



Ministry of Justice Review of Civil Legal Aid

Call for Evidence Response

February 2024

For further information contact

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

JUSTICE, 2nd Floor Lincoln House, 296-302 High Holborn, London, WC1V 7JH
tel: 02073295100
email: admin@justice.org.uk website: www.justice.org.uk

Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the justice system in the United Kingdom. It is the UK section of the International Commission of Jurists. Established in 1957, 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. JUSTICE does not represent or advise individual legally aided clients, rather our work examines and makes recommendations to improve the justice system and access to it, focusing on the most vulnerable within society. Legal aid is of course an essential part of that access; in the words of Lord Bingham, "denial of legal protection to the poor litigant who cannot afford to pay is an enemy of the rule of law."¹
3. We were clear, in our responses to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("**LASPO**") and to the *Transforming Legal Aid* consultation, that we considered the cuts in legal aid in 2013 to be ill-considered, rushed and unsupported by evidence. However, since 2013, we have sought to promote innovative but practical solutions to try to protect the most vulnerable despite drastically depleted legal aid provisions.²
4. Unfortunately, whilst the 2013 legal aid cuts produced immediate savings, some have led to long-term inefficiencies, causing cost and delay elsewhere in the system. It is clear to us that a sustainable legal aid system is one that must meet the needs of the present without compromising the future.
5. The below evidence is drawn from a number of JUSTICE Working Parties, our principal way of working. Our Working Parties are made up of professional and cross-party expertise, from our membership and beyond, they include barristers, solicitors, advice providers, academics, those with lived experience of the justice system and other non-legal experts working within the justice system. Those Working Parties examine

¹ Sir Thomas Bingham, *The Rule of Law* (Allen Lane, London, 2010), p. 88.

² See the focus on early case management, mediation and neutral evaluation in JUSTICE's registrar model, to improve litigant in person journeys through court, in JUSTICE, [Delivering Justice in an Age of Austerity](#) (2015).

evidence on particular issues within the justice system, consult with and take evidence from stakeholders and those with experience of the relevant area of inquiry, and produce reports proposing practical solutions to law-makers, judges and relevant public servants. Such Working Parties have, since LASPO, reviewed the adequacy of access to justice within affected areas and have produced specific conclusions, recommendations and insights that touch upon the provision of legal aid.

1. Do you have any suggestions of changes – both short-term and longer-term changes – that could improve each of the following categories of law?

Question 1a. Family

Legally-aided representation for both parties in private family fact-finding hearings

6. JUSTICE is concerned that vulnerable litigants and witnesses are still struggling to conduct and participate effectively in fact-findings in private family proceedings. These hearings are of course not necessary in every case, however sometimes it will be both necessary and relevant to a child's welfare and the outcome of the case for live evidence to be heard, tested through cross-examination, and for the judge to determine facts in the case. These hearings often concern allegations of domestic abuse or child abuse, and therefore the fair and effective conduct of these hearings is of huge importance to the safeguarding of children. As the Court of Appeal observed in 2021, "*the stakes may be high*":

If the court decides that an abusive allegation has not been sufficiently proved, the court must assess future risk on the basis that the event 'did not take place'. If, in reality, the abuse did occur but there is a lack of evidence to prove it, the court's subsequent orders may risk exposing the child and parent to further abuse. Conversely, if the alleged abuse did not in fact occur, but the court finds the allegation proved, orders significantly limiting the 'perpetrating' parent's future relationship with their child may be imposed.³

7. Despite this, individuals continue to be left to allege and respond to allegations in these evidential hearings without legal representation, struggling to be their own notetaker,

³ *Re H-N* [2021] EWCA Civ 448, para. 6.

cross-examiner, and witness. Many do so when the other party has legal representation, resulting in clear inequality of arms.

8. During JUSTICE's Working Party on private children proceedings in 2021-2022 ("**the JUSTICE family Working Party**"),⁴ we took evidence from consultees including professionals and lay participants in these cases. We heard evidence of many survivors of domestic abuse or other protective parents or carers finding themselves acting as litigants in person, despite the current legal aid provisions. This can be because they are above the means threshold but cannot afford representation, or because they lack the documentary evidence required to secure legal aid (see further at Question 9 below).
9. When the protective parent is a litigant in person in a fact-finding hearing, they take the role of a quasi-prosecutor, requiring them to call evidence of theirs or their child's abuse and present it to the court. This is the case even when they have not chosen to be in the proceedings in the first place, for example when responding to an application for increased contact. The difficulty of the situation is compounded in our view when the litigant is expected, in addition, to respond to counter-allegations of parental alienation raised in answer to an allegation of abuse.
10. The JUSTICE family Working Party heard directly from one litigant in person, who described the experience as being "*forced to prosecute my own rape trial.*" She explained to us that, on the day of the fact-finding hearing, she had been too intimidated and did not understand how to cross-examine, nor how to conduct the rest of the hearing, including whether she could bring her own witnesses. The judge had asked a select few questions on her behalf, based on what she could ask him to do. Whereas the cross-examination of her by the other side's barrister had lasted four hours.
11. Meanwhile, those responding to abuse allegations have no eligibility for legal aid under the current legal aid scheme, regardless of the seriousness of the accusations, their merits, or their ability to conduct proceedings. If those who are wrongly accused are unable to effectively participate, this also risks serious consequences, since the orders that will follow will limit their relationship with the child. Moreover, whether they are

⁴ JUSTICE, [Improving Access to Justice for Separating Families](#), (2022).

wrongly accused or not, their effective participation is critical to the reliability of the factual determination and the legitimacy of proceedings.

12. Cross-examination of an alleged victim by an alleged perpetrator was a significant concern for many years, leading up to the Domestic Abuse Act 2021.⁵ Provisions in the Domestic Abuse Act 2021 introduced new measures to prohibit direct cross-examination by litigants in person in limited circumstances when certain criteria are met.⁶ Furthermore, there is provision for court-appointed legal professionals to be funded to conduct cross-examination instead, when “*necessary in the interests of justice*” and in the absence of a “*satisfactory alternative*.”⁷
13. The provisions came into force on 21st July 2022,⁸ with accompanying statutory guidance on the role of the qualified legal representative undertaking the cross-examination.⁹ From the guidance it is clear that the scope of the legal professional’s role is very limited:
 - a) they may elicit relevant information from the prohibited party that will form the basis of the cross-examination and inform the drafting of the position statement. However, they should not take instructions from them in the manner that a party’s own lawyer ordinarily would.¹⁰
 - b) they should advance the interests of the prohibited party during the cross-examination, but the qualified legal representative “*must not attempt to present the prohibited party’s entire case*.”¹¹

⁵ This has been criticised for years by the judiciary, as “inherently and profoundly unfair” (Hayden J, Re A (a minor) (fact finding; unrepresented party) [2017] EWHC 1195 (Fam), at [60]); and a practice which will “sometimes amount, and on occasions quite deliberately, to a continuation of the abuse, as the court has to stand by, effectively powerless, while the abuse continues in court and, indeed, as part of the court process”. Sir James Munby, [Because it is the right thing to do](#) (24 July 2018).

⁶ For the prohibition to apply automatically, there must be evidence of a conviction, caution, charge, on-notice protective injunction, previous finding of fact, or other “specified evidence”. For other cases in which harm is alleged based on the alleged victim’s testimony alone, with no third-party evidence, the prohibition is discretionary. The automatic provisions are found in ss 31R to 31T of the Matrimonial and Family Proceedings Act 1984 and the discretionary power found in s. 31U, inserted by s. 65 of the Domestic Abuse Act 2021.

⁷ S. 31W of the Matrimonial and Family Proceedings Act 1984 inserted by s. 65 of the Domestic Abuse Act 2021.

⁸ The Domestic Abuse Act 2021 (Commencement No. 5 and Transitional Provision) Regulations 2022.

⁹ Ministry of Justice, [Statutory guidance: Qualified legal representative appointed by the court](#).

¹⁰ Ibid, p. 12.

¹¹ Ibid.

14. The JUSTICE family Working Party considered the limited role of the qualified legal representative does not go far enough in addressing the assistance required by many litigants in person in evidential hearings. We note that the prohibition of cross-examination in principle remains discretionary for some cases in which domestic abuse is alleged, and a qualified legal representative does not automatically follow, thereby creating a likely pool of litigants in person who will continue to be forced to conduct cross-examination themselves. Moreover, JUSTICE is concerned with reports from the Domestic Abuse Commissioner in her June 2023 report that the qualified legal representative scheme has had “limited success likely owing to the low rates of pay, compounded by QLR advocates not being able to recover travel or other reasonable expenses.”¹²
15. Changes to the qualified legal representative scheme have been introduced recently, in response to the Domestic Abuse Commissioner’s report, to reimburse expenses.¹³ We welcome these short-term changes, and hope they make the scheme more attractive to practitioners. However, while the scheme is undoubtedly better than what existed immediately prior to its creation, i.e. a complete lack of representation which undoubtedly resulted in a breaches of Articles 6 and 8 ECHR, it is not an adequate long-term solution. Alleged victims and alleged perpetrators with a qualified legal representative will nevertheless lack legal advice on the allegations and the evidence of them; assistance to cross-examine non-prohibited witnesses, including expert witnesses; and assistance presenting the evidence in the context of the overall case.
16. Given the importance of these hearings, and the significant consequences in the lives of the families concerned, the JUSTICE family Working Party recommended has concluded that legal representation for both parties needs to be reconsidered in such cases. **JUSTICE therefore recommends that, if the court identifies a contested allegation of harm between the parties, and the alleged harm is relevant to the child’s welfare such that it requires judicial determination, then both parties should be eligible for legally aided representation.**

¹² Domestic Abuse Commissioner, [The Family Court and domestic abuse: achieving cultural change](#) (July 2023).

¹³ The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) (Amendment) Regulations 2023, which commenced on 2 January 2024 and which amended the Prohibition of Cross Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022 SI 2022/567.

