civil courts • Characteristics of families appearing before the Special Educational Needs and Disability Tribunal • Data on children's living arrangements at the time of application to the family court • Data on allegations of domestic abuse or safeguarding concerns • Data to measure public trust and confidence in civil and family courts and tribunals <p><i>Cross-jurisdiction</i></p> <ul style="list-style-type: none"> • Longitudinal data measuring changes in trust and confidence in the justice system over time, disaggregated by legal jurisdiction, UK region, respondent demographics and level of experience with the justice system
Access to a fair and effective hearing
<p><i>Criminal justice</i></p> <ul style="list-style-type: none"> • Data to monitor levels of legal representation in the magistrates' courts • Routine data on user perceptions of procedural justice across remote and in-person hearings and digital services • Objective data to monitor the procedural fairness of hearings • Data to monitor the quality and performance of technology used to support remote hearings • Data recording technical issues with remote hearings • Data on the Single Justice Procedure – including users, cases, mitigation submitted, mitigation received and outcomes • Sentencing remarks in the magistrates' courts

Civil, administrative and family justice

- Data on legal representation across the tribunals
- Routine data on user perceptions of procedural justice across remote and in-person hearings, and digital services
- Objective data to monitor the procedural fairness of hearings
- Data to monitor the quality and performance of technology used to support remote hearings
- Data recording technical issues with remote hearings
- Data on whether parties have English as a foreign language across the tribunals

Access to a decision in accordance with law

- An agreed complete record of judgments and decisions made across the courts and tribunals in England and Wales

Access to remedy/access to effective enforcement

- Data on the amount of money unpaid each year in relation to family financial orders
- Data on applications for enforcement and warrants linked to previous case data
- Data on compliance with civil preventive orders (e.g. Anti-Social Behaviour Injunctions, Domestic Violence Prevention Notices)
- Data on the subject matter of / reasons why warrants are granted in the magistrates' courts

6.4 Research and evidence infrastructure

6.4.1 There are significant gaps in the research and evidence infrastructure needed to support a transition to evidence-based policy-making

Recent years have seen significant investment in research and evidence intermediary initiatives in the justice space, including the Nuffield Family Justice Observatory. However, whilst there are several think tanks and What Works Centres focused on youth offending, policing and other areas of criminal justice, gaps exist at the nexus of research and policy, and in the areas of civil and administrative justice. Access to justice policy, and the justice system more generally, has not had the benefit that would come from initiatives that are equivalent to the National Institute for Health and Care Excellence, which has been vital in raising standards in clinical practice and promoting evidence-based healthcare. England and Wales has fallen behind other jurisdictions in areas where it once led – for example in the conduct of research to understand people’s experience of, and response to, legal need. Finally, there are a dearth of organisations to support the development of best practice in court administration and judicial practice – there is no equivalent in England and Wales to the National Centre for State Courts in the USA, or the Association of Family and Conciliation Courts. Delivering sustainable improvements in access to justice requires further investment in initiatives of this kind.

In parallel, there is a need to grow the skills and capacity of the field of academic and independent researchers working in the access to justice space, and to encourage researchers from disciplines such as health services research, epidemiology, behavioural science and economics to see access to justice and the justice system a legitimate site of social inquiry. The recent programme of Nuffield-funded research led by academics based at the Institute for Fiscal Studies is a significant positive development in this regard, but further investment is needed.

6.4.2 Gaps in regulation and the absence of quality assurance standards for access to justice technology undermine attempts ensure tools are effective and fair

As discussed above, justice system leaders have expressed strong support for an expanded role for digital and data-driven technologies in both the delivery of legal services and justice system processes. This focus on technology is mirrored across other areas of social policy, including education and health. However, unlike health, the justice system does not benefit from a robust

ecosystem of organisations tasked with quality-assuring these tools³¹⁸, or agreed standards³¹⁹ to enable consumers to compare and assess their performance. Gaps in existing regulatory frameworks mean that many products and tools are not covered by the remit of the Legal Services Act 2007, preventing consumers from accessing crucial protections. The current context led the cross-party House of Lords Justice and Home Affairs Committee to conclude that the implementation of these tools across the criminal justice system is akin to a “new Wild West”³²⁰. Urgent investment is needed in both research to develop quality standards and advocacy to promote better regulation of these products and tools.

