



**Ministry of Justice Consultation on the Future of the  
Housing Possession Court Duty Scheme - Housing  
Legal Aid: the way forward**

**Consultation Response**

**January 2022**

**For further information contact**

Stephanie Needleman, Acting Legal Director  
[sneedleman@justice.org.uk](mailto:sneedleman@justice.org.uk)

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 02077626415  
email: [admin@justice.org.uk](mailto:admin@justice.org.uk) website: [www.justice.org.uk](http://www.justice.org.uk)

## Contents

<b>Introduction</b> .....	<b>3</b>
<b>The Proposals</b> .....	<b>4</b>
Q1: Do you agree with our proposal to reform the way housing possession legal aid services are delivered and create the Housing Loss Prevention Advice Service, providing duty advice at court and early legal advice? .....	4
<i>Early Advice</i> .....	4
<i>Remote Provision of Advice</i> .....	6
<i>Clustered Legal Issues</i> .....	8
<i>ADR</i> .....	9
Q2: Do you agree with our proposed approach to renumeraling the new HLPAS service? .....	12
Q7: Do you agree with our proposed approach to tender for individual courts? Should there be just one HLPAS contract awarded for each court? If no, please suggest an alternative and provide supporting evidence / Q8: Do you agree that ensuring providers are located in close proximity to the court where they are contracted will ensure a better service for clients? .....	12
<b>Impact Assessment</b> .....	<b>15</b>
Q10: From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views. ....	15
Q11: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please give data and reasons. ....	16

## Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible, and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This paper sets out JUSTICE's response to the Ministry of Justice's Consultation on the Housing Possession Court Duty Scheme and housing legal aid in England and Wales. In responding to the consultation paper, JUSTICE has focussed on specific questions that address issues considered by JUSTICE through its *Solving Housing Disputes*<sup>1</sup> working party. JUSTICE has refrained from commenting on questions relating to technical fee arrangements and instead defers to those within the profession, e.g., housing duty scheme providers whom we feel are better placed to remark on those aspects of the consultation.
3. In summary, JUSTICE supports the overall spirit of this consultation in terms of identifying, and seeking to address, the need for more sustainable legal aid funding for possession cases. JUSTICE is also encouraged by proposals to widen the scope of early legal help and the increased attention on the role that ADR should play within housing disputes. Nonetheless, JUSTICE considers that if the proposals within this consultation are to achieve their intended outcomes, more focus and funding must be made available at an earlier, pre-action stage. This includes ensuring that those subject to a housing dispute or possession claim, can access advice and ADR prior to the notice of possession hearing being issued. To that end, and as set out in our *Solving Housing Disputes* working party, the definition of "legal help" under legal aid contracts for housing must be changed to capture and remunerate acting and advising through pre-action ADR processes.<sup>2</sup> There is now a growing body of evidence that proves that the earlier housing issues (including associated clustered issues), are explored and advised upon – the more likely it is that the issues will be resolved amicably, sustainably, and without needing to go to court. Indeed, such findings form the basis of the Ministry of Justice's

---

<sup>1</sup> JUSTICE, [Solving Housing Disputes](#) (2020).

<sup>2</sup> *ibid.* p.71.

plans to increase the uptake of ADR within housing,<sup>3</sup> and it is imperative that if those proposals are to be successful, they must be accompanied by an increase in legal aid funding for early legal support and ADR.

## The Proposals

Q1: Do you agree with our proposal to reform the way housing possession legal aid services are delivered and create the Housing Loss Prevention Advice Service, providing duty advice at court and early legal advice?

### Early Advice

4. JUSTICE welcomes the recognition by the Ministry of Justice that “*the way the [duty advice] scheme is currently structured, misses the opportunity to help those facing possession proceedings at the earliest point, potentially avoiding the need for court proceedings altogether*”. This reflects the findings of JUSTICE’s *Solving Housing Disputes* report and previous research which shows that early advice has a significant impact on parties’ ability to bring their disputes to an early resolution in the context of welfare benefits, homelessness, and eviction proceedings.<sup>4</sup> There is also substantial evidence that early legal advice has economic benefits for parties and reduces public spending elsewhere.<sup>5</sup>
5. JUSTICE notes that tenants will become eligible for this additional early legal advice “*where they have received a notice of a possession hearing from the court*”. However, if HLPAS is to be truly preventative in nature, rather than merely responsive, JUSTICE strongly suggests that HLPAS be made available to tenants earlier in the process e.g., at pre-action stage – rather than once proceedings have commenced. One need only look at