Funding for Expert Evidence in private family proceedings

17. JUSTICE is extremely concerned about the absence of public funding for testing and expert evidence when these are unaffordable for litigants in private family proceedings. Cafcass will arrange and fund DNA tests, however the same provision does not exist for alcohol and drug testing, even if such testing has been identified as relevant and necessary to determine what arrangements are in the child's best interests.
18. Ordering expert assessments poses a similar problem. During the course of the JUSTICE family Working Party's evidence gathering, many consultees including judges emphasised the impossible circumstances of expert evidence being necessary in a case but not being within the means of the parties. If the assessment is of the child, then the child should be made a party and therefore be granted a legal aid certificate which will cover the costs of expert evidence. However, when the assessment is of a parent, lack of funding has the potential to cause extreme difficulties.
19. An example provided in evidence to the Working Party was the lack of funding for expert evidence (medical or psychological) when a litigant in person may lack capacity in proceedings. Such litigants are potential protected parties,¹⁴ for whom there is the possibility of the Official Solicitor acting as a litigation friend if there is evidence or a finding of lack of capacity. If there is no available funding for an assessment of capacity, however, the Official Solicitor is out of reach. She also requires security for costs for legal representation.¹⁵ For those without funds this would have to be through exceptional case funding, which in turn would probably depend on the same evidence of lack of capacity.¹⁶ One judge described this to us simply as "*a black hole*."
20. Further financial barriers identified for third party disclosure were also raised, such as charges for letters from medical professionals¹⁷ and police disclosure. The latter was

¹⁴ See the current guidance which acknowledges that, in the case of litigants in person in private proceedings, the court needs to take a practical approach and investigate the issue, rather than the traditional approach of requiring those who raise capacity to prove it. Family Justice Council Guidance, [Capacity to Litigate in Proceedings involving children](#) (2018), p. 22 onwards.

¹⁵ See Official Solicitor Practice Note, [The Official Solicitor to the Senior Courts Appointment in Family Proceedings and Proceedings under the Inherent Jurisdiction in Relation to Adults](#) (January 2017).

¹⁶ Requirements for exceptional case funding applications are discussed below.

¹⁷ Which we were told were often relied upon if no one could afford testing for drugs and alcohol, creating a double barrier for those who can afford neither.

a particular concern of the Ministry of Justice Harm Panel, which recommended that “urgent consideration is given by police forces, together with the family court and policy representatives, as to how police disclosure may be funded where parties are not legally aided and are not, otherwise, able to fund it themselves.”¹⁸ IDAS told us that this was a significant barrier for the litigants they support:¹⁹ they regularly see victims of domestic abuse who are unable to afford police disclosure, leaving them without necessary evidence in the case.

21. We do not advocate the funding of information or expertise on the mere whim of any party; we are clear that the funding of expert evidence, testing, or further third-party information needs to be focused on what is necessary and relevant to the issues in the case. However, when it has been so concluded by a judge or magistrates, we consider the absence of public funding is unjustifiable and seriously risks undermining the quality and safety of the process and its outcomes for children. **We recommend that expert assessment, third-party information, and testing, should be available in all cases in which it is deemed necessary by the court. Where parties cannot afford the relevant fees and no legal aid certificate exists in the case, funding should be available for obtaining this information. This includes the funding of expert medical assessments of capacity.**

Legal advice for children on their own child arrangements

22. The JUSTICE family Working Party was concerned at the dearth of accessible legal advice available for children about their own child arrangements.²⁰ While most children may have a parent who represents their interests, some may not, and by the nature of their position are therefore some of the most isolated. Those who are capable of giving legal instruction, and who wish to do so, should have clear routes to accessing legal help so they can be informed of their options.

¹⁸ R. Hunter, M. Burton and L. Trinder, [Assessing Risk of Harm to Children and Parents in Private Law Children Cases](#) (Ministry of Justice, 2020) pp. 180-181.

¹⁹ Independent Domestic Abuse Services, a Yorkshire charity supporting those experiencing or affected by domestic abuse or sexual violence.

²⁰ The Working Party identified one service only, Coram Children’s Legal Centre, which provides online guidance and advice about a child changing child arrangements – on their [Lawstuff](#) website and advice by phone via their Child Law Advice Service.

23. These options include applying with leave of the Court for a child arrangements order under section 10(8) of the Children Act 1989. The Working Party does not consider such applications to be preferable to parents applying if they are available and willing to do so. However, when they are not, s.10(8) is an important backstop if a child in private child arrangements does not have an adult to seek an order for them, but they are stuck in arrangements making them seriously unhappy or unsafe.
24. An interesting international comparison is Denmark, where children over the age of ten have a 'right of initiative' to request a meeting about their own child arrangements with the state administration (the Danish Agency of Family Law, or *Familieretshuset*). If resolution is not reached, the *Familieretshuset* makes a referral to the family court.²¹ Even accounting for the different organisational structure of the Danish system,²² the recognition of the child as a rights-holder in the pre-court space is a stark contrast to the position in England and Wales.
25. So too is the difference in legal assistance available to child who are looked after by the local authority under a care order. Independent Reviewing Officers must inform children, in light of their age and understanding, of their right to bring proceedings for child arrangements or to discharge their care orders. When children do wish to challenge their arrangements as decided by the local authority, for example by having more or less contact with family members, Independent Reviewing Officers have a duty to establish whether an appropriate adult is able and willing to assist the child to obtain legal advice or bring proceedings on their behalf, and if there is no such person, they must assist the child to obtain such advice.²³ Looked after children in the local authority's care and those in their family's care are of course in different situations. However, the Working Party noted the similarity in their need for legal advice in these narrow circumstances: when a child opposes their current arrangements and there is no appropriate adult able and/or willing to assist the child to change them.

²¹ S. 35 of the Parental Responsibility Act; see the useful explanation in I. Lund-Andersen and C. Gyldenløve Jeppesen de Boer, [Parental Responsibilities National Report – Denmark](#) (Commission on European Family Law).

²² The [Familieretshuset](#) has a mandatory role before court in all cases, and will invite most parties to a meeting about a disagreement in child arrangements upon one of the parties issuing an application to them.

²³ Reg. 45 of The Care Planning, Placement and Case Review (England) Regulations 2010.

26. In practice, children’s applications for child arrangements are rare.²⁴ Some have suggested this is because the bar for being granted leave is too high; section 10(8) only allows for leave when the child has “*sufficient understanding*”, which in practice will be assessed by the solicitor. However, the JUSTICE family Working Party’s view was that there is also an accessibility issue: namely children being able to access legal advice about an application in the first place, before any assessment of their competence takes place. There is no equivalent for these children to the *Familieretshuset* to go to for a meeting, nor a professional like an Independent Reviewing Officer to oversee their access to legal advice; instead such children are on their own.
27. We are further concerned by potential financial barriers. To access legally aided legal services, the Civil Legal Aid helpline informed us that a child would have to evidence their financial eligibility, which as dependents would in practice require them to produce their parent’s financial information. This is an especially difficult burden in the particular circumstances of such applications. Furthermore, the helpline informed us that a child would have to evidence their eligibility for legal aid under the same gateways as adults, i.e. for domestic abuse or child abuse.²⁵ We later identified there is a separate legal aid provision available for children to access legal aid before a child arrangements application in LASPO: schedule 1 paragraph 15 provides for civil legal services for a child who “*is, or proposes to be, the applicant or respondent*” (emphasis added) of family proceedings. It is therefore of concern that we were given inaccurate information on the Civil Legal Aid helpline.
28. We are unable to determine decisively whether the current funding provision is being accessed sufficiently in practice, since we do not know what the demand is from children, nor do we have data on the use of the provision. However, the incorrect information given by the Ministry of Justice’s own Civil Legal Advice helpline, and the lack of practical experience of the provision from the several children’s solicitors we contacted, gives us cause for some concern. We therefore recommend a small but deep dive review into Schedule 1 para 15 LASPO and whether it is being accessed

²⁴ The number is not included in the Ministry of Justice’s published Family Court Statistics. The Family Solutions Group stated “*The numbers are so small that the Ministry of Justice does not keep the figures but likely to be under 10 annually*”, see the Family Solutions Group (sub-group of the Private Law Working Group), [“What About Me?” Reframing Support for Families following Parental Separation](#) (November 2020) p. 95.

²⁵ Under Schedule 1, paras 12 and 13 of LASPO.

effectively by children who seek legal information and advice about a s.10(8) Children Act 1989 application. This must include a review of the information and training provided to call handlers of the Civil Legal Advice helpline, legal professional awareness of Schedule 1 para 15 LASPO, and any means test and evidential requirements imposed on children which are wholly inappropriate in such cases.

Question 1c. Housing & Debt

Immediate increase in fees for housing advice providers

29. JUSTICE recommends that the Ministry of Justice urgently increase the rates of legal aid for those providing housing advice. As set out by the National Audit Office, the Ministry of Justice must work with providers to ensure its fees are set at a level that “*optimises the balance between cost effectiveness, affordability and access to legal aid (for those who are eligible)*”.²⁶ Currently, the system is failing both those seeking advice and those providing it. Data from the Legal Aid Agency demonstrates that the number of housing legal aid providers has reduced by one-quarter over the past 5 years.²⁷ One of the major reasons for this is that fees have not increased since 1996, and in 2011 were cut by 10%, whilst legal costs have increased since 2011.²⁸ In practical terms, this means that on average, housing legal work is compensated at the rate of £46 – 72 per hour which is completely unsustainable and has led to a crisis in recruitment and retention of practitioners.²⁹ Housing advice deserts affect huge swathes of the country and are likely to continue worsening unless the sector receives significant investment. JUSTICE considers this extremely worrying in the context of a cost of living crisis whereby more people than ever are struggling to pay rent and are therefore at risk of becoming homeless. It is crucial that individuals and families can access support and legal advice to prevent avoidable evictions. We note the Government’s commitment to preventing homelessness by increasing support to tenants via its Renters Reform Bill. However, such proposals are futile unless those facing eviction or forced out of their homes due to uninhabitable, unsafe conditions –

26 National Audit Office, ‘[Government’s Management of Legal Aid](#)’ (2024), p.12

27 Legal Aid Agency, ‘[Legal Aid Provider Contract Statistics](#)’, calculated for period September 2018 – September 2023.

