

Written evidence submitted by The Bar Council (WCC0046)

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The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Scope of Response

With the exception of question 5, this submission addresses all the questions which the Committee has sought evidence on.

Question 1: 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

Overall, the nature and length of any delay will be highly dependent on the type and stage of proceedings, given the range of matters that County Courts will hear. On the one hand, proceedings involving short (1 hour) hearings concerning local authorities (such as housing and Court of Protection cases) do not generally incur overly prejudicial listing delays. However, in relation to private law matters such as small claims, there have been extraordinary delays observed in County Courts which can leave litigants without a resolution to their claim for many years.

Examples provided have included:

- An application to strike out an incomprehensible and unmeritorious claim by a litigant in person, taking two years and five hearings before two different judges to be resolved;
- An application regarding the court's jurisdiction made in August 2021 which received its first determination in June 2023 before a District Judge. This hearing followed two hearings having been adjourned for insufficient time of the judges' own motions;
- Parties and witnesses to two separate trials being 'sent away' on the day of the listed trials due to a shortage of judges;
- Three-month delays in the handing down of judgments.

Any delay will have a negative impact on litigants, with potentially significant cost and welfare implications. Further, it has been observed to be entirely usual for witnesses to be asked to recall events which occurred two or three years previously. This is particularly difficult in cases involving road traffic accidents, where the relevant incident often takes place over the course of a matter of seconds. The delays are likely to compound difficulties with witnesses' recollections, with plainly detrimental effects on the parties and the administration of justice.

Question 2: The ways in which the County Court engages with litigants in person, and how this could be improved

The County Court's engagement with litigants in person (LiPs) is considered in serious need of improvement due principally to the enormous delays and procedural issues caused by the lack of assistance for LiPs. The lack of administrative support combined with high numbers of LiPs in the County Courts compound these issues substantially.

For example, LiPs regularly submit claims to court which ought not to be issued or ought to be struck out by the court's own motion because they do not comply with basic rules, for example by providing a non-compliant statement of case (or not at all), or a defence to claim which provides no legal basis to defending the claim. Notwithstanding the procedural rules to remedy this, this lack of engagement with court procedure, often combined with a lack of proactive case management, introduces substantial delay.

When LiPs wish to make an application, often the lack of administrative support has been observed to cause difficulty, partly because it is perceived that there is no thought given to how to deal with the application until it comes before a judge at a hearing. LiPs routinely produce further evidence part way through hearings which causes adjournments. They are not encouraged by the court to provide all evidence in one go or warned that they will not be able to rely upon new evidence unless they have a very good reason and make an application. There is no or limited active case management of claims save for the court hearings.

District Judges and Deputy District Judges are often very experienced at handling LiPs and talking them through proceedings at court, but doing so often introduces a lot of delay to proceedings, given they are required to explain at every stage what they or the other parties are ordering/asking for.

Duty advice schemes for housing cases, more recently widened to be available for other classes of claim, remain an essential service for LiPs to assist them with navigating a court hearing on the day. They should be extended as widely as possible to ensure the timely and fair disposal of claims involving LiPs, as even on-the-day legal advice and representation can significantly reduce delay and any prejudice to LiPs.

Question 3: The condition of the court estate, and its effect on the work of the County Court

There is a marked variation of the court estate. Some courts seem to be well equipped and well presented and to be functioning in a business-like and efficient way. Other courts are in a very poor state of repair and without functional basic facilities. Many are in buildings which are highly inaccessible to those with disabilities or poor mobility. A junior has seen this particular problem of broken lifts recently at court centres in Swindon and Stockport. The effect of this may be to prevent or disincentivise vulnerable individuals from attending court and engaging with proceedings.

For example, the lack of copying or scanning services can make the County Court extremely challenging as an advocate, particularly when a LiP turns up with new evidence. Many courts have no drinking water fountain or tap available to attendees. Many do not provide water even in the court rooms, since Covid. It is very rare to find a café in the court building.