---

3 see [Ministry of Justice Consultation on Dispute Resolution in England and Wales: Calls for Evidence](#) (2021)

4 Ipsos MORI, ‘[Analysis of the potential effects of early advice/intervention using data from the Survey of Legal Needs](#)’. (The Law Society, 2017), p. 6. The report found that early advice had a significant impact on getting issues resolved. “Participants in the survey who did not receive early advice were, on average, 20% less likely to have resolved their issue at a particular point in time (compared to those who did receive early advice).”

5 A 2010 Citizens Advice report suggested that for every £1 spent on legal aid, the state saves £2.34 from housing advice; £2.98 on debt advice; and £8.80 from benefits advice. Citizens Advice, [Towards a business case for legal aid: Paper to the Legal Services Research Centre’s eighth international research conference](#) (2010).

the results of the Ministry of Justice Mediation Pilot for Possession Hearings<sup>6</sup>, as an example of an initiative which, though well-intended, came too late in the court process to achieve a meaningful impact or succeed in diverting possession cases away from court.

6. The Ministry of Justice must also be live to the issues that currently impact on a) an individual's ability to engage with representatives at an early stage and b) the success of early legal advice in achieving sustainable solutions. In terms of the former, evidence shows that consumer, debt, and housing are areas in which parties are less likely to seek advice or legal assistance.<sup>7</sup> This is directly linked to the nature of proceedings and the high stakes involved e.g., the loss of the family home and homelessness. Tenant lawyers that we spoke to and judges on our *Solving Housing Disputes* Working Party told JUSTICE that many respondents who face evictions tend to put their head in the sand for those reasons and feel unable to engage with advice.
  
7. How to address this reluctance to engage is a complex question. It requires discussions such as those currently underway between the Ministry of Justice and the Department of Levelling Up, Housing and Communities about how information and support is communicated to tenants generally e.g., via guidance posted online at Gov.uk webpages. It also requires ongoing discussions between landlord organisations and regulators in publishing new codes of conduct setting out the way that landlords should act and communicate with their tenants – especially in relation to possession cases. Removing financial barriers that limit a person's ability to access advice is crucial and JUSTICE supports proposals to remove mean's testing from the HLPAS service. JUSTICE also advocates for more work to be done in consolidating the otherwise disaggregated housing advice landscape and improving signposting to relevant support services. All too often, tenants who are engaged in seeking help and finding solutions, become disillusioned and distance themselves from the process due to experiencing difficulties, confusion and being “passed from pillar and post” by services or professionals.<sup>8</sup> Therefore, efforts must be made to ensure that the new HLPAS scheme is well communicated to those who could benefit from it.

---

<sup>6</sup> See Ministry of Justice and Ministry of Housing, Communities and Local Government [Mediation Pilot for Possession Hearings](#), (2020)

<sup>7</sup> P Pleasence and N Balmer, [How People Resolve 'Legal' Problems: a report to the legal services board](#) (PPSR, 2014), table 1.2, p12

<sup>8</sup> See JUSTICE, [Solving Housing Disputes](#) (2020) where JUSTICE makes several recommendations concerning how the current system can be streamlined into a one-stop shop for housing advice

8. Furthermore, JUSTICE draws attention to the physical and geographical barriers that get in the way of a tenant seeking advice, via the duty scheme or otherwise. Huge swathes of the country are subject to “advice deserts,” leaving many with nowhere to go when facing a housing problem. The introduction of court closures to part-fund Her Majesty’s Court and Tribunal Services (HMCTS) Reform Programme (Reform Programme)<sup>9</sup> has further frustrated access to justice, reducing attendance rates of respondents because they simply cannot afford to attend possession hearings outside their own towns.
9. Whilst this consultation does not explicitly suggest that Stage 1 of HLPAS is to be provided at court, JUSTICE would warn against any proposal that assumes it is. This is because expecting tenants to travel twice to court – first to obtain advice and then to attend their own hearing, is simply unrealistic. This is evidenced by the low uptake of the “review hearing” arrangements introduced during the pandemic. JUSTICE therefore strongly requests the Ministry of JUSTICE to explore other opportunities to bring in-person legal advice from the ‘doors of court’ to the ‘doorstep’ of the tenant and at a rate that is sustainable for advice providers.