28 Law Society, ‘[Housing Legal Aid: Sustainability Research](#)’ (2024)

29 Ibid.

have the means to access a lawyer who can help them enforce their housing rights and maintain their home.

Expand access to non-means tested early legal support

30. For legal advice to be effective at resolving a dispute or empowering parties to understand their rights and make their own choices about *how* to resolve their dispute, it must be available as early as possible. Only by granting early access to a lawyer, can solutions to housing problems be identified and potentially resolved before the situation escalates. JUSTICE encourages the Ministry of Justice to invest in services that grant tenants access to free, non-means tested legal advice as early as possible and before cases are filed in court.³⁰ We are encouraged by schemes like the Housing Loss Prevention Advice Service (“**HLPAS**”) which was introduced in August 2023 to replace the Country Court Duty Scheme. It allows practitioners to provide early legal support free of charge, on illegal evictions, rent and mortgage arrears, issues with welfare benefits, debt concerns and housing disrepair, regardless of a client’s financial status. Parties are entitled to access this service from the moment a notice of intention to evict is communicated to the tenant, thereby facilitating an early intervention which may prevent cases from going to court. However, there are shortfalls. HLPAS is only available in 11 areas currently and the sustainability of the scheme is jeopardised by the increasing shortage in housing advice providers, for the reasons already referred to.³¹ The effectiveness of HLPAS is contingent on the availability of lawyers to take on the work. Moreover, assuming the issues with funding and sustainability can be addressed, the Ministry of Justice should look to expand the point at which a party can gain access to the scheme. For example, for those living in inadequate, unsafe housing – access to early legal support should not depend on them first being issued with a notice to evict.

Expand contracts to allow for lawyers to provide advice on clustered issues

³⁰ Findings from JUSTICE’s *Solving Housing Disputes* report and the Ministry of Justice Post-Implementation Review of the Rental Mediation Service Pilot evidenced that some parties to a housing dispute, particularly landlords, are less likely to engage in finding out-of-court solutions to housing disputes once proceedings have been lodged in court. This is owing to a number of factors including the status of the relationship between parties and the costs incurred in commencing proceedings.

³¹ Brikenhead, Cheltenham, Crew, Dartford, Hull, Leicester, Liverpool, Salisbury, Southampton, Telford and Wigan

31. 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.³² 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. Again, JUSTICE is encouraged by HLPAS which recognises the value of approaching legal problems holistically, by allowing providers to give advice on related issues such as debt and welfare. However, we consider that the Ministry of Justice must expand civil legal aid contracts for housing to allow all practitioners to provide advice on clustered issues, at sustainable rates, and not only in circumstances where a party is at immediate risk of losing their home, as with HLPAS.³³ As explained above, if the Ministry of Justice wishes to prevent disputes from escalating or unnecessarily ending up in court, then it is crucial that legal aid affords parties access to non-means tested advice that helps them to identify the multi-faceted cause of their problem, at the very beginning of a dispute. Doing so provides the greatest opportunity for early resolution out of court.

Change the definition of “legal help” to capture advising and engaging with DR at the pre-action stage.

32. We note various intentions to increase the uptake of Dispute Resolution (“DR”) within housing disputes.³⁴ JUSTICE supports the greater use of DR within housing which we consider can provide for parties to achieve fair, sustainable and mutually beneficial early resolutions to housing disputes which prioritises keeping tenants in their home, provided it is safe to do so. However, it is crucial to uptake and efficacy of DR, that tenants have access to legal advice and support as early as possible so that they feel empowered to engage in it. 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 DR processes. Furthermore, we recommend legal aid practitioners should not have to obtain prior authority from the Legal Aid Agency to

³² R Moorhead and M Robinson, [A trouble shared – legal problems clusters in solicitors’ and advice agencies](#) (Department for Constitutional Affairs, 2006).

³³ [Housing Loss Prevention Advice Service](#)

³⁴ For example, we note various Government consultations to increase the use of dispute resolution including via the use of pre-action protocols. We also acknowledge the Possession Mediation Pilot which ended in 2021.

engage in ADR but should be free to pursue it as part of an ordinary legal aid certificate.

Long term proposals to create a holistic, investigative model for resolving housing disputes

33. In our ‘Solving Housing Disputes’ report, JUSTICE proposes a new model of dispute resolution for housing: the Housing Disputes Service (“**HDS**”). Underlying the proposal for the HDS is a desire to intervene early in housing dispute, investigate the clustered underlying issues that give rise to the claim (e.g., welfare and benefits issues, debt issues and mental health needs) and facilitate holistic support, provided by a range of experts,³⁵ to achieve early but lasting solutions.

34. It is envisaged that the HDS will constitute the first mandatory step in a housing dispute by replacing the role of the First-tier Tribunal (Property Chamber), the County Court and Magistrates’ Court. The HDS would also assume the DR function from redress providers and tenancy deposit schemes.³⁶ Doing so ensures that the HDS becomes a streamlined mandatory gateway, replacing parts of the existing court pathway. Parties’ right to progress their claim in the way they see fit would be retained through the right of appeal from the HDS to a court or tribunal for a final determination.

35. The proposal for the HDS envisages incorporating elements of DR models utilised elsewhere in the justice system, at home and abroad,³⁷ to resolve disputes through a staged approach. Following a holistic investigation, it is proposed that there will be an initial and provisional assessment (providing a preliminary view of what should follow from it in terms of resolution), before moving on to a DR stage (employing several DR methods including open discussion, negotiation, and mediation) and if necessary, concluded by final determination. To help identify the underlying issues and ensure that parties have access to expert advice and support, the HDS would be serviced by a range of professionals from various sectors such as housing, benefits, and the health

³⁵ It is envisaged that the HDS will be the first port of call for all housing disputes – regardless of the context and will allow for multiple experts to engage with it, including health professionals, debt advisors and lawyers.

³⁶ JUSTICE, [Solving Housing Disputes](#), (2020), Part 1

³⁷ As part of its work in Solving Housing Disputes, the working party had regard to the UK Tenancy Deposit Scheme and the British Columbia Civil Resolution Tribunal, an online administrative tribunal which resolves low value money claims, strata disputes and certain motor vehicle accidents. Both feature a staged approach to dispute resolution.

sectors. The involvement of such persons also performs a crucial role in ensuring fairness – especially in circumstances where there might otherwise be an imbalance in resource or power between parties.

36. For the model to be successful it is crucial that parties have access to lawyers and legal advice throughout the process. Lawyers will play a significant role, ensuring that parties are aware of their legal rights and obligations, and therefore feel empowered to meaningfully engage in the process. Lawyers will be needed to advise clients on the merits of their case, to engage with the other side, to make written representations as part of the range of evidence that the HDS would consider and of course to support appeals from the HDS to the court or tribunal JUSTICE envisages that legal aid provision can be facilitated via the expansion of the existing Early Legal Help contract or via the creation of a new civil legal aid contract specifically for the HDS. Either way, it is imperative that lawyers be remunerated at a sustainable rate, following consultation between the Ministry of Justice and stakeholders.

Question 1k. Welfare Benefits

37. Many individuals are not aware of their potential eligibility for social security benefits. Even for those that are aware, the process of claiming social security benefits is often complex; the criteria for entitlement are not straightforward and the translation of these criteria into a self-assessment mechanism is difficult and may not be successful in capturing the information required to make a full assessment.³⁸ The need for advice and support is particularly acute for those with certain health conditions and disabilities which may make understanding and completing the forms particularly challenging.³⁹ Advice and support is also crucial for claimants who have poor literacy rates and/or are non-English speakers⁴⁰ and, in light of the digital by default nature of UC, those

³⁸ G. McKeever, M. Simpson and C. Fitzpatrick, '[Destitution and paths to justice Final report](#)' (June 2018) p.40.

³⁹ J. Organ and J. Sigafos, '[The impact of LASPO on routes to justice](#)' (EHRC, 2018) p. 36; G. McKeever, M. Simpson and C. Fitzpatrick, '[Destitution and paths to justice Final report](#)' (June 2018); National Audit Office, *Universal Credit: getting to first payment* (see above) p. 12.

⁴⁰ Literacy rates are particularly low amongst the Gypsy, Roma and Traveller (GRT) community. One advice organisation who provides support to the GRT community told us that individuals would simply be unable to apply for benefits or manage their claims without their advice and support.

who are digitally excluded. Without advice, people often feel forced to give up, or make errors leading to much slower resolution of their problems,⁴¹ and/or loss of income.⁴²

38. Advice is also crucial for helping people understand whether the decision they have received is correct and therefore whether they should challenge it. Advice is also needed so that claimants understand how to go about challenging a decision. This is even more the case with the current two stage appeals process. Our *Reforming Benefits Decision-Making Working Party* was told that many claimants find the process too confusing and tiring, stressful and detrimental to their health to go through alone.

39. Advice at the mandatory reconsideration stage is often critical to a successful outcome. One adviser explained that his clients had been successful in all the mandatory reconsiderations he had requested on their behalf without providing new information to the DWP. Instead, he merely restated claimants' positions more assertively or with better-articulated representations. This underscores the positive impact of benefits legal for individuals and its potential to reduce the number of appeals by ensuring that correct decisions are made to begin with.

40. We therefore recommend the reinstatement of early legal advice for welfare benefits. As with housing there is a similar problem with recruitment of sufficient specialist lawyers due to the cuts to legal aid in this area. The resumption of funding for early legal help should up-skill a new generation of welfare benefits specialists and help deal with this issue.

