

Submission from the Law Society of England and Wales to the Justice Select Committee inquiry on access to justice

30 September 2025

The Law Society of England and Wales is the independent professional body representing over 210,000 solicitors. We have a public interest role in promoting the rule of law and protecting the public's legal rights.

Summary

- The Law Society welcomes the Justice Select Committee's inquiry into access to justice. The inquiry rightly builds on previous work which highlight that the justice system in the UK remains that of a struggling public service. While the Government's efforts to support legal aid are welcome, further action is required to encourage and ensure accessibility of representation, innovate to improve efficiency and bring this public service onto a sustainable footing.
- Supplementary services have been treated as a substitute for early legal advice funded by legal aid, leading to greater strain and a lack of understanding about unmet legal needs.
- Despite the clear operational impact of litigants in person, there is a lack of data about this impact on delays in the court. Similarly, there is a lack of data highlighting the usage of Qualified Legal Representatives, and the extent to which the availability of legal aid could mitigate problems.
- Collective actions and dormant client accounts represent appropriate alternative methods for supplementing the funding of access to justice initiatives. However, levies on the profession or schemes which take interest from lawyers' client accounts may impact the economic stability of some firms for little to no gain, while being complex to design and implement.
- Additional investment should focus on early advice and private law family legal aid. £43m of targeted investment would help to achieve the Government's wider goal of halving violence against women and girls in the next ten years.
- Solicitors are proud to do their part for access to justice through pro bono work. However, it would be misguided to see pro bono services as a viable or appropriate substitute for a well-funded legal aid system.
- Online Dispute Resolution (ODR) represents a possible avenue to address unmet legal need. However, care must be taken to ensure that ODR is one avenue of a well-funded justice system also comprising readily accessible legal advice and representation, funded by legal aid where appropriate.
- The Ministry of Justice (MoJ) should compare costs between private firms and the Public Defender Service (PDS). Past evidence shows the PDS was far more

expensive than private firms, suggesting private providers remain more cost-effective.

- Legal aid firms face significant unpaid bureaucracy, delayed expert fee payments, and burdensome audits. Streamlined processes and regular funding reviews are needed to keep services sustainable and prevent market exits.
- Firms sustained significant financial pressure due to the Legal Aid Agency (LAA) cyber-attack. The contingency arrangements developed during this emergency represent a unique opportunity to adopt a high trust model and streamline processes, reduce costs to the LAA, ensure fair treatment, and improve providers' financial stability.

1. How does the current state of the legal services and representation market in England and Wales, and associated operating pressures, affect access to justice for clients?

Criminal legal aid

Chronic shortages of defence solicitors, largely the result of cuts to legal aid, the failure to increase rates in line with inflation and an ageing profession, are delaying police station and court proceedings, putting defendants' and victims' lives on hold and denying them justice.

The number of duty solicitors providing representation at police stations fell by 1,369 between 2017 and 2024, a 27% drop.¹ Criminal solicitors are an ageing cohort, and few young solicitors are undertaking criminal law. Many areas of England and Wales have fewer than seven duty solicitors on the rota, meaning solicitors need to be on duty more than one 24-hour period a week, while still getting up the next day and going to court and undertaking their other duties. This is not sustainable.

Police forces across the country have told us that they are struggling to find duty solicitors at night or for certain cases. We are following up these anecdotal reports with research of custody officers to understand more about these shortages.

Civil legal aid

Civil legal aid ensures that poor housing does not remain in disrepair and that people can hold local authorities to account if education or care services are inadequate. It provides advice and representation to people appearing before tribunals relating to issues such as mental health, immigration and social security benefits.

Despite announced increases in housing and immigration fees, legal aid deserts continue to expand across England and Wales. Our latest data on community care from June 2025 show that 70% of people do not have access to a local provider².

In addition, our February 2024 data also shows that:

- 90% of people do not have access to an education provider,
- 85% do not have access to a welfare benefits provider,

¹ <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/criminal-justice/criminal-duty-solicitors> - data source: [Duty solicitors: rotas, information and guidance - GOV.UK](#)

² <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/civil-justice/legal-aid-deserts/>

- 44% do not have access to a housing provider,
- 63% do not have access to an immigration and asylum provider³.

To halt the current levels of decline, fee increases are urgently needed. While there have been proposals for increases in fees for immigration and housing providers (which have not yet been implemented), these areas, alongside community care, education, welfare benefit and family civil legal aid, all require urgent consideration.