³¹⁸ See for example, the NIHR Health Technology Assessment Programme (<https://www.nihr.ac.uk/explore-nihr/funding-programmes/health-technology-assessment.htm>) and the Medicines and Healthcare Regulatory Agency (<https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency>).

³¹⁹ See for example, the National Institute for Health and Care Excellence’s Evidence standards framework for digital technologies.

³²⁰ See House of Lords Justice and Home Affairs Committee (2022) “Technology used in the justice system is outpacing scrutiny and regulation”, 30 March 2022, News Article. Available at: <https://committees.parliament.uk/committee/519/justice-and-home-affairs-committee/news/165183/technology-used-in-the-justice-system-is-outpacing-scrutiny-and-regulation/>

7 Conclusion and next steps

This report has attempted to map, as systematically as possible, both the current issues in access to justice across England and Wales, and the structural issues that undermine our collective ability to address them. In addition to exposing deficiencies in the data that exists to understand people's journeys to and through the justice system, this report has identified over 80 key evidence gaps and priority research questions – presented below in Table 7.1. Taken as a whole, this document serves as both a call to action and the basis for an agenda, which, if delivered by researchers and implemented by policymakers, would transform the experience of the justice system for those who rely on it.

The scale of the challenge is significant. Addressing the current crisis will require both political will and consistent, credible action on the part of policymakers and justice system leaders, including the senior judiciary. It will also require funders of research to be prepared to invest at scale in developing the infrastructure to support evidence-based policy and practice. This means, funding programmes to support organisations delivering services in communities to improve their ability to collect, store, and manage and use data, and continuing to invest in the extension of initiatives such as ADR-UK to improve access to administrative data for research. Support must also be provided to build the skills and capacity of researchers working in the access to justice space, helping them to deploy methods from quantitative research fields and build multi-disciplinary teams. Providing answers to the research questions outlined will require access to expertise from disciplines including health services research, economics, computer science, engineering, design and behavioural science. It may also require research funders to support less traditional activities, including analysis and advocacy, to compel changes to regulation or in the data collection practices of justice system agencies. Sustained investment is needed to grow the field of evidence intermediary organisations focused on civil and administrative justice, learning from effective initiatives established across other areas of social policy. Positive examples on which to build including the Resolution Foundation, the National Centre for Health and Care Excellence, and the Nuffield Family Justice Observatory.

The cost of putting in place the infrastructure for evidence-based improvements to the justice system is not insignificant, but neither is the cost of maintaining the status quo. The impact of the crisis in access to justice described in this report can be measured in financial, constitutional and moral terms. The consequences for individuals of failing to access justice are frequently devastating – causing ripple effects across lives and livelihoods – and driving demand for other public services. The issues facing the justice system are now so serious and pervasive that government has been forced to act – particularly in relation to court backlogs. The issue is that far too frequently, politicians and

policymakers are unable to tell whether their responses have worked. Researchers and research funders have a crucial role to play in ensuring that the solutions put in place are sustainable and effective, and moving towards a future where no one is left asking: “Where has my justice gone?”.

7.1 Key evidence gaps and priority research questions

I. Access to legal information and advice

Journeys and referral pathways

- How can we better understand referral pathways and client journeys between different sources of advice and information?
- What challenges are created by the existing landscape of legal information and advice provision, and how do these challenges impact both on people's ability to access legal information and advice, and on the outcomes they secure in relation to their legal problems?
- How do advice journeys and experiences vary between people from different demographic groups?
- What systems and infrastructure are needed to help frontline agencies better understand client journeys?
- How are the changes proposed in the new vision articulated by the Lord Chancellor and senior judiciary for technology-assisted joined-up advice, information and dispute resolution, provided by the private sector, impacting on people's ability to access legal information and advice, and on the outcomes they secure?

Technology-assisted advice provision

- How might we define quality standards for remote advice provision (advice delivered via platforms such as Zoom or Teams, or by phone)? (See also "Typologies of legal information and advice provision" below.)
- What is the impact of remote advice provision on clients' experience, behaviour and outcomes? How does this vary across different demographic groups?
- What kinds of people benefit most from remote advice provision?
- What is the impact on services of delivering advice remotely?