### *Remote Provision of Advice*

10. JUSTICE acknowledges the proposal that, “*in some cases...early legal advice could also be delivered entirely remotely where that is appropriate considering the needs of the client.*” As explained above, JUSTICE’s *Solving Housing Disputes* Working Party found that a very low proportion of tenants attend court for possession hearings.<sup>10</sup> There are numerous factors which can prevent individuals attending court, including fear, misunderstanding of the court system and practical or physical challenges. This problem has been exacerbated by court closures, which have made it more difficult for vulnerable

---

9 The Reform Programme is predicated on the expanded use of technology and the development of accessible digital court and tribunal processes to extend access to justice to those who have historically been excluded, by virtue of legal cost, delay and complexity, from the justice system.

10 JUSTICE, [Solving Housing Disputes](#) (2020), para 3.22. Research by the University of Oxford and the University of Hull in 2014 identified low attendance rates at possession hearings as attributable to people burying heads in the sand, seeing little point in attending, landlords and housing officers telling them there was no need to attend, fear or misunderstanding of the legal system, general apathy and the cost and difficulty of attending. Bright and Whitehouse, ‘[Information, Advice & Representation in Housing Possession Cases](#)’, (April 2014) p. 47

individuals to cover the travel costs to a court outside their town. These same difficulties act as a barrier to persons accessing HLPAS. JUSTICE therefore recognises that the remote provision of advice might go some way to mitigating these issues.

11. However, whilst JUSTICE welcomes increased flexibility in accessing duty scheme advice online, remote provision is no substitute for comprehensive, in-person legal advice. It cannot be seen as a complete solution to the housing advice deserts that affect substantial portions of the country.<sup>11</sup> This is especially true when considering that around 70% of the UK population suffer digital exclusion.<sup>12</sup> It is therefore important that any digital advice scheme exists in parallel with an in-person service<sup>13</sup> for those who are digitally excluded. As explained above, housing disputes can feature complex issues and tenants with complex needs. Forcing people online, as has been done with Universal Credit, risks further marginalising people who already struggle to access help and support. Providing exclusively digital processes also risks creating a “digital underclass,” who are unfairly excluded.<sup>14</sup>

12. We are therefore pleased that the consultation recognises that the appropriateness of remote advice will depend on the needs of the client and that it will not be appropriate for those who are digitally excluded. JUSTICE agrees that a digital advice service can bring significant benefits to some tenants, so long as any digital service adopts a user focussed approach and prioritises the needs and wishes of the tenant when it comes to the means through which they access advice.<sup>15</sup> This includes ensuring that any form of online advice service gives tenants a choice about how they receive advice (e.g., online or in-person) and embraces a “multi-channel” approach – helping people to move between digital

---

11 *ibid*, paras 3.5 - 3.6

12 JUSTICE, [Preventing Digital Exclusion](#), (2018)

13 For instance, HMCTS has undertaken to maintain paper-based channels to access courts and tribunals through the Reform Programme for those who are unable to get online, see Inside HMCTS blog, [‘Helping people access our services online’](#) (12 October 2017).

14 A 2016 academic study of internet non-use in the UK and Sweden suggested that digital exclusion can become concentrated over time and that “non-user populations have become more concentrated in vulnerable groups”, i.e. those who are “older, less educated, more likely to be unemployed, disabled and socially isolated”, E. J. Helsper and B.C. Reisdorf, ‘The emergence of a “digital underclass” in Great Britain and Sweden: changing reasons for digital exclusion’, (New Media and Society, 2016).

15 See JUSTICE, [Preventing Digital Exclusion](#) which makes 19 practical recommendations to ensure that necessary support is an integral feature of the digital justice system and that the HMCTS reform programme continues to work to instil a user focussed approach recommendations, including through the ‘Assisted Digital’ project.

access, phone assistance and face to face contact. Were the Ministry of Justice to explore remote provision of advice further, JUSTICE encourages them to learn from advice sector agencies. The Ministry of Justice may also consider the approach adopted by The Traffic Penalty Tribunal<sup>16</sup> which successfully bridges the gap between traditional offline communication and digital provision. The bottom line is that online provision of advice should be seen as an additional service for those who are able to engage with it and not an alternative to in-person contact.