Question 11. Miscellaneous

Behavioural Control Orders

41. Behavioural Control Orders are defined as orders obtained via a civil process, that regulate an individual's behaviour via the imposition of conditions/requirements to prevent a particular type of conduct. Where a condition is breached, a criminal offence

⁴¹ G. McKeever, M. Simpson and C. Fitzpatrick, '[Destitution and paths to justice Final report](#)' (June 2018), p. 38 where interviewees struggled to identify what benefits might lift them out of poverty.

⁴² For example, furloughed workers who applied for UC without seeking advice on how it would impact their existing tax credits, lost their existing tax credits and ended up worse off. In some cases the advice was provided by DWP staff at a Jobcentre, see Child Poverty Action Group, '[Mind the gaps: Reporting on Families' incomes during the pandemic](#)' (August 2020) p. 2.

will result. They occupy a “grey area” within the law and within the legal aid framework – straddling as they do, both civil and criminal law. Examples include: Community Protection Notices, Public Spaces Protection Orders, Football Banning Orders, Knife Crime Prevention Orders, Sexual Risk Orders and Stalking Protection Orders. Depending on the Order, they can be imposed by the local authority or the police “on the spot” without judicial oversight⁴³ or via a hearing in the civil courts.⁴⁴ Breach of an Order is dealt with via the criminal courts and therefore criminal legal aid applies to breach proceedings. In 2023, JUSTICE launched a report that explored their function and effectiveness.⁴⁵

42. Our report identified the existence of significant barriers which prevent individuals from being able to challenge the imposition and/or enforcement of Orders via the civil process. Firstly, far too many individuals are left uncertain of where to go and who to turn to, to challenge an order. Public legal education about Behavioural Control Orders is exceptionally poor. This is particularly true of Behavioural Control Orders relating to anti-social behaviour.⁴⁶ JUSTICE heard regular accounts of individuals being turned away from advice clinics or law centres who did not know how to help them challenge a Community Protection Notice or enforcement of a Public Spaces Protection Order. Many recipients did not know they were entitled to legal aid, and nor do many lawyers, as is evidenced by the Civil Justice Council in their report looking at Behavioural Control Orders under the 2014 Anti-Social Behaviour Crime and Policing Act.⁴⁷ Even where an individual was able to find a lawyer to assist, in the context of legal advice deserts, difficulties in obtaining legal aid made it exceptionally difficult to challenge an order within the timeframe. For example, Community Protection Notices provide only 21 days to appeal the imposition of an Order to a Magistrates Court and lawyers we spoke to explained that they were only able to obtain legal aid in exceptional circumstances and by evidencing that their client would experience substantial challenges in representing themselves. In reality, most parties subject to Behavioural Control Orders do not have legal representation at the time that Orders or imposed

⁴³ Community Protection Notices, Public Spaces Protection Order

⁴⁴ For example, Anti-Social Behaviour Injunctions, Knife Crime Prevention Orders, Sexual Risk Orders

⁴⁵ JUSTICE, [Lowering the Standard: a review of Behavioural Control Orders in England and Wales](#). (2023)

⁴⁶ Community Protection Notices, Public Spaces Protection Orders, Anti-Social Behaviour Injunctions

⁴⁷ Civil Justice Council, [Anti-Social Behaviour Orders and the Civil Courts](#) (July 2020)

and/or do not challenge Orders at all.⁴⁸ The risk that they may be liable for the costs of the police or local authority applying for the Order, is also a major deterrent.⁴⁹ The appeals process for challenging the imposition of a PSPO is particularly limited. For example, there is no merits-based appeal route.⁵⁰ Only two challenges of PSPOs have been brought, despite over 2,000 PSPOs being in existence and they have been mostly unsuccessful.⁵¹

43. This is particularly problematic given that the consequences of breaching an Order or having one imposed, can amount to an interference with Article 5 and Article 8 ECHR. Parties can be criminalised and/or incarcerated where breaches occur. As stated by the Civil Justice Council many recipients are not represented during the hearings to impose an Order which greatly increases the chance of such an Order being imposed. As stated by the Civil Justice Council, *“The position contrasts sharply with the criminal courts where a person eligible for and seeking publicly-funded legal advice and representation, would not ordinarily face being deprived of their liberty without it being provided.”*⁵²

44. Furthermore, lawyers we spoke to stated that even where legal aid was available, the civil rates were far too low. This is because the work required to challenge the imposition of Orders such as Criminal Behaviour Orders, Serious Crime Prevention Orders and Sexual Risk Orders, was more akin to the work that required to be undertaken defending in a criminal trial given the gravity of the behaviours alleged and the serious consequences. **Given the potentially significant criminal outcomes that they have for recipients, the level of legal aid must be revisited to ensure that it is financially viable for those with civil legal aid contracts to represent parties in respect of Behavioural Control Orders. Finally, the Legal Aid Agency**

⁴⁸ JUSTICE, [Lowering the Standard: a review of Behavioural Control Orders in England and Wales](#). (2023)

⁴⁹ JUSTICE, [Lowering the Standard: a review of Behavioural Control Orders in England and Wales](#). (2023), para 4.57

⁵⁰ See Anti-Social Behaviour Crime and Policing Act 2014, s.66 which sets out that interested persons (those who live in, work in or regularly visit the area covered by the Order, can appeal to the High Court within 6 weeks of the Order being made on the basis that that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order; or (b) that a requirement under the statute was not complied with in relation to the Order

⁵¹ See *Summers v Richmond upon Thames LBC* [2018] EWHC 782 (Admin) and *Dulgheriu and Orthova v Ealing LBC* [2018] EWHC 1667 (Admin).

⁵² Civil Justice Council, [Anti-Social Behaviour Orders and the Civil Courts](#) (July 2020) p.14.

should reverse its position that statutory appeals of Public Spaces Protection Orders under s.66 are out of scope.

45. We echo the calls made elsewhere, including by the Civil Justice Council, that the Ministry of Justice and Legal Aid Agency, urgently review and address the availability of legal advice and representation in respect of all hearings regarding Behavioural Control Orders.⁵³ Specific attention should be directed to the creation and/or expansion of, legal aid duty advice schemes in respect of applications for Behavioural Control Orders. This is of course contingent on there being investment in tackling legal advice deserts across the country to ensure that lawyers are available to take on cases pertaining to Behavioural Control Orders.

Windrush Compensation Scheme

46. JUSTICE published a report in November 2021 which made a series of recommendations on how to improve the administrative and procedural aspects of the Windrush Compensation Scheme (the “**Scheme**”) to ensure it is accessible, fair, and efficient for those who need it.⁵⁴ It recommended that “Funding should be made available for legal representation for all successful Claimants via (a) Legal Aid and/or (b) funding provided under the Scheme.

47. Whilst the Home Office aimed to design the Scheme to be clear and simple so that people would not need legal representation to apply our report demonstrated that this is not the case as demonstrated by:

- a) the number of changes to the scheme since its inception;
- b) the length of the application form (44 pages long);
- c) the extent of the guidance provided to caseworkers and claimants;
- d) the evidence required to prove loss of employment and impact on life (including psychiatric and medical reports);
- e) the number of hours spent by staff on cases - according to the National Audit Office, “up to 31 March 2021, cases that resulted in a compensation payment involved 154 hours of staff time”⁵⁵

⁵³ Ibid., see also Civil Justice Council, [Anti-Social Behaviour Orders and the Civil Courts](#) (July 2020) para 44.

⁵⁴ JUSTICE, [Reforming the Windrush Compensation Scheme](#) (2021)

⁵⁵ National Audit Office Report, p17. para 4.4

f) the number of hours that legal advisors spend on cases when providing legal advice to claimants. Experienced firms confirmed to JUSTICE that they were spending on average up to 45 hours per application.”⁵⁶

48. The cohort of claimants to the scheme is aging, many of them are vulnerable, possess poor literacy skills and/or face mental health challenges due to the trauma and impact of having their status removed from them.⁵⁷ This makes it particularly difficult for them to navigate the claim process.

49. As a result of legal aid not being available, claimants need to rely on a few organisations and firms who are providing legal support on a pro bono basis, but this is not available to all because of capacity, and is reliant on the good will and charity of professionals. As a result of the lack of funding, we were told that firms have been offering Damages Based Agreements commonly requiring payment to the legal representative of around 20-30% of the award, and as much as up to 67%.⁵⁸ This creates unfairness to claimants faced sacrificing a significant proportion of their award and runs contrary to the intended operation of the Scheme.

50. Subsequent to the publication of our report, Windrush Justice Clinic published their report on the same issue which came to the same findings, based on their experience of helping claimants apply for the scheme.⁵⁹ In a number of cases claimants have submitted a claim themselves then sought legal assistance after receiving a low offer. In these cases it is clear the difference legal assistance makes to the level of award. In one instance reported to us an advisor had a client who’s award increased from £40,000 to £70,000 once they had the benefit of legal representation. In another reported instance a client’s with a nil award was increased to £280,000 after the assistance of a solicitor’s firm.

⁵⁶ JUSTICE, [Reforming the Windrush Compensation Scheme](#) (2021) p.42, para 4.72

⁵⁷ Not being able to prove their status meant that they were not able to apply for work, benefits, housing, health care, banking, driver’s licence etc. Many of the cohort were made homeless as result of not being able to work, having an extreme impact on their life for many years, having a detriment to their mental health.

⁵⁸ [Supplementary written evidence submitted by Jacqueline McKenzie](#) (WCS0033) para. 3.5; and [Written evidence submitted by Malcolm Johnson, Hudgell Solicitors](#) (WCS0012) para 5.