Closures of County Courts has also meant that 'local' court centres are now further apart, which can mean very long journeys for litigants, and sometimes with no journey available via public transport - possible access to justice issue. Some courts have extremely busy waiting rooms and limited conference rooms, which can make it very difficult to take instructions from clients at Court. Croydon County Court and Birmingham County Court waiting rooms for district judges are particularly hectic.

Question 4: The use of technology in the County Court and how it could be used to improve the service provided by the County Court

The increased use of technology in the County Court is considered a good idea provided there is a consistent and user-friendly approach which is properly publicised. Disparate innovations introduced by single courts are less useful because the wheel is constantly being reinvented. Innovations which are not suitably publicised so that all court users (including non-local Counsel) are not aware of them is a recipe for confusion and irritation all round.

It would be very helpful to be able to adopt new technology quickly because new and better products become available all the time. Zoom and Teams are far better and more user friendly than Cloud Video Platform (CVP). It is possible to share documents on Teams or share a screen on Zoom which has great advantages for remote hearings.

Ensuring court staff and judges are suitably trained on new technology is essential. Examples provided include where the inability of a judge to change their microphone settings led to an hour's delay in the start of a hearing.

Question 6: The current level of fees and the approach taken to costs in the County Court, and how the fees collected are used as part of the current funding arrangements for the County Court

Issue fees are set by the relevant fee orders. General issue fees and fees for money claims are staggered on a scale relative to the value of the claim. All other issue fees are fixed. Issue fees in most cases are recoverable by successful litigants. The Bar Council will respond in detail to the separate Ministry of Justice consultation about the increase in court fees¹ and would be happy to share the response to the Committee by way of follow up.

The approach to costs will vary considerably depending on which regime the claim is subject to, the conduct of the litigation and the parties, and the circumstances of the case. Many types of case heard in the county court will be subject to the Civil

¹ <https://consult.justice.gov.uk/digital-communications/increases-selected-court-tribunal-fees/>

Procedure Rules' fixed costs regime and the rules surrounding it. The most common order in these cases is for the 'losing' party to pay the 'winning' party's costs. Other non-civil claims, such as in the Court of Protection, are subject to their own costs rules, where commonly the parties bear their own costs.

Question 7: Whether there is sufficient judicial capacity in the County Court, and current steps to improve judicial capacity

This seems to be a serious problem in a number of courts, including the Central London County Court and Norwich County Court, where there is commonly no sufficient judicial capacity. Court centres will often have empty courtrooms despite there being long lists, and vacating hearings for lack of judicial availability remains relatively common across the board.

The following example demonstrates the level of delay caused by lack of capacity: an application to challenge jurisdiction made in August 2021 was listed for April 2022. The hearing was cancelled due to lack of judicial availability. The case was re-listed for a day in November 2022 and all three parties sent Counsel. The District Judge refused to hear the case on the basis that the listing was too short for the arguments to be fully ventilated, even refusing to hear submissions and reserve his decision. The Judge re-listed the hearing before him for 1.5 days, which was heard in June 2023.

One responder (Counsel) has stated: *"Personally I would not apply to be a Deputy District Judge even though I am senior enough because the administrative side of the County Courts is too chaotic and their lists are far too busy. The job seems extremely stressful, unsupported and not particularly well paid"*.

Question 8: Whether there is sufficient staffing of the County Court

There is a massive problem with staffing and delays. Many County Court Centres aren't processing paperwork quickly and are working with enormous backlogs in dealing with applications and letters (we are told that delays of 28 – 42 days are not unusual in some courts such as Burnley). That means that it is really hard to run a case efficiently if one wants something dealt with by consent, or needs the court to answer an enquiry, for example, to confirm the date on which the court actually received the Claim Form for limitation purposes because the Notice of Issue clearly has the wrong date on it.