### *Clustered Legal Issues*

13. Assuming the geographical limitations can be overcome, early legal help provided via the duty scheme can go some way in helping tenants to engage with the legal process. However, if it is to create opportunities for early and effective resolutions, HLPAS providers must be able to address the many inter-related causes of housing disputes. Disputes are rarely one-dimensional in that they are usually the result of a combination of inter-related or 'clustered' problems. For instance, research has found that housing, benefits, debt, and relationship breakdowns are commonly associated with one another.<sup>23</sup> Only when providers are supported to investigate these underlying causes, will early legal advice be successful in achieving sustainable solutions in possession cases. If legal advice is limited to focussing on only one element, then it is likely to condemn itself to simply treating the symptom as opposed to the cause. Legal advice, and therefore legal aid, must be harmonised in order that those facing eviction can benefit from advice and support regardless of whether the underlying cause of the housing dispute is related to debt, health, employment or challenges accessing social welfare and benefits.
14. JUSTICE therefore welcomes the proposals to widen the scope of issues that HLPAS providers can provide early legal help in relation to, in line with its recommendation in *Solving Housing Disputes* that legal aid be expanded to cover funding for clustered legal problems.<sup>17</sup> However, for the advice to be effective in achieving sustainable solutions and empowering tenants to move forward, JUSTICE considers that the expertise available via HLPAS requires to extend further than simply housing and social welfare law. As described above, welfare benefits, debt and employment issues are common causes of housing

---

<sup>16</sup> See [www.trafficpenaltytribunal.gov.uk](http://www.trafficpenaltytribunal.gov.uk).

<sup>17</sup> JUSTICE, *Solving Housing Disputes*, (2020), para. 3.09



disputes and the Ministry of Justice should consider whether additional expertise, e.g., in employment law, is made available.

15. However, JUSTICE has some reservations about whether extending the scope of expertise provided via HLPAS (be that to provide social welfare advice or additionally, to cover debt and employment advice) is realistic, given the current deficit of providers in these areas. Whilst JUSTICE supports HLPAS being expanded to advise on the full range of clustered issues set out above, the Ministry of Justice must first consider how to address the current resource issues and the current lack of available welfare, debt and employment law advisers, if this is to be possible. Legal aid cuts since 2012 have led to a significant shortage of available advisors in these areas and attempts must be made to resolve this. Without investment, it is difficult to see how proposals to offer welfare benefits advice via HLPAS, can be realistically achieved.

16. Likewise, JUSTICE considers that the requirement that the “*possession issue [be] caused or exacerbated by a wider social issue*” should not be overly prescriptive. Tenants must also be given opportunities to identify these underlying issues and the proposed HLPAS scheme must undertake appropriate investigations to reveal the same. This is especially true in the light of the remarks made above in terms of many tenants finding it difficult to navigate the legal process and to understand what help and advice they are entitled to.

## ADR

17. As discussed above, the earlier that advice is provided, the more effective it is in bringing about a lasting solution. The same applies to ADR. As discussed elsewhere in response to the Ministry of Justice’s Consultation on Dispute Resolution,<sup>18</sup> JUSTICE considers that housing is one legal area that could benefit from more focus on consolidatory methods of dispute resolution. Our Working Party found that ADR affords the opportunity to holistically investigate all underlying causes of a dispute, including the clustered problems referred to above, which may otherwise go unaddressed during a court procedure. JUSTICE also found that ADR minimises the stress of going to court and can lead to more sustainable solutions.<sup>19</sup>

---

<sup>18</sup> See Ministry of Justice [Consultation on Dispute Resolution in England and Wales](#) (2021).