The Law Society commissioned Frontier Economics to undertake an analysis of the sustainability of housing and family legal aid services.⁴ Data was collected and assessed on the costs of applying for and maintaining a civil legal aid contract, and the associated profits (or losses) from this work.

The research demonstrated widespread financial loss amongst legal aid providers due to stagnant fees and rising costs:

- Civil legal aid work is loss-making for 82% of the providers sampled.
- All housing legal aid providers in the sample were loss-making from their civil legal aid work, including all private sector solicitors offering housing legal aid.
- 47% of providers sampled working in family legal aid were also loss making.

Sustained investment in training, fee rates and provision of a network of providers across the country is needed to build a sustainable future workforce across the justice system.

The report also showed that, when investments are made in legal aid, other downstream public services benefit. For instance, 10% of all rental properties in the UK have significant disrepair issues, costing the NHS £355 million each year in health-related matters. Our research found that if reforms to housing legal aid reduced significant housing disrepair by just 5%, the savings to the NHS could be more than £15 million each year.

The legal aid means test

The legal aid means tests has not been updated since 2009, meaning that millions of people who cannot realistically afford legal help are excluded from receiving it. The most recent estimate of the percentage of the population entitled to legal aid is 25% for civil legal aid, but this is based on 2016 figures - significant inflation has eroded the threshold levels further since then⁵.

In 2022, the Ministry of Justice committed to amend the means test thresholds to enable more people to have access to justice. To date these changes have not been implemented. Each year, increasing numbers of people are priced out of justice as a result. The amended means test thresholds must now be implemented, taking into account inflation since 2022.

2. What is the role of supplementary advice services in supporting access to justice?

³ <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/civil-justice/legal-aid-deserts/>

⁴ <https://www.lawsociety.org.uk/topics/research/civil-legal-aid-sustainability>

⁵ <https://researchbriefings.files.parliament.uk/documents/CDP-2020-0115/CDP-2020-0115.pdf>

The decline of supplementary advice services and the need to reassert the importance of early legal advice

Supplementary advice services make an important contribution in helping people access justice. However, due to declining investment and changes introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), supplementary services have been treated as a substitute for early legal advice funded by legal aid. Ever-greater reliance on these services has led to a patchwork of provision, with no central oversight and a lack of understanding about the real demand for services to address unmet legal need.

While these services provide invaluable support, ensuring access to justice for the most vulnerable requires a robust public service for providing early legal advice, spearheaded by legal professionals, funded by legal aid, and available across the entire country.

Digital exclusion

Research the Law Society carried out as part of our 21st Century Justice project demonstrated that even people with relatively developed digital skills struggle to search for solutions to their legal issues online⁶. This means even where there are supplementary advice services in a particular area, people may struggle to access them.

Our report proposes a government-developed and AI-powered 'Solutions Explorer' which would signpost people to the options available to them to resolve their dispute, whether that is supplementary advice services, Ombuds or other forms non-court dispute resolution, as well as legal advice and litigation.

A 'Solutions Explorer' would act as a trusted and effective triage mechanism through which appropriate cases could be resolved out of court, thus easing pressure on the system and improving consumer confidence in alternate paths to solving problems, safeguarding them from the dangers of false information and poor advice.

A cost-benefit analysis undertaken by Social Finance found that the explorer could save approximately £72 million in direct costs over a five-year period⁷.

3. What is the impact of those acting without legal advice and / or representation having on access to justice?

Litigants in person

Due to the lack of readily accessible legal aid, more people are appearing in court as litigants in person. In domestic abuse cases, one in five court applications are now made by people without legal representation - 1,555 out of 7,720 applications in April-June 2024. The number of domestic violence victims applying for court orders without legal representation has more than doubled from 2011 to Q2 2024⁸.

⁶ <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/21st-century-justice>

⁷ Published in the Annex of the [21st Century Justice Green Paper \(2023\)](#).

⁸ <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2024/family-court-statistics-quarterly-april-to-june-2024>

These unrepresented parties are likely to lack legal training and experience, which can result in proceedings being delayed, adjourned, or postponed. Even when hearings can go ahead, feedback we have heard consistently from judges indicates that they can take longer and may require more judicial input and are less likely to be resolved by agreement between parties⁹. This adds significant strain to an already overburdened court system and contributes to growing case backlogs.

Despite the clear operational impact of litigants in person, there is currently a lack of precise data on their numbers and the specific effects they have on court efficiency and outcomes. This data is vital for gaining a clear picture of the effects that the decline in legal aid is having on the court system and true level of unmet legal need.

