

Written evidence to be submitted by The Law Society of England and Wales (WCC0028)

Law Society written evidence submission to the Justice Select Committee inquiry on the work of the County Court

1. The Law Society of England and Wales is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.

What the current level of delay in the County Court is; the extent of any regional variations; and the effect of delays on litigants and the administration of justice?

2. The latest statistics show that in the civil courts the total number of claims issued continues to increase this quarter and is currently at 80% of the pre-covid baseline.¹
3. The statistics show that the average time between issue and trial for small claims and fast/multi track claims have risen by 3.5 and 0.5 weeks respectively; the average time for small claims is at the highest it's been since tracking began in 2009.
4. Research carried out by the Association of Consumer Support Organisations (ACSO) and Express Solicitors suggests there are significant regional variations within the County Court.² Their data shows that on average it takes 353 days for the court to hear a case. This varies across the country, with cases in the South-East facing an average wait of 462 days. The North-East sees the lowest wait times, but these remain extensive, with an average wait of 251 days.

a) Litigants in person

5. Delays are having a significant impact on litigants. Delays can lead to litigant attrition as those involved consider dropping cases rather than put more time or resources into them.
6. Solicitors' firms themselves have publicised examples and evidence of the frustration clients experience from delays and the pressure that it adds to their cases.³
7. We have heard examples from our members of the impact court delays can have. During a Section 21 notice possession case, where a landlord is attempting to take possession of a rented property, proceedings must be issued no later than 6 months of service of the notice or they time out. A practitioner noted the first notice timed out before proceedings were issued by the court, proceedings were again issued and timed out for a second time as the Court took so long to process and issue the claim.
8. This significantly impacts the administration of justice and is in no one's interest. These delays will also have a deterrent effect as even those with valid claims may rethink pursuing a case due to the lengthy delays they will experience.

The ways in which the County Court engages with litigants in person, and how this could be improved?

9. The Ministry of Justice's civil justice data for 2022 shows that in 55% of cases both the defendant and claimant have legal representation.⁴ In 25% of cases only the claimant has legal representation, while in 4% of cases only the defendant has legal representation. In 16% of cases

¹ <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-july-to-september-2023/civil-justice-statistics-quarterly-july-to-september-2023>

² <https://acso.org.uk/news/202309/justice-delayed-justice-denied-acso-launches-campaign-reduce-civil-justice-logjams>

³ <https://www.expresssolitors.co.uk/blog/what-do-long-court-delays-mean-for-our-clients>

⁴ <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-april-to-june-2023>

both parties are unrepresented. These statistics have not significantly shifted since 2013 when the statistics began.

10. However, the experience of litigants in person in the County Court is unknown. The last piece of research published by the Ministry of Justice on the experience of litigants in person in the County Court appears to have been in 2011.⁵
11. The Government should commission and publish new research surveying the experience of litigants in person in the County Court. This could look at why they are unrepresented, what their experience of the court process was, how it could be improved, and whether they feel justice was done in their case.
12. It is important that representation is available for those who want it. Representation ensures that cases move more smoothly through the courts and diverts cases that can be solved elsewhere in the system, for example through mediation alleviating the wider courts backlog. It is likely the best way the Government can improve the experience of litigants is by ensuring they have access to early advice or representation at some stage in the courts process.

a) Legal aid

13. It is also likely that the crisis in civil legal aid is leading to litigants being forced to represent themselves, especially in housing or welfare cases. 40% of the population do not have access to a local legal aid provider for housing advice, for welfare that figure is 84%.
14. The number of civil legal aid firms starting work has dropped from 3,896 in 2012 to 2,170 in 2021. This has created vast legal aid deserts across England and Wales where those seeking support and help will not be able to find it locally.
15. These deserts and shortages have been created by extensive cuts in legal aid rates. The last time fees were increased was in 1996, over 25 years ago. On top of this, the government imposed a further 10% fee-cut in 2011. This represents a real-terms cut of 49.4% in fees to 2022. Firms have been forced to abandon their contracts as they can no longer face the financial burden.
16. This is also fuelling delays in the County Court. We heard from a housing practitioner of one case in Manchester where a housing repossession case had to be repeatedly adjourned so a tenant could get legal advice. It is likely they struggled to find it due to the lack of providers, forced out of the sector by unsustainable rates.
17. To help address this crisis and ensure cases move through the courts as seamlessly as possible, the Government should address civil legal aid rates as part of the ongoing review of civil legal aid.
18. The Government should invest around £11m in civil legal aid for early advice to keep the system sustainable while reform takes place. Not only would this support this system, early legal advice would also help ensure that meritorious cases reach the courts, while others can be diverted to the best avenue of resolution.