Digital information and advice provision (including AI-assisted tools)

- How do people without access to legal advice use general purpose tools like ChatGPT when faced with legal issues?
- How well do AI-assisted tools perform when faced with questions relating to the law in England and Wales?
- How might we define technical quality standards for digital information and advice provision that can be understood by engineers and developers? (See also "Typologies of legal information and advice provision" below.)
- How can we best support people to critically evaluate the benefits and drawbacks of AI-assisted tools? Do "health warnings" and disclaimers work?
- How might we gather better data on the risks created by the use of AI-assisted tools, and monitor any harms that occur as a result of these tools? What monitoring mechanisms are needed?
- What regulatory standards are needed to support innovation in the interests of access to justice, and prevent harm?
- How do gaps in data impact on the potential for AI-assisted tools to meaningfully address access to justice challenges?

Standardised tools for measuring information and advice outcomes

- What wider health and social outcomes are plausibly linked to the provision of legal information and advice?
- How might these outcomes be measured, by who, and at what stage?
- What standardised tools (e.g. questionnaires) are needed to better assess outcomes? How might gaps in the standardised tools available be addressed?

Typologies of legal information and advice provision

- How might we better understand "quality" legal information and advice provision from the perspective of people who seek information and advice?
- How can we better articulate and define the different kinds of legal information and advice provision (moving away from metrics like "hours spent with client") so that we can compare the outcomes of different interventions in a more robust way?
- What kinds of provision, in what types of setting, work best, when, and for whom?

- How can we routinely and robustly evaluate the cost-efficacy of different approaches to legal information and advice provision?

2. Access to the formal legal system

Reducing court backlogs

- What methods and approaches are most effective in tackling court backlogs? What can be learned from approaches taken in other jurisdictions?
- How do methods introduced to tackle court backlogs (including new fee structures, remote hearings, Nightingale Courts, changes to listing prioritisation criteria and decriminalisation of offences) impact on the experience of, and outcomes for, people from different demographic groups? How do they impact on parties and outcomes in different kinds of cases? What is their impact on the use of remand?
- How do mechanisms introduced for tackling backlogs in the courts and tribunals impact on other agencies across the justice system? How do they impact on wider social outcomes?
- Which approaches are most cost-effective – for the courts and tribunals, and for the wider system?
- How does legal representation impact on case and hearing duration?

Digital court processes

- How has the introduction of digital court processes impacted on practical and attitudinal barriers to accessing the formal legal system? How do these barriers vary across people from different social and demographic backgrounds?
- How has the introduction of digital court processes impacted on the experience of, and outcomes for, people from different demographic groups, and with particular protected characteristics under the Equality Act 2010?
- How can we better understand the impact of digital court processes on default judgments? How might we design digital court processes to increase engagement from defendants from different backgrounds, and with particular protected characteristics under the Equality Act 2010?

Mediation and alternative dispute resolution

- How is an expanded role for private sector dispute resolution providers, as announced by the Lord Chancellor and senior judiciary, impacting access to the formal legal system for people from different demographic backgrounds? How are these services impacting on the outcomes received by people from different backgrounds, and in different types of cases?
- What transparency standards should apply to private sector dispute resolution providers? How can people be supported to make informed choices about whether to use different models and services?
- Is mediation and alternative dispute resolution effective at reducing pressure on the courts and tribunals?
- How might we develop a typology of different models of mediation and alternative dispute resolution in order to robustly compare outcomes from different interventions? What kinds of dispute resolution work when, where and for whom?
- How might we compare the cost-efficacy of different approaches to dispute resolution, including with the courts and tribunals?
- What can we learn from international research?

Public trust and confidence in civil and family courts and tribunals

- How can we develop better methodologies for measuring changes in public trust and confidence in the courts and tribunals?
- How might we better align measures of trust and confidence with standards of procedural justice to measure the attitudes of those with experience of the justice system?
- How is public trust and confidence in the civil and family courts and tribunals changing over time? Are initiatives to improve transparency in the family courts delivering on their aim of improving trust and confidence?
- How have digital reforms to justice system processes impacted on people's confidence in, and willingness to access, the formal justice system?
- What factors are associated with increased public trust and confidence in the justice system, and across particular courts and tribunals?

