

Written Evidence from the Association of Personal Injury Lawyers (WCC0043)

About APIL

1. The Association of Personal Injury Lawyers (APIL) is a not-for-profit membership organisation which has campaigned for the rights of victims of negligence for more than 30 years. Our vision is of a society without needless injury but, when people are injured, a society which offers the justice they need to rebuild their lives.

Executive summary

- Civil justice statistics published by the Government reveal that claimants now have to wait longer for justice through the County Court than they did in 2016. The time it takes for fast-track and multi-track claims to reach trial has increased by 44 per cent when compared to 2016.
- Increased delays are not the result of the COVID pandemic - between 2016 and 2019, there was an 11 per cent increase in the average time it took fast and multi-track claims to reach trial, and a 19 per cent increase in the average time it took small-track claims to reach trial.
- Government proposals for mandatory mediation in small claims in the County Court are likely to contribute further to delays.
- County Court hearings are being cancelled only a few days before they are due to be held because of a lack of judicial availability.
- There are considerable advantages to digitisation of the court service, but the Damages Claims Portal has been plagued with problems, including outages when it cannot be used.
- There are buildings within the court estate which are in a state of disrepair, including poor toilet facilities, and a lack of charging points to allow lawyers to work on their laptops.

Personal injury claims in the County Court

2. An efficient court service is essential for the administration of justice, but lawyers who act for injured victims of negligence will, where they can, aim to resolve a legal claim without the

need for the case to go to trial. Only a minority of personal injury claims, therefore, proceed through the County Court.

3. In 2022, there were 441,733 personal injury claims registered with the Government's Compensation Recovery Unit (CRU)¹. During the same year, 81,481 personal injury claims were issued in the County Court. This indicates that fewer than 20 per cent of personal injury claims are issued in the County Court. Data for recent years also indicates that only 9 per cent of personal injury claims, or around 7,300, issued in the County Court ultimately reach trial². For those victims of negligence whose cases are in the County Court, however, the time it takes for those cases to reach trial is getting longer.

Increased delays in the County Court

4. The committee, in launching this inquiry, has recognised already that delays in the County Court are on the increase. The civil justice statistics published by the Government do not provide a breakdown for how long personal injury claims specifically take to reach trial, because they relate to non-family civil claims in general³. The statistics reveal, however, that in the third quarter of 2023, it took an average of 76.4 weeks for fast-track (claims valued between £10,000 and £25,000) and multi-track claims (certain claims valued at £25,000 and above) to reach trial.

5. Our own analysis of the civil justice statistics has found that the time it takes for cases to reach trial has increased by 29 per cent when compared to the third quarter of 2019, and by 44 per cent compared to the same quarter in 2016. Claimants, who include injured victims of negligence, now have to wait an extra four months when compared to four years ago, and an extra five months when compared to seven years ago.

6. Delays are also a problem for claims allocated to the small claims track. In the third quarter of 2023, it took an average of 55.6 weeks for these cases to reach trial, which our analysis has found is up by 46 per cent when compared to the same period in 2019, and up 79 per cent compared to the same period in 2016. Claimants in these cases now wait an

¹ Information gathered after a request to CRU under the Freedom of Information Act.

² <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-april-to-june-2023>

³ <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-july-to-september-2023>

extra four months when compared to four years ago, and an extra six months compared to seven years ago.

7. There are courts across the country where the average time between issue of the claim and a trial for fast and multi-track claims in the third quarter of 2023 was much longer than the national average. At Medway County Court, claimants were waiting an extra 74 weeks, taking the waiting time to 151 weeks, while at Romford County Court the average wait was an extra 56 weeks, which results in a waiting time of 132 weeks. Claimants at Southend County Court were waiting an extra 58 taking the waiting time to 134 weeks. At Canterbury County Court, the average time from issue to trial was 111 weeks, an extra 35 weeks longer than the national average.

8. The civil justice statistics for the second quarter of 2019 published by the Government include a comment from the statistician which makes references to the COVID-19 pandemic⁴, but while the pandemic will have contributed to the delays, it is not the sole cause. Delays were already on the increase prior to the pandemic. Between 2016 and 2019, there was an 11 per cent increase in the average time it took fast and multi-track claims to reach trial, and a 19 per cent increase in the average time it took small-track claims to reach trial.

9. We are concerned that the Government's decision to introduce mandatory mediation for all small claims in the County Court could make those delays even worse. APIL is supportive of the use of alternative methods of dispute resolution generally, and would welcome a more structured approach to dispute resolution in lower value personal injury claims. A "one-size fits all" approach, however, which will involve a mandatory mediation session for every small claim case is not appropriate. As referred to earlier in this evidence, our members aim to resolve as many claims as possible without the need to go to court. A mandatory mediation session, however, would simply be a further hurdle that victims of negligence must jump before they can have their case heard by a judge, making a case take even longer through the County Court.