<sup>19</sup> JUSTICE, [Solving Housing Disputes](#) (2020)

18. JUSTICE is therefore pleased that the proposals included in this consultation recognise the role that ADR can play in resolving disputes, including in possession cases. However, the findings of recent ADR pilots<sup>21</sup> highlight the importance of timing. For example, findings shared by the Tenancy Deposit Scheme ('TDS pilot') show that the conciliation pilot received more engagement and referrals once it was made accessible to parties not yet engaged in the court process.<sup>22</sup> Anecdotal evidence from the TDS pilot suggests that by the time cases were in the court queue, the relationship between many parties was already impacted by the adversarial process and therefore was too damaged to allow for successful negotiation and compromise at ADR. Timing was also frequently described as the limiting factor, and the reason for the low uptake of the Ministry of Justice's Possession Mediation Pilot. This supports the findings by the *Solving Housing Disputes* working party that the earlier ADR is offered, the more successful it is likely to be. The same applies to the impact of early legal advice, as described above. The Ministry of Justice should therefore consider how ADR can be encouraged at an earlier stage in the dispute, including via the use of Pre-Action Protocols.<sup>23</sup> To that end, JUSTICE recommends that the Ministry of Justice track the results of the Civil Justice Council consultation on Pre-Action Protocols, to which JUSTICE responded.

19. Whilst JUSTICE supports proposals that HLPAS providers refer their clients to ADR, referrals will only lead to engagement where tenants fully understand the benefits of ADR. There is currently a significant 'knowledge gap' when it comes to parties understanding what ADR is, who provides it, how much it costs and how it can help them to resolve their disputes. For parties to take up ADR, they need to first understand it and know where to go to take part in it. Those involved in the TDS Pilot have attributed the relatively low uptake at the start of the pilot to the public's lack of knowledge about ADR and difficulties experienced by TDS in advertising the pilot. JUSTICE have been advised that once parties are 'through the door,' engagement has been good and successful resolutions, including early settlements, have been achieved. For example, almost 50% of cases reached resolution prior to mediation day with further resolutions reached thereafter. Both the TDS pilot and the Ministry of Justice Possession Mediation pilots highlight the need for external

---

21 See [TDS Resolution Service](#) provided by the National Residential Landlords Association and the Tenancy Deposit Scheme, as well as the Ministry of Justice and Ministry of Housing, Communities and Local Government [Mediation Pilot for Possession Hearings](#).

22 The TDS Resolution Service was relaunched in April 2021 and changed its focus from redirecting cases that were already in the court queue to instead reach parties at an earlier stage in their dispute.

23 See, for example, the [Pre-Action Protocol for Possession Claims by Social Landlords](#).

parties to be more active in referring users to the service. This is especially relevant to the proposals in this consultation which envisages HLPAs providers to refer parties to ADR services.

20. More also needs to be done to encourage and promote ADR generally. For example, information about ADR services should be provided to tenants by landlords at the initiation of possession claims. More information about ADR should also be provided at the pre-action stage, including via the use of Pre-action Protocols ('PAPs').<sup>24</sup> JUSTICE considers that 'joined-up thinking' is required and encourages the Ministry of Justice to work with other agencies currently invested in improving understanding around ADR.
21. Uptake of ADR is also discouraged by the current approach to legal aid funding. Our Working Party considers that changing the definition of "legal help" to capture advising and engaging with ADR at the pre-action stage is crucial to uptake and efficacy and should be available to encourage ADR as early as possible in the process.<sup>25</sup> We recommend that the definition of "legal help" under legal aid contracting for housing should be changed to capture and remunerate acting and advising through pre-action ADR processes, as opposed to simply allowing HLPAs providers to refer clients on to ADR. Currently, legal aid practitioners require to obtain prior authority from the Legal Aid Agency to support clients in ADR. Instead, JUSTICE recommends that providers should be free to pursue it as part of an ordinary legal aid certificate and at an earlier stage in proceedings.
22. Finally, whilst out with the scope of this consultation, JUSTICE draws attention to its proposals, set out in its *Solving Housing Disputes* report, for the creation of an all new, holistic and fully integrated model of alternative dispute resolution, the 'Housing Disputes Service' (the 'HDS'). Pulling together professionals from across the legal sector, the HDS seeks to intervene early in a housing dispute, investigate the underlying issues that gives rise to the claim (e.g., welfare and benefits issues, debt issues and mental health needs) and provide both legal and non-legal support to bring about lasting solution.<sup>26</sup>

---

<sup>24</sup> See JUSTICE, [Solving Housing Disputes](#), (2020), chapter which recommends that existing housing Pre-Action Protocols be simplified. It also recommends the introduction of a Pre-Action Protocol for the private rented sector, including for possession cases. JUSTICE considers that such an approach would further encourage the uptake of ADR.