3. Access to a fair and effective hearing

The impact of legal representation

- How can we generate representative findings on the impact of legal representation on both the fairness and efficacy of hearings and outcomes secured by parties?
- Who benefits the most from legal representation, in what contexts and under what circumstances?
- What is the impact of legal representation on judicial behaviour?
- What is the impact of legal representation on parties' perceptions of the efficacy and fairness of hearings? How does this change when only one party is represented?
- What is the impact of legal representation on cost to both the court service and other justice system agencies?

The impact of changes to court processes

- How can we better understand the experience of remote hearings and their impact on the fairness and efficacy of hearings?
- What minimum standards of performance should technology meet to support fair and effective hearings? What is the threshold for performance beyond which a hearing should be considered ineffective/unfair?
- What are the drivers of perceptions of fairness and efficacy in relation to remote hearings?
- How might we gather representative objective and subjective data on the experience of remote hearings for parties?
- When, and under what circumstances, should remote hearings not be used?
- How do remote hearings impact on decision-maker bias?
- How can we gather representative data on the impact of new processes such as the Single Justice Procedure? What monitoring mechanisms are needed to ensure that hearings are fair and effective?

How effective are measures to support fair and effective participation for litigants?

- How consistently are provisions in the Equal Treatment Bench Book – intended to support the fairness and efficacy of hearings – applied across the courts and tribunals?
- How effective are measures to support parties who are neurodivergent, experiencing mental ill-health, or lacking mental capacity across the courts and tribunals? What is their impact on experience and outcomes?
- How effective are the courts at identifying and providing support to individuals who are lacking mental capacity or experiencing mental ill-health?

Judicial practice

- How might we gather representative data on judicial practice, particularly for cases that are not reported?
- What impact do court observers have on judicial practice? What other mechanisms and approaches show promise in improving the treatment of parties?

4. Access to a decision in accordance with law

Bias in decision-making across the civil and family courts and tribunals

- To what extent are decisions made across the civil and family courts and tribunals biased against parties from different socio-demographic groups?

Judgment publication

- What proportion of judgments are published on the new Find Case Law service, compared to both judgments published by privately owned publishers and total judgments given across the courts and tribunals?
- Are there patterns in the kinds of judgments and decisions that are missing? What is the impact of these missing judgments on research and innovation?
- What does the public consider acceptable in terms of the use and re-use of data contained in judgments?
- How does an increase in the number of decisions and judgments published impact on people's willingness to bring kinds of cases before the courts?

- How effective are current anonymisation techniques at protecting the privacy of children and other vulnerable parties? How do changes in the mode of publication impact on these considerations?
- Does an increase in judgment publication improve public understanding of the courts and tribunals?

5. Access to remedy and effective enforcement

Understanding orders

- For what purpose are orders and warrants issued across the civil and magistrates' courts?
- Are people from particular socio-demographic groups more likely to receive orders against them?

Compliance with orders

- To what extent are orders made by the civil and family courts complied with?
- Are there patterns in non-compliance?
- How effective are different types of orders in promoting positive outcomes?
- What mechanisms are needed for capturing representative data on compliance?

Access to enforcement

- What barriers do people from different socio-demographic backgrounds face in securing effective enforcement of orders and decisions?
- What mechanisms are needed to monitor trends in enforcement over time?

6. Cross-cutting issues

Comparative research exploring different models for managing justice systems

- What types of arrangements for managing courts and tribunals are most effective in terms of increasing access to justice for people?
- What structural arrangements are most effective at supporting efficient management of the justice system as a whole, whilst promoting the independence of the judiciary and prosecutorial function?
- What structures and processes are most effective in supporting evidence-based policy-making in relation to justice systems?

Data collection and linkage

- What are the costs and benefits associated with the introduction of person-level identifiers across the justice system?
- What governance models are needed to build and maintain public trust and confidence in the collection and use of data by justice agencies?
- What mechanisms are needed to support informed discussion with policymakers, professionals and the public about justice data management and use?

The Nuffield Foundation

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