The time it takes for documents that have been filed substantially in advance and in any event by court-set deadlines to reach the relevant judge frequently can also be the cause of delay, often being put before the judge on the day of the trial/hearing and often at the instigation of Counsel. Truncated reading time introduces further delay and sometimes means that the court is not across all the relevant issues.

Counsel have also been routinely instructed to attend court even where the parties have submitted a consent order to vacate the hearing because it is impossible to get hold of court staff and find out whether the judge will agree to vacate the hearing and/or whether the draft order has even been put before them. There is a lack of

telephone assistance and no responses to emails and the only option is to incur Counsel's fee to attend court, a completely avoidable waste of costs.

Question 9: The causes of action giving rise to claims in the County Court

There is a wide variety of general civil claims. High volume cases include road traffic accidents, personal injury claims, housing possession claims, debt recovery and consumer credit cases.

It is not always clear why insurers use the courts to resolve road traffic accidents in particular rather than more informal means. Further, the low value of these and other high-volume claims often means that there are no binding decisions and there are thousands of different unreported district judge decisions on similar issues.

Question 10: The current procedural mechanisms used by the County Court to resolve disputes

There are in theory a range of mechanisms available to courts under the Civil Procedure Rules to dispose of claims efficiently, including the ability to stay proceedings for out of court settlement, striking out unmeritorious claims, and making orders with various costs consequences to incentivise resolution. However, the practice of utilising these options is often hindered by a lack of active case management, allowances made for unrepresented litigants who frequently do not understand the implications and incentives behind various orders and seek to appeal them/set them aside, and the delays in various interlocutory applications being put before judges.

Overall, the County Court would benefit greatly from more active management of cases rather than waiting for parties to make formal applications.

Question 11: The quality of data available on the work of the County Court

Counsel do not have access to data which would allow them to advise clients about likely waiting times or outcomes. The data available on County Courts online is considered fairly superficial and relates mainly to numbers of cases. It is not very qualitative or allows you to determine whether or not the system is working. Overall, 'data' is mostly anecdotal and depends upon judges and court staff sharing information about the state of their respective courts.

Question 12: What future reforms to the County Court should be considered

Recommendations include the following:

- Better resourced hearing centres. Some people advocate for fewer hearing centres for this objective, though others are concerned about a lack of local justice preventing people from using the court system at all.
- Online hearings of interlocutory matters with time estimates of two hours or less as standard. Some barristers have suggested up to 1 hour ought to be

standard. Others are keen to go further and suggest that any hearing which does not involve giving live evidence ought to be heard remotely as standard.

- Active case management by specific court staff allocated to cases, to prevent hopeless claims and applications from wasting court time. For example, in the Property Chamber of the First Tier Tribunal, a dedicated case worker is allocated to each case and contacts the parties proactively. This could be rolled out more widely.
- A streamlined procedure for interlocutory paper applications to be put before judges as a priority.
- A uniform and user-friendly online interface.
- E-filing as standard.
- Standard directions as to the format of hearing bundles in electronic copy.
- No hard copy bundles where both parties are represented.
- Better hardware for judges so that they can work electronically with ease.
- Training for judges and court staff on using technology.
- Dedicated helplines and assistance for litigants in person.
- The ability for Litigants in Person to attend their closest hearing centre (or other public building such as a library with a CVP link) to take part in a remote hearing in a distant County Court.
- Training for court staff to be able to properly estimate the length of a hearing, or a requirement for advocates to inform the court about time estimates before a hearing is listed.
- Limit the number of cases in a District Judge / Deputy District Judge's list to a realistic number.
- Advertise judicial jobs with a clear expectation of workload and the support that will be provided.
- Better coordination when a new type of claim brings thousands of similar claims to the county court, such as credit hire claims, Payment Protection Insurance claims and similar. It would be sensible for a more senior judge to sit on a group of test cases regularly, to give an authoritative decision which can avoid the same points being argued repeatedly before district judges.

The Bar Council
December 2023