<sup>25</sup> *ibid*, paras. 3.7 - 3.9.

<sup>26</sup> *ibid*, pt.1.

Q2: Do you agree with our proposed approach to remunerating the new HLPAS service?

23. As stated above, JUSTICE does not consider it appropriate to comment at length on the rates of remuneration set out by this consultation. We consider that practitioners and those already working under the HCPDS scheme, are best placed to respond to the questions raised in relation to Part 2.

24. Nonetheless, JUSTICE strongly feels that legal aid provision for early legal help must be increased. Tenant lawyers we spoke to as part of our consultation for *Solving Housing Disputes* expressed concern that the rate of funding for “early legal advice” was extremely low, and often did not meet the overheads of advice rendered. Sustainable rates must be addressed if the objectives underlying the proposals set out in Part 1 of this consultation, are to be achieved.

Q7: Do you agree with our proposed approach to tender for individual courts? Should there be just one HLPAS contract awarded for each court? If no, please suggest an alternative and provide supporting evidence / Q8: Do you agree that ensuring providers are located in close proximity to the court where they are contracted will ensure a better service for clients?

25. As stated elsewhere in this response, JUSTICE defers to the expertise of existing housing duty scheme providers in relation to technical or contractual proposals directly affecting their practice.

26. However, we agree that having local providers would likely result in service improvements in that the legal advice can be more tailored to reflect the local environment. This is especially important in terms of duty scheme providers being able to signpost their client to relevant services and support (both legal and non-legal) which may assist them in their dispute. As explained above in response to Q1, housing disputes usually arise from a combination of different issues and problems. If persons are to achieve long-lasting, sustainable solutions – then these other, underlying issues require to be addressed. Where a duty scheme provider is not able to assist with a particular issue, it is crucial that others can. As stated above, the housing advice landscape suffers from disaggregation, and individuals find it very difficult to identify support themselves. Ensuring that duty

scheme providers understand the local advice and support services available – will go some way to improving this situation and helping individuals access much-needed support.

27. Furthermore, having localised legal aid contracts will mean that duty scheme providers will be more familiar with their local court and therefore better placed to help familiarise their client with the physical court environment too. As identified in JUSTICE's working party report, *Understanding Courts*,<sup>34</sup> most people find going to court daunting, overwhelming and stressful. From the moment a member of the public enters a court or tribunal building, they find themselves in an unfamiliar, intimidating environment.<sup>35</sup> They must negotiate security, find the relevant courtroom, and try to make sense of the process and outcome of the hearing. Not knowing where to go, who to talk to and facing an unstaffed reception desk makes the experience of attending a hearing or trial more unnerving, confusing, and stressful. If duty scheme providers are more attuned to the day-to-day operation, layout and facilities provided at the court, then it is hoped that they can better prepare their clients and pass this knowledge on to their clients.

28. Nonetheless, JUSTICE is concerned that introducing localised contracts may lead to "patchwork provision" across the country – particularly in rural areas that already suffer from a lack of housing advisors. Quality legal advice provision at one court, must not come at the expense of quality service delivery at another. Care must be taken to ensure that proposals do not negatively impact parts of the country where service delivery is already unsatisfactory owing to shortages of legal aid housing providers. For example, the number of legal aid providers outside of cities has been particularly diminished since the legal aid cuts introduced by the Legal Aid, Sentencing and Punishment of Offenders Act in 2012. There is a risk that courts in rural areas will continue to be unattractive to legal aid providers, as the volume of cases in rural areas is lower and therefore the cost of delivering the service, higher. This risk may be offset by the ability of providers to offer early legal advice at HLPAS Stage One or by the introduction of the attendance fee. However, due to low case volumes in rural areas, this may still be insufficient to persuade providers to bid to deliver a service at courts in rural areas.