The condition of the court estate, and its effect on the work of the County Court?

19. The physical condition of the court estate is having an impact on the work of the courts across England and Wales. Repair issues often force courts to close, the buildings themselves can be unpleasant work environments, while some courts are difficult for disabled users to access.
20. This is not the main cause of the significant backlogs we see across the estate, but it is a contributing factor. The backlogs themselves are down to extensive cuts to the justice system including to courts, sitting days, legal aid and to administrative staff in recent years.

⁵ <https://assets.publishing.service.gov.uk/media/5a7c451b40f0b62dffde0f83/litigants-in-person-literature-review.pdf>

21. The Law Society carried out a survey of practitioners' experiences across the court estate, which found significant issues with the condition of the state that is likely impacting the work of the courts.

a) Condition of the court estate

22. Respondents to our survey flagged repeated issues with the court estate. 47% of those surveyed had experienced a case delay and adjournment in the previous twelve months, while 28% felt the courts estate was not fit for purpose.

23. This included issues like an air conditioning unit falling on the head of one practitioner, leaking roofs, exposed wiring, a lack of heating or air conditioning, leaking toilets, and chairs held together by gaffer tape.

24. Our survey shows that significant investment in the courts estate, including buildings and interiors is needed for the estate to be fit for purpose. If the Government fails to do this, it is likely repair issues will continue to cause delays impacting the work of the County Court and the wider court estate.

b) Experience of disabled court users

25. The state of the courts poses a particular challenge to disabled users. The Law Society's own research looking at experiences across the court estate found that disabled users of the courts are less likely to feel physically secure or safe from harm while attending court. ⁶ This group were more likely to feel that the court's physical building were not fit for purpose 37% vs 28% for non-disabled users.

26. Respondents to our survey highlighted examples including poor lighting making it difficult to see, hearing loops not working, lifts not working or court buildings themselves not being accessible for disabled court users.

c) RAAC in the courts

27. Recently, the presence of Reinforced Autoclaved Aerated Concrete (RAAC) has been found in at least 8 courts, with a number forced to close. Blackpool County Court and Doncaster Justice Centre North are two of the County Courts that have been forced to close.

28. Not only does this disrupt the work of the courts, but it forces cases to be reallocated to surrounding courts, adding pressure to their workload and creating extensive disruption to the litigants, practitioners and court staff working in the area and may be forced to undertake additional travel.

29. In addition to the disruption, it is unclear whether HMCTS will be given additional resources to carry out remedial works, or whether funding will need to be taken from the existing maintenance budget, potentially disrupting other needed work.

The effect of the court reform programme on the County Court, including the new Online Civil Money Claims service and the Damages Claims service

30. In summer 2023 we surveyed over 700 solicitors who have used three new online portals for courts and tribunals, one of which was the damages claims portal (the others being family public law and probate). ⁷

⁶ <https://www.lawsociety.org.uk/topics/research/are-our-courts-fit-for-purpose>

⁷ <https://www.lawsociety.org.uk/topics/research/online-court-services>

31. Our research found that rather than supporting the delivery of a more efficient justice system, online portals are associated with delays, with 62% of respondents experiencing delays in court proceedings, which had emotional and financial impacts on clients, and 34% reporting increased costs which have been passed on to clients.
32. Contributory factors to these delays, which were found across the three portals were:
- Timeliness issues
 - Communication issues
 - Technical issues
 - Staff resource
 - Level of experience of staff
 - Lack of access to adequate training.
33. The survey showed some of the key reasons behind delays within these portals. Just 14% agreed that the online system is effective in delivering justice. Only a small majority of 51% felt the online system is quicker than the paper system.
34. Almost three-fifths of respondents considered the Damages Claims portal difficult to use (57%). The number of years a respondent had practised did not appear to impact on ease of use. Solicitors working in the larger firms (26+ partners) were more likely to report the portal being difficult to use compared to those working in medium sized firms (46%) or small firms (57%).
35. Around two-thirds of respondents did not know who to contact if they experienced a problem. A telephone helpline was preferred over an online enquiry system, so that issues could be quickly identified and resolved.
36. Being kept informed of changes and having access to adequate training from HMCTS were concerns for a similar proportion (66%, 63%).
37. The survey highlighted a variety of issues with the system. The most frequently cited technical issues reported were difficulties in uploading documents (56%) and technical errors and frequent breakdowns (52%).
38. Legal process issues cited were in relation to additional application and fee requirements (38%), digital errors taking time which is unrecoverable from the court (36%) and issues with payments of fees, including the fee remission system.
39. Respondents were more confident in their commercial clients understanding their intended role in the process and how the online/digital system works in delivering justice, compared to their consumer clients.
40. Most significantly, only a small proportion of respondents viewed the impact of digitisation of the service as being positive, where costs were reduced (13%) and where the reduction was passed on to clients (4%).