⁵⁹ Windrush Justice Clinic, [The Windrush compensation scheme: unmet need for legal advice](#) 25th March 2022, p.37

51. The Home Office currently provide assistance with compensation claims through We Are Digital (“WAD”).⁶⁰ However, this support is insufficient to enable claimants to receive the compensation they are entitled to. Claimants receive only 3 hours of support (with some provision to request approval from the Home Office to allocate more time), this is insufficient to ensure that claimants understand the process, meet the eligibility requirements, understand the additional evidence required and how to structure the form.⁶¹ WAD will ensure the Claimant’s form is completed in the correct places, but they will not write anything on the Claimant’s behalf and will not assist them with drafting. They do not provide support to Claimants who may struggle with expressing themselves in written English. They do not assist Claimants to obtain the necessary evidence to support their claim. They are also unable to provide legal advice. More vulnerable Claimants or those with complex cases may be advised to contact a lawyer but they are not signposted onto somewhere they can get legal advice. When questions arise on which WAD staff cannot assist, the Claimant is signposted back to the Home Office and this means they then have to engage with the Home Office which is traumatic for many.

52. We were told by WAD that between March and July 2021 less than 35% of the people assisted by WAD went on to make a claim, even though they were eligible for the Scheme. This suggests that for most people the support provided is not sufficient to enable them to make a claim. Further WAD provides support by patterning with local organisations and there are geographic gaps in the provision.⁶²

53. A number of applications have been made for Exceptional Cade Funding but these have been refused on the grounds that the scheme has been designed to be simple enough for legal representation to not be required and that a support service is in place to help Claimants.⁶³ Making ECF funding available for claimants with the most complex cases would be a step in the right direction and certainly helpful. However, in our view

⁶⁰ Trading as We Are Group: <https://www.wearegroup.com/>

⁶¹ Reforming the Windrush Compensation Scheme (as above) para 4.65, p40. The Home Affairs Select Committee agrees that support sessions are insufficient and further legal assistance is required (HASC Windrush Compensation Scheme report, para. 131, p42: [The Windrush Compensation Scheme - Home Affairs Committee \(parliament.uk\)](https://www.parliament.uk/publications/2023/10/windrush-compensation-scheme-home-affairs-committee))

⁶² There are no locations in Scotland, in England north of Leeds, or in the East of England north of Ipswich. Major cities with likely high numbers of potential Claimants, including Nottingham, Bristol, Liverpool, Preston and Wolverhampton do not have any physical venue offering WAD support.

⁶³ There is an ongoing judicial review of the Legal Aid Agency’s refusal to grant ECF to a Scheme claimant. Monidipa Fouzder, ‘Windrush Compensation Scheme: claimant denied legal aid heads to the High Court’ *Law Gazette* (20 February 2024)

the dire need for assistance by a number of claimants due to the issues outline above, along with the difficulties in accessing ECF even when someone is entitled to it (see Question 13 below), in our view necessitates brining assistance with making applications to the Scheme as well as challenging initial decisions within scope of legal aid.

4. What potential risks and opportunities do you foresee in the future for civil legal aid: i) in general; and ii) if no changes are made to the current system?

54. Effective access to the justice system in order to be able to enforce legal rights is essential to the rule of law. The legal system is complex and difficult to navigate. The average individual is “*not in a position to bring judicial proceedings on their own*”.⁶⁴ It is, therefore, critical that legal advice, assistance and representation is both readily available and affordable. Where individuals are unable to pay for legal representation, individuals should be able to access legal aid, where the public interest dictates, so as to ensure an effective right of access to the courts.⁶⁵ The current system of civil legal aid does not guarantee this right. Without significant changes to funding and delivery of civil legal aid, there is a risk to the country’s compliance with the rule of law and access to justice. We are concerned about the slow pace of reform – it is now five years since the LASPO Post Implementation Review and the Legal Support Action Plan, and few changes have been made. This slow pace of change is threatening access to justice and compliance with the rule of law.

5. What do you think are the possible downstream benefits of civil legal aid? The term ‘downstream benefits’ is used to describe the cost savings, other benefits to government and wider societal benefits when eligible individuals have access to legally aided advice and representation?

Private family proceedings

⁶⁴ Venice Commission of the Council of Europe, *‘Rule of Law Checklist’*, (2016), p. 25.

⁶⁵ See e.g., *Golder v. the United Kingdom*, 4451/70, 21 January 1975, § 26ff.

55. JUSTICE welcomes the recent Ministry of Justice commitment to pilot early legal advice in child arrangements.⁶⁶ JUSTICE considers early legal advice funded by civil legal aid will lead to downstream benefits as follows:

- a) More cases will be settled earlier after early legal advice, or otherwise the issues reduced, leading to a downstream saving for the courts. Evidence from the Ministry of Justice's Legal Support for Litigants in Person grant interim report supports this: 79% of the family sample who received generalist advice, casework and early specialist legal assistance before engagement with the formal court system (stages 1 and 2 in the evaluation) resolved problems avoiding the need to go to court, as opposed to 11% of the employment sample and an average of 62% across all areas of law.⁶⁷
- b) Fewer litigants in person will arrive at court unassessed, unadvised, their expectations unmanaged and their legal case unarticulated. This means a reduction in wasted hearings, in which a litigant in person has not effectively understood what is required or misunderstood the nature of the application and what they are asking for. We anticipate it will also result in a reduction in the length of time required for the judge to deal with the case, resulting in a saving of judicial and court resource.
- c) When there is a dispute between parents/carers regarding child arrangements, the risk that a child's living and contact arrangements will be settled unfairly and/or in ignorance of the law will not depend on whether their parents can pay privately for legal advice. Instead, publicly funded legal advice will put the child's welfare first, and ensure a more equal access for all children to child arrangements which prioritise their welfare. Prioritising children's welfare over parents' access to private funds is essential for this cohort, since evidence shows that families in private children proceedings are disproportionately from the most deprived areas. In 2019/20, 29% of applicant fathers and 31% of applicant mothers making a private law application lived in the most deprived quintile, with 52% of fathers and 54% of

⁶⁶ Ministry of Justice, [Supporting earlier resolution of private family law arrangements: Government response](#). (January 2024)

⁶⁷ P. Welham and W. Dugdale, [Legal support for litigants in person mid-grant report](#) (MINISTRY OF JUSTICE, 2022) Table 20 at p. 80.

mothers living in the two most deprived quintiles.⁶⁸ There is further evidence that parents experiencing poverty or under economic pressure are more likely to experience relationship conflict.⁶⁹

- d) Settlement of child arrangements problems in a constructive and fair way improves children's lives, well-being and life chances: evidence shows that children's exposure to frequent, intense and poorly resolved parental conflict can impact their mental health and long-term life chances.⁷⁰

56. JUSTICE further recommends that parties be made eligible for legally aided representation in cases in which a fact-finding hearing has been necessary by the court (see above our answer to Question 1.a). This will improve the quality of the process through which evidence is elicited from witnesses and tested, assisting the judge or magistrates in their task of weighing the evidence and making findings of fact in the case. It will also prioritise safety, ensuring vulnerable people can access a fair and safe process in court. This will better protect children and adults from ongoing harm ;harm arising from domestic abuse which has extensive costs to society.⁷¹

⁶⁸ In 2020-21, the NFJO published a series of reports from a newly formed Family Justice Data Partnership between the Universities of Lancaster and Swansea, using anonymised data from a SAIL (Secure Anonymised Information Linkage) Databank. The Data Partnership linked population-level demographic data to the administrative data held by Cafcass to provide a picture of the families coming to court, finding disproportionate deprivation in both Wales and England. See respectively: L. Cusworth et al, [Uncovering private family law: Who's coming to court in Wales?](#) (NFJO, 2020) and L. Cusworth et al, [Uncovering private family law: Who's coming to court in England?](#) (NFJO, 2021).

⁶⁹ D. Acquah, R. Sellers, L. Stock, and G. Harold, '[Inter-parental conflict and outcomes for children in the contexts of poverty and economic pressure](#)' (Early Intervention Foundation, 2017).

⁷⁰ G. Harold, D. Acquah, R. Sellers and H. Chowdry, '[What works to enhance interparental relationships and improve outcomes for children?](#)' (Early Intervention Foundation, 2016).

⁷¹ See the Home Office's [The Economic and Social Costs of Domestic Abuse](#) (2019) which estimates the social and economic cost for victims of domestic abuse in year ending March 2017 in England and Wales to be approximately £66 billion. This is the best proxy available, as there is a high degree of co-occurrence between domestic abuse and child abuse within abusive families and therefore the direct causal impact cannot be established.

Housing and welfare benefits

57. Benefits, debt and housing issues often go hand-in-hand. Early legal advice to resolve one or more of these issues can not only avoid costly litigation further down the line but reduce public spending elsewhere.⁷²
58. Individuals who are denied benefits that they are entitled to may find it challenging to afford basic necessities, such as food, heating and water. As a result they may suffer health issues and require healthcare services, thereby increasing the strain on the NHS. Some individuals who are entitled to benefits also have dependants to provide for, including notably children. Children experiencing hunger or inadequate living conditions may struggle academically due to difficulties with concentrating and learning. They may also find it more difficult to engage with their peers socially as a consistent lack of access to nutritious meals and other necessities can cause mood swings and irritability; this in turn can further affect their ability to succeed academically. This not only has severe consequences for the individual children but may have long lasting consequences for the ability of those children to contribute economically through employment.
59. In addition, early benefits advice would help individuals better understand the correctness of the decisions they receive and whether they should challenge them. If individuals are advised that the decisions they receive are correct, they are less likely to contest these decisions. This would lead to cost savings for the Department for Work and Pensions and/or Department for Communities as well as the Ministry of Justice as fewer decisions will be challenged through the mandatory reconsideration and appeals process. Where individuals seek to challenge decisions following advice, they are usually able to articulate and evidence their claim more thoroughly making the decision making process both at mandatory reconsideration and at the tribunal easier and saving time and resources.
60. Problems accessing welfare benefits or struggling with unsatisfactory debt arrangements, are often the root cause of rent arrears issues. Legal advice provided

⁷² 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); See also, National Audit Office, National Audit Office, '[Government's Management of Legal Aid](#)' (2024),

at an early stage of a dispute can result in tenants being supported to access their benefits and entitlements e.g. via representation to DWP. This is considerably cheaper than having to fund legal representation in a subsequent possession claim, and reduces the problems associated with court backlogs and waiting times – an issue that the Government has repeatedly referred to as a reason for it delaying important reforms such as the abolition of s.21 “no-fault eviction”.⁷³ Moreover, providing early legal advice and support means that tenancies are considerably more likely to be sustained and loss of a tenant’s home, prevented. It prevents against the knock-on impacts that late legal advice – and the threat of eviction - can have on a tenant’s health, employment and social relations.⁷⁴ Moreover, it has obvious downstream impacts in helping to reduce homelessness – which currently costs the Government approximately £1bn annually.⁷⁵ Some reports suggest that the associated costs of homelessness, taking into account the impact on health services and the criminal justice system – mean that this figure is considerably higher. Finally, housing legal aid lawyers directly link the cutting of the sector to tragic cases such as the death of Awaab Ishak. They argue that the current gap in service provision allow for simple cases of damp and mould to be left untreated, “spiralling into a devastating health risk”.⁷⁶

61. “It might be short-term annoying to have a lawyer bother you about a small issue, but then you get it dealt with,” Mr Newman says. “But it’s got to the point when housing associations themselves don’t know about the problems, and that’s disastrous. We know it kills.”