Judicial capacity

10. A factor which has contributed to increased delays is the lack of judicial availability, with examples of how this has contributed to the delays reported to us by our members. In some cases, hearings have been withdrawn from the court list, either with a couple of days' notice, or even immediately prior to the hearing, because of the lack of judicial availability.

⁴ <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-january-to-march-2022/civil-justice-statistics-quarterly-january-to-march-2022#statisticians-comment>

11. In one case, a Direction Questionnaire, which is used to collect information relevant to a claim, was submitted in March 2022, and the case was listed for a Costs and Case Management Conference hearing for the following August. This hearing was then adjourned by the court because there were no judges available, and it was not re-listed for until January 2023 – ten months after the Direction Questionnaire was submitted.

12. In another case, the Direction Questionnaire was submitted in August 2022, and the case was listed for a Costs and Case Management Conference hearing for late April 2023. This hearing was then cancelled only a few days before it was due to be held, and the matter was re-listed for June.

13. Another issue identified by our members include an instance where a case was listed for a full day hearing, but then removed because a judge was not available for the full duration of the hearing. This was despite letters sent to the court from the lawyer, to which no response was received, which explained that the lawyer believed that the hearing would take only one or two hours of judicial time.

14. During a delay justice is at a standstill. Injured victims of negligence have to wait longer for compensation, which is be vital to support them if they're unable to work because of their injuries. They also must wait longer for answers about why they were injured, and those answers can be important to bring them the closure they need to help them move on with their lives. Our members do their best to manage expectations, and try to act early to give victims of negligence the best chance of not being adversely affected by these delays, but it is not always possible.

Quality of court services

15. All court users, especially victims of negligence who are waiting for their much-needed compensation, must expect at least a good quality of service from the County Court. This does not always happen. There have been instances where case files have been misplaced by a court, and where a court has not provided sufficient notice of a hearing to enable the parties to complete steps within a deadline without sanctions being applied, such as

complying with rules on budgeting. In two cases shared with us, the court staff even struggled to understand how a court fee was calculated. This resulted in the rejection of court proceedings because it was claimed the court fee was incorrect, when it was not.

Court fees

16. The court system is a public service, from which the whole of society benefits. For example, people can go to work in the knowledge that if they become victims of negligence while at work, they are protected by both the law, and the impartiality of the court system to enforce that law and provide redress. The court service, must, therefore, be funded primarily by the taxpayer, with court users paying a contribution towards the service they receive.

17. In many cases lawyers acting for victims of negligence will fund the disbursements involved with the case, including court fees, with the ability to recover those costs from the losing defendant only at the end of a case. Higher court fees, however, could impede the ability of victims of negligence to secure redress. Lawyers could become reluctant to take on cases because of the potential financial risk of paying court fees for injured people if the case is then unsuccessful. Claimants could also want to avoid taking a case to court for fear of a high court fee, and instead accept lower settlements from defendants who might take advantage of this fear. A lower settlement means that injured victims of negligence do not receive the full and fair compensation they deserve, and to which they are entitled.

18. Currently, the Ministry of Justice is consulting on an increase in certain court and tribunal fees, and we are considering our response to that consultation. APIL does not, however, object to an increase in fees in line with inflation, but any increase must not be above inflation. If court fees are increased, there must also be a corresponding increase in the threshold at which people become eligible for financial support for those fees through the 'Help with Fees' remission scheme.

19. Earlier this year the Government carried out a review of the 'Help with Fees' remission scheme, which ministers said would make the scheme more generous and protect access to justice⁵. That review, however, failed to accurately acknowledge the current economic landscape of the country, and used data which was out of date to set the income threshold for support. If court fees are increased, but the financial threshold for when people become

⁵ <https://assets.publishing.service.gov.uk/media/6405b5798fa8f527f110a3b1/revising-help-fees-consultation.pdf>

eligible for support through the scheme is not increased, there will be more people who cannot afford the court fees, but also who do not qualify for financial support for those fees. Justice should never be unaffordable, but that would be the reality for those people.

Digitisation of the justice system

20. There are considerable advantages to digitisation of the justice system, including increased efficiency, but the Damages Claims Portal (DCP) has been plagued with problems. These range from a lack of guidance and communication from HM Courts & Tribunals Service (HMCTS) repeated errors with the portal which are not addressed, and even outages where the system cannot be used at all.