29. Therefore, JUSTICE encourages the Ministry of Justice to investigate the impact of their proposals on rural courts that have smaller case-values. Specific attention must be

---

34 JUSTICE, [Understanding Courts](#) (2018)

<sup>35</sup> Interviewed by G. Langdon-Down, '[Interview with Sir James Munby, Family Division President](#)', Lexis Nexis Family Law, 6th August 2018,

directed to increasing the funding for providers in housing deserts to ensure that individuals in these communities are still able to access quality legal advice.

30. To help address concerns about the quality of advice provision varying from county to county, JUSTICE also recommends ensuring that mechanisms are in place to monitor the quality and consistency of the legal provision from court to court. As discussed in *Solving Housing Disputes*, variations in the provision of legal advice across large swathes of the country means that many of those in need of help and advice are subjected to a “postcode lottery.” Great care must be taken to ensure that this is not exacerbated. For example, JUSTICE strongly suggests that, if legal aid contracts are localised and tendered to individual courts, that a full and proper evaluation is carried out looking at whether any adverse consequences result from the arrangements. Time and effort should also be spent in ensuring that members of the public understand how to raise concerns about the quality of their legal advice provision, should they have any, and opportunities to collect feedback from user groups at different courts should be created.
  
31. Finally, JUSTICE stresses the importance of adopting a client focussed approach when considering amending contracting arrangements. Rather than asking about the impact of locating housing advice providers to their local courts, proposals should instead be concerned with ensuring that providers are located in close proximity to their clients, and vice versa. With 40% of the population living in local authority areas without a single housing legal aid provider, tenants must have access to quality legal advice, regardless of where they are located and their proximity to a court building.
  
32. To that end, JUSTICE draws attention to its response provided at Q1, in terms of it being crucial that tenants have a meaningful choice as to how they access and engage with their duty scheme providers (e.g., in person or virtually). As part of proposals for Stage 1 of HLPAS, the Ministry of Justice should also consider whether advice can be provided away from court, for example making use of pop-up advice centres in civic buildings in more rural areas.<sup>37</sup> Spaces such as local council offices, libraries, community centres and schools were highlighted as suitable for pop-up venues in disputes with little need for formal security arrangements.

---

37 JUSTICE, [Solving Housing Disputes](#), (2020); JUSTICE [What is a Court](#), (2016)

## Impact Assessment

Q10: From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views.

33. JUSTICE considers that the proposal to offer wide ranging legal advice under Stage One will particularly benefit individuals whose possession disputes are the consequence of underlying social problems, such as benefits or debt. Providing these groups with legal advice which recognises that housing disputes often occur in a 'cluster' with interrelated legal and non-legal issues will better address the cause of their possession dispute and provide a sustainable solution to their difficulties. JUSTICE considers that such a move will particularly benefit those who experience underlying health-related difficulties, including mental health challenges. As described above, the housing advice landscape is disaggregated and confusing for tenants to navigate. By advising on housing and related welfare issues, HLPAS will help to simplify the process and remove the stress for those requiring assistance with both areas.
34. Nonetheless, those same people are likely to be negatively affected if they had to travel to court to access HLPAS. As 30% of HPCDS' clients in 2019-2020 were disabled, service provision by HLPAS must be particularly attuned to the needs of these clients. JUSTICE therefore recommends that the Ministry of Justice consider how to ensure that Stage 1 of HLPAS be in easy to access locations, close to tenants. As stated above, the process of travelling to a court centre may be physically difficult or anxiety inducing for clients with protected characteristics or those with limited financial resources and all measures should be taken to avoid tenants having to do this, where possible. For the reasons provided above, JUSTICE strongly suggests that the Ministry of Justice explores the use of other venues, away from court, to host the HLPAS service.
35. Telephone or video advice may be appropriate for these clients, but this will not always be the case, as some clients may be digitally excluded or find it more difficult to engage remotely and for some, doing so may be detrimental to their health. It is therefore imperative that clients have a choice of telephone, video or face-to-face advice from HLPAS, so that they can choose the mode of delivery which best suits their needs. The

availability of reasonable adjustments from HLPAS will also be vital to ensure that clients' needs are consistently accommodated. JUSTICE is encouraged by progress being made by HMCTS with their project looking at the way Reasonable Adjustments are offered across the court estate and JUSTICE encourages the Ministry of Justice to work closely with HMCTS in this regard.

Q11: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please give data and reasons.

35. Please see response to answer Q10, provided above.