62. We also agree with arguments made elsewhere that access to early legal advice helps drive up standards and contributes to a culture of compliance within the housing sector. As stated by the Legal Action Group, “*there are parts of the country where the slum landlords and the decisions on homelessness just do not get challenged because there are no lawyers to do it*,”.⁷⁷ We consider that this sets an incredibly worrying and unsafe precedent which will ultimately lead to further costs down the line and housing stock that is unfit for purpose. For example, a report in 2021, found that poor-quality housing

⁷³ See, Inside Housing, [‘No abolition of s.21 without Court Reform’](#), (2023)

⁷⁴ Law Centres Network, September 2018, *LASPO Act 2012 Post-Implementation Review*.

⁷⁵ Department of Housing, Levelling Up and Communities, [‘Evidence review of the cost of homelessness’](#)

⁷⁶ Inside Housing, [‘Legal Aid in Crisis’](#), (2024)

⁷⁷ *Ibid.*

cost the UK public around £18.5bn per year, including a direct costs to the NHS of £1.4bn to treat those who are physically affected by poor quality housing.⁷⁸

9. What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid?

Private family proceedings

63. In terms of accessing the current civil legal aid which exists, JUSTICE is concerned that children who need legal advice on their own options, as distinct from their parents, are not accessing that public funding. (See above in our response to Question 1a.)

64. Victims of abuse and protective parents of children who are at risk of/have experienced abuse are also supposed to be eligible to civil legal aid. However, there are clear barriers to their effectively and consistently accessing this help.

- a) Firstly, **victims of abuse or protective parents may not seek the help they need**. This distinguishes victims of abuse from the wider cohort of those with a family problem. In relation to the wider cohort, evidence shows that those experiencing family problems are far less likely to ignore the problem than those experiencing housing or debt issues,⁷⁹ and this was evidenced by the Ministry of Justice's own survey research which found that all participants facing a family justice problem took at least initial steps to understand their options.⁸⁰ The important exception is domestic abuse, where there was evidence of delays in responding to abuse. In the Ministry of Justice's research this was due to domestic abuse *not* being seen as a justice problem, as well as victims of abuse fearing the consequences of taking action. Previous national survey research has also found a high rate of inaction for domestic violence despite it being one of the areas in which, comparatively speaking, people were able to articulate their legal rights clearly.⁸¹ During the course of evidence gathering for the JUSTICE family Working

⁷⁸ BRE Group, '[The Cost of Poor Housing](#)' (2021)

⁷⁹ P Pleasance and N Balmer, [How People Resolve 'Legal' Problems: a report to the legal services board](#) (PPSR, 2014), table 1.2, p.12.

⁸⁰ I Pereira et al, [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, 2015), p. 40.

⁸¹ P Pleasance and N Balmer, [English and Welsh Civil and Social Justice Panel Survey: Wave 2 Summary Findings](#) (Legal Services Commission, 2013), pp39, 47.

Party in 2021-2022, we spoke with domestic abuse specialist agencies who work with these parents daily. They raised additional barriers which make access to legally aided help less likely for those who need it: low literacy levels, English as a second language, high levels of stress and anxiety and fear of an abusive partner. Southall Black Sisters explained to us that there are further intersecting barriers experienced by many Black and minority ethnicity women victims of abuse in accessing civil legal aid, including immigration insecurities, fear of reprisals from family and community, shame, isolation and fear of court as a punitive authority.

- b) Secondly, **victims of abuse or protective parents may not know where to go.** The JUSTICE family Working Party members were concerned by the sheer amount of piecemeal information sources online, of varying quality, amongst which users do not know what or whom to trust. Other JUSTICE Working Parties, Government-commissioned research and other independent research have all highlighted the value of a single authoritative online platform.⁸² JUSTICE considers those experiencing child arrangements problems would similarly benefit. Therefore we welcome the recent commitment by the Ministry of Justice to establish an authoritative online information platform for separating families,⁸³ which of course must consider the domestic abuse victim as a potential user and be designed to aid their access to civil legal aid. However online navigation is not the only answer, especially for those who are digitally excluded or otherwise marginalised. The importance of community outreach was stressed to us in our conversations with Forward UK, an African women-led organisation working to end violence against women and girls, with specialisation in female genital mutilation. It supports individuals and families to access support and legal assistance, and uses a model of engaging with community champions to reach out to marginalised members of communities, rather expecting people to find their service on their own. The JUSTICE family Working Party considered that community outreach to marginalised communities was particularly important to ensure civil legal aid was

⁸² JUSTICE, [Delivering Justice in an Age of Austerity \(2015\)](#); [Understanding Courts \(2019\)](#); [Solving Housing Disputes \(2020\)](#); I. Pereira, C. Perry, H. Greevy, and H. Shrimpton, [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, 2015); A. Barlow, J. Ewing, R. Hunter, and J. Smithson, [Creating Paths to Family Justice: Briefing Paper and Report on Key Findings](#) (2017) pp. 11-12.

⁸³ Ministry of Justice, [Supporting earlier resolution of private family law arrangements: Government response.](#) (January 2024)

accessible to all, through partnerships with trusted people and organisations within those communities.

- c) Thirdly, even if a victim of abuse does access legal help, **there are significant evidential barriers to successfully accessing legal aid**. These were evidenced in Ministry of Justice research in 2017: “*organisations, and health professionals in particular, can be unwilling to write letters; data protection issues arise when attempting to access evidence from the police; language or other vulnerabilities create barriers; and victims who do not disclose abuse to an organisation that can supply evidence end up significantly disadvantaged*”⁸⁴. The JUSTICE family Working Party also heard evidence about parents or carers who have safety concerns but lack the external evidence or local authority assessment which would satisfy the legal aid evidential requirements. Both domestic abuse and child abuse legal aid gateways will accept a letter from children’s services as evidence, if the letter confirms that the adult or child has been assessed as being at risk of harm.⁸⁵ Mums in Need (MIN), a support charity for mothers subject to post-separation coercive control, explained to us that they regularly see local authorities not conducting a full assessment with the family if they deem the parent seeking help to be a protective parent. In such circumstances, MIN have experience of children’s services signposting victims of abuse or protective parents to the Family Court to pursue private orders, while closing the local authority case and not fully assessing the risk, but also while being firm about the need for that parent to continue to be protective in the face of any demands for contact which might put the child at risk. MIN stressed that signposting to the Family Court without full assessment makes the victim of abuse and the child doubly vulnerable: the parent then lacks the evidence needed to satisfy the legal aid evidence requirements, but also fears failing to raise the issue in private proceedings, in case this will be seen by the local authority as a failure to protect.

Housing and welfare benefits

65. Severe physical and geographical barriers get in the way of a tenant seeking legal advice. Housing ‘advice deserts’ have increased year on year since 2012 and now

⁸⁴ See, F. Syposz, [Research investigating the domestic violence evidential requirements for legal aid in private family disputes](#) (Ministry of Justice, 2017) pp. 2-3.

⁸⁵ LASPO Schedule 1, paras 12 and 13.

affect huge swathes of the country, leaving many with nowhere to go when facing a housing problem.⁸⁶ Research produced by the Law Society in 2023 showed that 42% of people in England and Wales did not have access to a local housing legal aid provider, up from 37% in 2019.⁸⁷ More than half of all local authorities in England lack legal aid provision. Furthermore, reports have highlighted that of the housing legal aid providers registered in the year to August 2023, 29.5% did not deliver any legal aid cases, and of those that did deliver cases, 44.9% did fewer than 50 cases within the year.⁸⁸ As stated in *Al Ahmed v Tower Hamlets LBC*:

*Even those who are still entitled to legal aid will often not be able to find someone to provide the service they need. Those housing advice providers that are still left are facing increased demand and often do not have the capacity to assist everyone who approaches them for help.*⁸⁹

66. Similarly to housing, there is a dearth of welfare legal aid providers. According to the Law Society, 83.6% of the population does not have access to a welfare legal aid provider.⁹⁰ This glaring gap means even eligible individuals are unable to challenge or appeal decisions. Moreover, in local authorities where a welfare legal aid provider is available, 11.9% of the population only has a single firm available.⁹¹

67. It is clear that more and more legal aid providers are leaving the market year by year. As explained in response to question 1, problems with retention and attracting new lawyers to take on legal aid work risks completely decimating the housing and welfare advice landscape. This is an untenable situation and has profound impacts on access to justice, particularly in the context of a cost-of-living crisis where more people than ever are struggling with debt and are at risk of losing their homes.