21. The use of the DCP is mandatory for almost all personal injury claims issued in the County Court, but APIL members report that there has been a lack of guidance from HMCTS on how to use the system. There are limited training videos, and a lack of other support such as “frequently asked questions”. Users, including lawyers who represent victims of negligence, were unable to trial the system before they had to use it for live cases, so there was no opportunity to provide feedback. “User acceptance testing” (UAT) has now been extended to include legal representatives, and this should help minimise some of the issues within the system. Until this recently, UAT had been undertaken by the judiciary and HMCTS staff, but not by those who are required to use the system.

22. Our members also report failures to fix known issues and errors within the DCP, or the administrators of the system have been slow to fix issues. These errors have included an incorrect eligibility page for who can use the DCP. A page in the DCP lists eligibility requirements that are not included in the practice direction, such as that claimants must be based in England and Wales. Other issues reported by our members include the inability to see issued and none served cases in the organisation account, incorrect calculation of time limits, such as service deadlines, and email addresses which contain symbols, such as apostrophes, accepted by the system, but then notifications are not sent to those addresses, preventing claims being served.

23. There has also been multiple IT issues and outages since the DCP was launched, including four/five outages in a single 10-day period. These outages have serious repercussions on the administration of justice, and prevents claims being issued, served, and/or acknowledged. This will have led to missed deadlines and cases dismissed wrongly. One example provided by our members was a case that was due to be served online, but the system went down, and the case had to be served offline, to ensure compliance with the time limits around service. There were then ongoing discussions about whether the claim would progress online or offline, and a relief from sanction application was needed because of the IT errors.

24. Numerous changes have been applied to the DCP since it was introduced, and one of the main concerns expressed by our members is the lack of communication from HMCTS about those changes. There was, for example, short notice for when the DCP would become mandatory for defendants, and this led to a rush to issue claims before it was extended to ensure the new rules were not breached by claimant lawyers. Our members have told us that this extension, and other updates, were also not notified widely by HMCTS, and only through an external user group, which exists to allow practitioners to be aware of upcoming changes and how the DCP works. Practitioners who are not members of the group will have had no notification from HMCTS about this change. It is also the experience of our members that further changes are implemented to the DCP without existing issues being fixed. For example, an update to the system is released, and another expansion of the system happens before problems with earlier updates are resolved.

25. Our members also report instances where the DCP does not comply with practice directions or the civil procedure rules, which causes delays and issues which, if not rectified urgently, often leads to claims being automatically and incorrectly dismissed.

26. Under the civil procedure rules, it is mandatory for parties to notify the court of any vulnerable parties or witnesses in the claim as soon as possible, but this is not possible on the DCP. The claim form generated by the DCP does not contain the appropriate section in which to provide details of vulnerability. A lawyer will have to provide this information elsewhere, but it would be very easy for this information to be missed because of human error.

27. For digitisation of the justice system to work effectively, everyone involved in the process must be knowledgeable of the process. Our members have reported instances, however,

where claims have been rejected by the Civil National Business Centre, which services all of England and Wales for money claims, because they were out of scope of the DCP. It is the experience of members that this appears to be a staffing issue, with court staff unaware of which claims can and cannot be submitted through the DCP.

The court estate

28. It is the reality that several court buildings are in a state of disrepair, or even closed because they were found to include RRAC concrete. In some instances, there are even poor toilet facilities within court buildings, which should not be expected in 21 century Britain. Our members have also shared with us their concerns that several court buildings are not set up for electronic working. Northampton County Court, for example, has a lack of charging points in communal areas. This can create problems for solicitors who may need to work on a Court Order immediately after a hearing, but must rush to complete the work quickly to ensure the laptop does not run out of power.

The need for a fully-funded modern court estate and justice system

29. If the administration of justice is to be maintained, England and Wales needs a fully-funded, modern court estate and justice system. It has been recognised by the House of Lords Constitution Committee previously, however, that the Government's funding of HMCTS had 'fallen significantly' in the decade preceding the COVID-19 pandemic. The committee found that funding for HMCTS from the Ministry of Justice (MoJ) in 2019/20 was 21 per cent lower in real terms than in 2010/11⁶.

30. England and Wales once had a justice system which was held up as an example to all others, but now we have a justice system which is thwart with delays, is short staffed, and with court buildings which are in a state of disrepair. The answer to tackle these issues is not to limit access to justice, as happened with the recent whiplash reforms, but to ensure we have a full funded and supported justice system which provides access to justice to all who need it.

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⁶ https://publications.parliament.uk/pa/ld5801/ldselect/ldconst/257/25705.htm#_idTextAnchor009

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