The use of technology in the County Court and how it could be used to improve the service provided by the County Court

41. Technology can drive efficiency in our courts, saving time for lawyers and judges alike.

42. Technology, including remote hearings, kept our justice system running during the Covid-19 pandemic. When used in the right way it can help drive efficiency and address the backlog.
43. However, solicitors have reported that remote hearings have been used in the wrong circumstances and are not suitable for certain kinds of cases, especially those involving vulnerable people. Disabled lawyers have reported accessibility issues that have had a serious impact on their experience in court.
44. The Law Society's survey of practitioners experiences in the courts, which included respondents across the criminal and civil courts, found that in London only 13% felt that technology was to a large extent fit for purpose. Overall, respondents reported problems with the usability of technology, such as the screens being too small, not being able to link to the network, the sound being too low, and technology experiencing glitches or not working at all.
45. However, technology is a useful tool when used properly. Some of our surveyed members suggested remote hearings be used more for procedural and administrative issues to help clear the backlog, as well as digitising more filing processes.
46. Our Online Court Services survey mentioned above recommends a commitment that future online systems are user designed with strong collaborative working between users and stakeholders. Well designed and thoroughly tested online systems have the potential to increase access, drive efficiency, streamline case management, and be more cost efficient.
47. Over 50% of solicitors surveyed however do not believe that the online portals are effective in delivering justice, with the main impact being delays to the wider justice system. These portals have also proven not to be cost effective with less than 5% of solicitors agreeing that the portals decreased which were then passed on to clients.
48. With proper planning and development these systems can be better designed and made more efficient for all those who need to use them. The success of this will rely on greater and sustained engagement. If it cannot be demonstrated that the systems are reliable or efficient, they should not be rolled out until they are, or at the very least, piloted on a limited basis until operating problems have been resolved. This process may take longer to develop but will avoid costly errors and rework in the long run.

Whether there is sufficient staffing of the County Court

49. We often receive anecdotal evidence from our members regarding the lack of sufficient staff resource within the courts, citing the considerable strain they are under and that HMCTS are struggling to retain staff.
50. In our Online Services Report we have recommended that a minimum service level standard should be introduced which includes a comprehensive staff training programme.⁸ Achieving such a standard will depend on HMCTS having a strong workforce possessing the required knowledge and expertise to handle cases going through the online systems.
51. For this to happen there needs to be urgent investment to address the chronic lack of personnel within the court service, coupled with the need for them to be sufficiently trained to deal with enquiries from both professional and public users.

The quality of data available on the work of the County Court

52. We have long voiced the need for robust data collection, which is comprehensively recorded and shared, to aid continuous improvement of the systems in place and the design of those yet to be

⁸ <https://www.lawsociety.org.uk/topics/research/online-court-services>

developed. In our five-point plan to fix the courts backlog, we recommended better data collection as a key step to addressing backlogs and allowing timely access to justice.⁹

53. In our online services reports we recommended that making the collection and sharing of data standard across all existing and future online systems will ensure we have a better understanding of how these systems work, what their impact is on the delivery of justice and whether greater access to justice is truly being achieved.
54. Enhancing transparency would facilitate collaboration among stakeholders, including the legal profession, the judiciary, and litigants, enabling the development of data driven insights that can drive systemic improvements.

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⁹ <https://www.lawsociety.org.uk/campaigns/court-reform/news/five-point-plan-to-fix-court-backlog>