68. Even where legal aid providers are available, many people do not know how to access legal aid, nor believe that they qualify for it. Many assume that the law will not help them or do not know how to go about finding a lawyer or an advice service. For many,

⁸⁶ The Law Society, '[Legal Aid Deserts](#)', last accessed 10 February 2024

⁸⁷ Ibid.

⁸⁸ Inside Housing, '[Legal Aid in Crisis](#)', (2024)

⁸⁹ *Al Ahmed v Tower Hamlets LBC* [2020] EWCA Civ 51, [21]

⁹⁰ Law Society, '[Welfare benefits – legal aid deserts](#)' (February 2024).

⁹¹ Law Society, '[Welfare benefits – legal aid deserts](#)' (February 2024).

the legal system is alien, unfriendly and incomprehensible. Evidence shows that this is particularly true of consumer, debt, and housing which are areas in which parties are less likely to seek advice or legal assistance owing to emotional barriers.⁹² 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.

69. In addition, as with victims of abuse or protective parents, benefit claimants and tenants suffer from a disaggregated advice landscape. All too often, tenants and benefit claimants 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.⁹³ It is for these reasons that JUSTICE recommends the creation of a “one stop shop” or portal via which tenants or those experiencing a housing dispute, can be directly linked to legal advice providers, regardless of the type of housing dispute, or jurisdiction in which the dispute might be heard e.g., tribunal, court or ombudsman. Similarly in the benefits context JUSTICE has recommended the creation of a single access ‘portal’ which provides information on organisations providing welfare benefits advice and which should be clearly signposted to on all webpages that provide information on benefits, throughout the UC online application process, on paper-based forms and in all decision letters and mandatory reconsideration notices.

10. What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs?

70. While there is already a multitude of existing law firm websites, individuals lack navigational tools which can assist their decision-making, as between different legal aid providers. JUSTICE recommends consideration of the “*Affordable Advice*” service from Law for Life, which is aimed at addressing a range of barriers to parents seeking

⁹² P Pleasence and N Balmer, How People Resolve ‘Legal’ Problems: a report to the legal services board (PPSR, 2014), table 1.2, p12

⁹³ 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

advice about child arrangements and financial remedies after divorce, including fear and confusion about prices, the high cost of advice, and a lack of confidence. Throughout pages of online legal information on the AdviceNow website there are regular opportunities to receive a one-off advice appointment from a Resolution lawyer at a fixed rate, also known as “unbundled” advice. The client clicks through to Resolution lawyers who have signed up to provide advice in that specific area, reviews their profile, and can thereafter request an appointment. The appointments are booked digitally, and the appointments can be held by phone or video call. The client fills in a questionnaire ahead of their appointment, as well as having read the legal information. The pilot was a success and continues to run as a service, with users reporting high levels of confidence and stress reduction after having received advice, corroborated by solicitors interviewed in the evaluation.⁹⁴

71. JUSTICE considers this kind of online model could be one way of improving access to civil legal aid providers. It could be a feature of an online information platform for separating families, allowing families to better understand their problem and any legal aid eligibility, then navigating them through to a search function of different practitioners, their characteristics and the services they offer (eg whether they accept remote appointments, or their postcode for face to face appointments).
72. This model of combining online legal information with opportunities for one off pieces of unbundled legal advice could also be used in other civil contexts, outside of family. However, it is important to acknowledge that this will not be appropriate for all users of the civil justice system. In particular, those who are digitally excluded. But also others who may need ongoing support with their legal issue, rather than one off pieces of discrete advice.
73. Furthermore, while online navigation is important it is not the only way that clients can and will find legal aid providers. Clients may instead look to others they trust, including friends and family, or local trusted community groups (see our evidence provided in relation to Question 9 above). Local networks or alliances of services are therefore an important additional initiative: they have the potential to cultivate knowledge, trust and referral routes between local services, to ensure families can receive help with their problems as easily as possible. A particularly developed model of such coordination

⁹⁴ Law for Life, [Evaluation of Affordable Advice Service Pilot](#) (September 2021)

the JUSTICE family Working Party identified was that of CLOCK,⁹⁵ which provides service users with a volunteer ‘Community Legal Companion’ to coordinate their multi-agency support, from law firms, mediators, Domestic and Sexual Abuse survivor support services and others. Other models include health-justice partnerships, which can help navigate those seeking healthcare assistance or intervention to also secure legal help. JUSTICE has previously highlighted the benefits of locating advice provision within primary healthcare settings.⁹⁶ Research by the Administrative Justice Council found that locating benefits advice within hospital settings had a number of advantages for both the hospital trusts and the claimants. This included being better able to assist claimants gather medical evidence needed to support their benefits claims.⁹⁷ Other approaches include situating advice provision in places or services that vulnerable or hard to reach groups already use for other purposes. For example, in Northern Ireland the Community Advice Centre outreach advisers used to situate themselves in rural community centres, some housing associations have in-house benefits advice, advice providers located in foodbanks,⁹⁸ and benefits advice provided by women’s centres.

74. Improvements are also required to the signposting to advice by the Government departments interacting with individuals seeking to access state benefits or to challenge a Behavioural Control Order. Better signposting on Gov.uk pages, in correspondence and in decision letters is required. Codes of conduct should also set the requirements for how landlords should communicate with tenants and the information they must provide to them, including signposting to advice, and when to do so.

13. How do you think that the Exceptional Case Funding scheme is currently working, and are there any ways in which it could be improved?

⁹⁵ *Community Legal Outreach Collaboration Keele* (CLOCK) is a University-based public, private and third sector partnership model (originating in Keele University, now operated by 9 University Law Schools in 8 court centres) providing navigation and coordination of legal and support services for litigants in person, through a “Community Legal Companion” role.

⁹⁶ JUSTICE, [Innovations in personally-delivered advice: surveying the landscape](#) (2018).

⁹⁷ Administrative Justice Council, Health Innovation Ecosystem and University of Westminster, *Access to social welfare advice in a hospital setting: integration of services* (see n. **Error! Bookmark not defined.** above).

⁹⁸ Eastbourne Foodbank, [‘Get Help, More than Food’](#).

75. Exceptional Case Funding (“ECF”) is supposed to be a safety net: for those no longer in scope for legal aid funding but whose human rights would otherwise be breached if they had to represent themselves in proceedings. The Court of Appeal has clarified that such cases do not need to be “rare or extreme”.⁹⁹ The test is whether withholding legal aid would mean that the applicant is unable to present his case effectively and without obvious unfairness, having regard to (a) the importance of the issues at stake; (b) the complexity of the procedural, legal and evidential issues; and (c) the ability of the individual to represent himself or herself (or to participate in the relevant process) without legal assistance.¹⁰⁰

76. However, JUSTICE is concerned by evidence that ECF is not reliably accessible to individuals before they come to court: some have criticised the application process for being too complex and time-consuming for individuals,¹⁰¹ and there is evidence that the scheme is completely inaccessible to those with multiple intersecting vulnerabilities, who need the scheme most.¹⁰² Meanwhile, others have identified that professionals can have a preconception that any application will not succeed, decide not to use unpaid time on an application for which they may not receive payment, and have a lack of knowledge about ECF generally.¹⁰³

Private family proceedings

77. In 2022, the JUSTICE family Working Party heard examples of litigants at court being identified as highly vulnerable and in need of legal assistance, yet there being no routine consideration or practical mechanisms available to help that litigant access ECF.¹⁰⁴ The Working Party was acutely concerned with those who need an

⁹⁹ *R (Gudanavienene and Others) v The Director of Legal Casework and others* [2014] EWCA Civ 1622, para. 45.

¹⁰⁰ *Ibid* para. 72 onwards, as incorporated into the Lord Chancellor’s [Exceptional Funding Guidance \(Non-Inquests\)](#) (January 2021) paras. 19-29.

¹⁰¹ For example, see House of Commons Justice Committee, [Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), Eighth Report of Session 2014–15, HC 311 (March 2015), para. 47.

¹⁰² Rights of Women, [Accessible or beyond reach? Navigating the Exceptional Case Funding Scheme without a lawyer](#) (2019).

¹⁰³ H. Connolly, H. Crellin & R. Parhar, [An update to: Cut off from justice. The impact of excluding separated and migrant children from legal aid](#) (The Children’s Society, August 2017), p. 42.

¹⁰⁴ Albeit there are pockets of availability at court thanks to volunteer services in the court building, such as Liverpool University Law Clinic’s drop-in clinic at court for ECF in family cases, as referenced in Public Law Project’s Toolkit, [Exceptional Case Funding Clinics](#) (2019), p. 8.

intermediary's help, i.e. they need help communicating or understanding what is being said during a hearing in order to participate effectively. An intermediary we spoke to explained that work with litigants in person could be impossible, since so often the individual's requests for assistance are a blend of communication help, legal procedural information and legal advice. She explained that work with litigants in person was only feasible because she knew enough about the local community support available to coordinate legal advice and some pro bono representation for those cases. She was not aware of any available professional help with ECF applications, nor of what the scheme involved. She further added that she knew many intermediaries who would not take on litigant in person work because of these difficulties. It is a dire indictment of the ECF scheme that it is leaving those who need it, and who need intermediary help, without either.

78. In terms of improving the scheme, JUSTICE considers that the court has an unparalleled vantage point to identify individuals who may meet the ECF criteria but who are nevertheless unrepresented. It already has a duty to consider any participation directions required by vulnerable litigants, an exercise which goes hand in hand with the identification of eligibility for ECF. The court understands the complexity of the case, is involved in identifying the issues, and is highly likely to be able to consider and apply the test for ECF more effectively than the litigants themselves.

