

Written evidence submitted by Jonathan Hewitt (WCC0114)

Justice Committee Inquiry – Work of the County Court

Jonathan Hewitt – Second Submission

1. I make this submission to the Committee further to my previous submission in December 2024. By way of reminder, I am one of His Majesty's Notaries for England and Wales and sit on the Council of The Notaries Society, the professional representative body for notaries in England and Wales. However, I write in my private capacity and not on behalf of the Council.
2. Since my previous submission, a new government has been elected which is striving for growth and efficiency in all areas. The Lord Chancellor has specifically stated her aim of reforming the justice system and supporting the judiciary in delivering justice more swiftly while acknowledging the legal sector's vital role in the government's mission to kickstart economic growth.¹ The aims of the Lord Chancellor echo those of her predecessor to enable people to resolve their problems earlier, dialling down conflict and reducing cost.²
3. These priorities align with those of the judiciary. In his 2023 Mansion House speech, the former Lord Chief Justice highlighted the need for radical, long-term thinking with the aim of getting more disputes resolved before they ever reach a Court and the need for "constant questioning of whether the current way of doing things best delivers justice to those we serve."³ This latter point is key and something which must be considered in any review of the administration of justice.
4. However, having corresponded with the MOJ about the need for reform to relieve the burden on the civil courts and speed up the administration of justice by the provision of alternative processes administered by other public officials such as notaries, disappointingly, their response is simply that there are no plans to reform the law in this way.
5. To be truly effective, and achieve the above-stated aims, any review of the administration of justice must go further than simply exploring how to tweak existing inefficient structures and processes while leaving in place the fundamental inefficiencies. Rather, what is required is a thorough consideration of how justice can be delivered in a better way.
6. A key question in this regard is whether a court process is *necessary* in all cases where currently required. There are a number of non-contentious matters in respect of which more efficient alternatives could lessen the workload of the courts. The implementation of such alternative processes would allow the judiciary to concentrate on those matters where a judicial process is required, such as where there is a dispute on matters of fact or law or the need for the exercise of judicial discretion in the award of remedies.
7. The basis on which His Majesty's Notaries are well placed to be involved in and/or provide such processes (and do so in many jurisdictions) are set out at length in my previous submission. I do not repeat them here. However, in short, being public officials with the same independence and impartiality requirements as the judiciary, notaries are ideally and uniquely placed to administer non-contentious quasi-judicial legal processes to relieve the burden on the civil courts.

¹ Lord Mayor of London's Dinner for HM Judges 2024: Lord Chancellor's Speech: <https://www.gov.uk/government/speeches/lord-mayor-of-londons-dinner-for-hm-judges-2024-lord-chancellors-speech>

² Speech of The Rt Hon Alex Chalk KC MP at the QEII Centre on 20 November 2023: <https://www.gov.uk/government/speeches/lord-chancellor-sets-out-a-vision-for-the-future-of-the-civil-and-family-courts-and-tribunals>

³ Mansion House speech by the Lord Chief Justice for His Majesty's Judges on 18 July 2023: <https://www.judiciary.uk/mansion-house-speech-by-the-lord-chief-justice-for-his-majestys-judges/>

8. Introducing such processes would negate the need for a court process the sole aim of which is making findings of fact. Instead, notaries would make and record the necessary findings of fact on the basis of which parties can then apply to court for appropriate remedies (or to challenge the use of the notarial process ensuring ultimate recourse to the courts at all stages). This is an approach used in many countries with significant benefits.
9. Taking just the example of a notarial process for administering debt claims, upon introduction in Croatia, courts were relieved to such an extent that they cleared their outstanding backlog of enforcement cases in just one year;⁴ upon introduction in Hungary, the number of new non-contentious debt proceedings decreased by around 56 per cent in a year;⁵ and in Spain, almost 2,000 debt cases have been dealt with via the notarial process rather than court during its first years of operations.⁶ A similar approach in England and Wales could yield similar benefits.
10. Significantly, given the current economic climate and the need for cuts in government budgets in many areas, alternative notarial processes can be introduced quickly and at no cost to the public purse. The profession is well-established (it is in fact the oldest legal profession in England and Wales), highly qualified and trained and already creates, in the form of notarial acts, public records on which courts and the public rely. It would be an easy and quick change to ask the circa 800 English notaries to also do so in the context of new non-contentious quasi-judicial legal processes.
11. The Lady Chief Justice has highlighted the need for frontloading (of which delegation of functions to notaries in this way is an example). In evidence given to the Justice Committee on 16 January 2024, she stated that it was “if not mandatory, then desirable”.
12. Jurisdictions around the world are actively working on projects in this area. In November 2023, the International Union of Notaries (UINL) signed an agreement with the International Association of Judges (of which the UK is a member) to work together to explore where delegation can be made to national notariats thus “relieving the courts of a series of non-contentious tasks, and to make the administration of justice more efficient”.⁷ In parallel, a number of jurisdictions are collaborating on the second phase of the Justice Without Litigation project which seeks to identify possibilities for “the execution of judicial tasks outside the judiciary (courts) by other professions than judges, namely by notaries, lawyers or administrative officials”.⁸
13. I would invite the Justice Committee to be bolder than the Government (and to encourage the Government to be bolder) and to give proper consideration to reforms relieving the burden of the courts by delegating functions to other public officials such as notaries. In this regard, I would encourage the Committee to invite a representative of the English notariat and, if possible, overseas notariats involved in the above projects, to give oral evidence on this matter. Not doing so means the Committee will miss a large part of the picture and miss out on the possibility of bringing much greater benefits and efficiency to justice administered at the County Court level.

⁴ See data from Croatian Ministry of Justice <https://pravosudje.gov.hr/pristup-informacijama-6341/strategije-planovi-i-izvjesca/statisticki-pregled/6719>

⁵ M Kengyel, “Economic Analysis of Civil Litigation in Hungary”, in Recent Trends in Economy and Efficiency of Civil Procedure, Materials of International Conference, (Vilnius University Press, 2013) p 123.

⁶ See data from Spanish General Council of Notaries - Statistics to the end of 2023 under category 1641 (*Acta de procedimiento de reclamación de deudas dinerarias non contradichas*) <https://www.notariado.org/liferay/web/cien/estadisticas-al-completo>

⁷ https://www.uinl.org/-/the-uinl-signed-an-important-agreement-with-the-international-association-of-judges-on-dejudicialisation#p_73_INSTANCE_g4QgRSEIbf0Q

⁸ See for example the information provided by the University of Graz, Austria: <https://zivilrecht.uni-graz.at/de/neuigkeiten/eu-projekt-juwili-ii-justice-without-litigation/>

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