79. If ECF is in fact to work as a 'safety net', it must be reliably accessible from court, and we consider the best way of doing that is to enable the court itself to refer cases. **We therefore recommend a legal aid referral mechanism from the court to the legal aid agency for exceptional case funding when an individual is considered by a judge to be eligible.**¹⁰⁵

Inquests

80. We recognise that there have been some positive changes to legal aid available to bereaved families at inquests through the ECF - from January 2022, bereaved families have been able to apply for legal representation through exceptional case funding ("ECF") without means testing. As of September 2023, bereaved families have

¹⁰⁵ Whether this could thereby bind the Legal Aid Agency, as suggested by Richard Miller of the Law Society to the Justice Committee last year, should be further considered. House of Commons Justice Committee, [The Future of Legal Aid : Third Report of Session 2021-22](#), (21 July 2021) HC 70, p. 52.

additionally been able to apply for non-means tested legal help, through the ECF team. This is a significant step to improving the experiences of bereaved families at inquests and levelling the playing field between bereaved families and the state.¹⁰⁶

81. However, the circumstances under which families are entitled to ECF are limited. ECF may be granted only where it is required by Article 2 of the European Convention on Human Rights (“**ECHR**”) or where representation is in the “wider public interest” such that it “is likely to produce significant benefits for a class of person, other than the applicant and members of the applicant’s family.”¹⁰⁷ This means that despite the changes, many families are still left to navigate complex legal processes alone and in the midst of grief, whilst state and corporate interested persons are typically able to deploy ranks of solicitors, junior barristers and KCs.¹⁰⁸ Examples of these circumstances include self-inflicted deaths of voluntary patients in mental health settings or under the care of a mental health trust in the community, deaths in supported accommodation or in care settings where the person has been placed by a public body or local authority.¹⁰⁹

82. In this context, the claim that families’ effective participation can be guaranteed by the coroner and the “inquisitorial” nature of the process is to ignore reality.¹¹⁰ To truly level the playing field for bereaved families, JUSTICE considers that public funding should be available for cases that would or may sit outside ECF criteria, where the State has agreed to provide separate representation for one or more interested persons. This recommendation was reflected in the Justice Committee’s 2021 report on the Coroner Service.¹¹¹

Windrush Compensation Scheme

See response to Q11. above.

¹⁰⁶ Evidence, taken during our Working Party, found that the extensive financial disclosure necessitated by the means assessment was experienced by bereaved families as intrusive and demeaning. JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020), para 5.19.

¹⁰⁷ Legal Aid Agency, [‘Inquests – Exceptional Cases Funding – Provider Pack’](#), 15 May 2020, p. 3.

¹⁰⁸ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020), para 5.18.

¹⁰⁹ JUSTICE and INQUEST, [Judicial Review and Courts Bill: Joint Briefing for House of Lords Committee Stage](#) (2022), paras. 7-12.

¹¹⁰ JUSTICE, [When Things Go Wrong: The response of the justice system](#) (2020), para 5.2, 5.18.

¹¹¹ Justice Committee, [The Coroner Service](#) (May 2021)

14. What are the ways in which technology could be used to improve the delivery of civil legal aid and the sustainability of civil legal aid providers? We are interested in hearing about potential improvements from the perspective of legal aid providers and people that access civil legal aid.

15. Remote legal advice, for example advice given over the telephone or video call, can be beneficial for delivering civil legal aid advice. Please provide any specific evidence and thoughts on how the system could make the most effective use of remote advice services and the implications for services of this.

83. We have combined our answers to Questions 14 and 15, below.

84. JUSTICE supports the use of technology to improve access to justice. Remote advice initiatives have seen considerable success and improved access to advice for individuals, for example, Law for Life and Resolution's *Affordable Advice* pilot¹¹² and initiatives from Bethnal Green's Legal Advice Centre (University House), which has used remote video technology to provide legal advice to those in Falmouth & Plymouth. Remote technology improves the accessibility of advice for those who are in rural areas, have caring responsibilities, work commitments or limited mobility which can all make attending face to face appointments challenging. However, remote advice provisions should not replace but rather complement face to face options; the latter must be maintained at an adequate level for those who need them, including those who are digitally excluded.¹¹³ Digital exclusion is more likely to affect those who are disadvantaged by reason of other circumstances, including age, educational attainment level, unemployment, disability, income status or social isolation.¹¹⁴

85. This is especially important as certain areas of law, including housing disputes can feature complex relationships, complicated laws and parties with additional support

¹¹² Law for Life, [Evaluation of Affordable Advice Service Pilot](#) (September 2021)

¹¹³ See further JUSTICE, [Preventing Digital Exclusion from Online Justice](#) (2018)

¹¹⁴ 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).

needs including mental ill-health, physical disabilities and learning difficulties. Many housing disputes also involve parties who have experienced trauma such as domestic abuse.²⁶ Forcing people online, as has been done with Universal Credit, risks further marginalising people who may be experiencing vulnerable circumstances.²⁷ As set out in our report, those facing the prospect of repossession are required to access advice through the Civil Legal Aid telephone gateway under the “debt” category, where they receive legal help over the phone or online. Tenant lawyers we spoke to and judges on our Working Party told us that many respondents who face mortgage repossession cases tend to “*put their head in the sand*”, and for that reason, the existing measures are less effective than in-person advocacy. Online or telephone appointments only, makes it significantly more difficult for practitioners to identify whether their client is experiencing vulnerability, lacks capacity or requires reasonable adjustments to participate in proceedings which can have a catastrophic impact on their lives.²⁸ For many, being involved in legal proceedings constitutes a major life event, which is capable of causing considerable distress or even trauma. Therefore, it is crucial that parties have access to legal advice in a manner that is best suited to their needs.

86. Should the Ministry of Justice proceed with prioritising online advice provision, we urge it to conduct thorough engagement with stakeholders across the profession to understand which sectors of the civil justice system may be best suited to digital forms of service delivery and what user-focussed design should look like.³⁰ Finally, any move to online advice provision must be piloted - in both rural and urban settings – and subject to robust evaluation.

87. Looking to the future, increasingly capable technologies, including artificial intelligence, hold some promise to streamline processes, gain new data-driven insights and even improve access to justice. However, JUSTICE is concerned that access to safe, accurate and responsible technology risks being the preserve of the minority who can already afford legal services, while the majority are underserved by the tech market and/or overexposed to risky technologies.¹¹⁵ JUSTICE has recently commenced a new programme of work on AI, human rights and the law, and the use of technology to meet unmet civil legal need will be one of the focus areas.

¹¹⁵ The entrepreneurial ecosystem which surrounds “Justice Tech” (technology that supports consumers and SMEs to understand, protect, enforce and defend their legal rights and obligations) is still “in its infancy” as opposed to the far more developed market in “Legal Tech” (technology that supports law firms and legal departments to deliver legal services and manage compliance) See LawTech UK, [Building an Entrepreneurial Ecosystem to Improve Access to Justice](#) (March 2023)

16. What do you think are the barriers with regards to using technology, for both providers and users of civil legal aid?

16.1. Do you think there are any categories of law where the use of technology could be particularly helpful?

16.2. Do you think there are any categories of law where the use of technology would be particularly challenging?

88. We have combined our answers to questions 16, 16.1. and 16.2.

89. JUSTICE is unconvinced that categorisation by area of law is the best approach. Rather, the question of whether technology makes a certain process, output or service more helpful or indeed more challenging usually depends on the people using the service and their specific needs.

90. In doing so, it is always important to consider the needs of those who are digitally excluded. People can be digitally excluded because they do not have the connectivity, the hardware, or the confidence to participate in online processes.¹¹⁶

91. During recent work with the Administrative Justice Council on the digitisation of tribunal processes, JUSTICE has taken evidence from front line services in the past year who support digitally excluded people, funded through HMCTS's Digital Support Service in partnership with We Are Digital. One support service manager told us:

The lack of digital confidence is very common – we see it a lot. But it is also usually not on its own. There are a lot of people without the means to get online. [...] For those who the cost of living [crisis] is impacting the most – they have no laptops at home, they do everything through the phone anyway. But now [we are seeing] many people who have been unable to keep up with phone bills and their phones are being cut off.

92. The above quote demonstrates how a constellation of issues may be impacting individuals and how challenging they find technology. JUSTICE therefore advocates for a human-centred approach – and not “categories of law” approach – when it comes to technology and its use.

¹¹⁶ See further JUSTICE, [Preventing Digital Exclusion from Online Justice](#) (2018)

17. What do you think could be done to encourage early resolution of and/or prevention of disputes through the civil legal aid system?

93. Early legal advice can prevent the escalation of disputes and encourage resolution. In private family proceedings, JUSTICE welcomes the recent Ministry of Justice commitment to pilot early legal advice in child arrangements.¹¹⁷ JUSTICE urges that pilot to learn from the pilot in social welfare early legal advice if the pilot is going to meet its aims of helping families access safe, fair and prompt resolution of their child arrangements problems. Principally, JUSTICE considers that the issues with the social welfare pilot, in Manchester and Middlesborough, arose because it did not take a person-centred approach, and was not designed around the users who needed it. Most notably, this meant that those being pursued for council tax arrears were informed of the pilot in letters from the very council which was pursuing them for the debt. This predictably led to issues of distrust that the advice would not be independent, and woefully poor uptake of the scheme.¹¹⁸ JUSTICE urges the Ministry of Justice to learn from this pilot and apply that learning when designing the new family early legal advice pilot. The new pilot must prioritise the needs, behaviours and experiences of the families who it is supposed to be helping, and be designed around them.

94. We are deeply concerned about the length of time it took for the Ministry of Justice to commence the social welfare early legal advice pilot – four years after it committed to doing so. We urge the Ministry of Justice to acknowledge the wealth of experience and evidence that already exists regarding the benefits of early legal advice and to reintroduce it without needing to redo a failed pilot.

JUSTICE
21 February 2024

¹¹⁷ Ministry of Justice, [Supporting earlier resolution of private family law arrangements: Government response](#). (January 2024)

¹¹⁸ See Monidipa Fouzder, [‘News Focus: Early advice pilot was a missed opportunity’](#) *The Law Gazette* (4 July 2023).