Qualified legal representatives (QLR)

The QLR Scheme is designed to be a measure of last resort, allowing the court to appoint a family law professional to cross-examine a party who is acting as a litigant in person. The limited availability of legal aid in family law cases means that there are more litigants in person and demand for QLRs is outstripping supply.

The Government should increase fee rates for QLRs and collect data on the number of cases where a QLR cannot be found and whether the case is adjourned or the judge has had to step in and cross examine due to lack of counsel present, as well as on the average cost of QLR cases. This data should be made publicly available and updated at regular intervals to highlight how the scheme is operating and whether adjustments are needed.

4. Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding.

Collective actions

Collective actions are brought on behalf of large numbers of potential claimants, sometimes running into millions of pounds. When an award or settlement is reached, those within the remit of the action can claim their share of the fund. In practice, many potential claimants do not make a claim. This leaves significant funds available for other purposes. In other jurisdictions, these balances are often used to fund access to justice projects.

In England and Wales, the law currently provides for balances from judgments to be paid to the Access to Justice Foundation, although so far, no case has yet concluded and reached the point of the excess funds being distributed. For settlements, the leftover money only goes to the Foundation if both sides specifically agree to it. This represents a gap in the law and the Government should ensure that settlements are treated the same way as judgments.

Interest on Lawyers Client Accounts

⁹ <https://assets.publishing.service.gov.uk/media/5a7e2218ed915d74e33f0448/litigants-in-person-in-private-family-law-cases.pdf>

The Ministry of Justice is currently exploring schemes to target Interest on Lawyers' Client Accounts (ILCA), often also referred to as Interest on Lawyers' Trust Accounts (IOLTA). The rates of interest offered to firms on client and deposit accounts vary and firms may be able to negotiate better rates with their banks than standard savings accounts due to the level of client monies they hold.

Firms should account to clients for the interest unless they agree to a different arrangement. In the latter case, firms often put the interest towards the costs of administering the accounts and the handling of clients' money and overheads generally, some use the interest to subsidise services, and some explicitly put the money towards pro bono or other charitable work.

In some other jurisdictions, some or all of the interest generated on client accounts is instead collected by Government or administered by the local Bar Association to use for access to justice projects.

This idea is controversial. Many small firms state that the interest they receive enables them to keep prices for consumers lower, and/or to continue offering services at legal aid rates, and therefore if they were no longer permitted to keep these funds, they would have to increase prices, reduce or give up legal aid work, which would negatively impact on access to justice.

In 2010, the Government's 'Proposals for the Reform of Legal Aid in England and Wales' green paper contained a proposal to introduce an IOLTA scheme¹⁰. In our response to this consultation, the Law Society raised a number of concerns about IOLTA schemes. These included that they are unlikely to generate enough money to justify the damage that they will cause to small firms; they may reduce the level of pro bono work done by large firms and they will add to the cost of business for small and medium enterprises (SMEs), negatively affecting overhead costs¹¹.

Additionally, the amount of investment needed to set up such a scheme and the continual funding required to track interest on client accounts further reduces the already potentially low amount of money the scheme would raise for access to justice.

The Government acknowledged the merits of these concerns and, consequently, the Government decided not to proceed with IOLTA. More recently in February 2025, we raised similar concerns about IOLTA in response to the SRA consultation on client monies in legal services¹². Whilst the current level of interest is higher than in previous years, this is likely to be a temporary situation leading to unpredictable levels of income in future and potentially creating funding shortfalls for the Government.

Levies on the legal profession

The Law Society opposes the idea of a levy on legal professionals and businesses to fund access to justice. It would be a tax on success in a sector that already makes a significant contribution to the economy and is a driver of growth as recognised in the Government's Industrial Strategy.

¹⁰ <https://www.gov.uk/government/publications/proposals-for-reform-of-legal-aid-in-england-and-wales>

¹¹ <https://assets.publishing.service.gov.uk/media/5a7c0fa040f0b63f7572b1a2/8072.pdf>

¹² [SRA consultation on client money in legal services - Law Society response | The Law Society](#)

Many law firms and solicitors already carry out significant pro bono work, giving back to their communities and volunteering their time to provide access to justice to those who have fallen through the gaps in our legal aid system.

Our justice system should be seen and supported as a national public service, providing access to justice to all who need it. Like our NHS, or fire services, we should take a national approach to how we fund it.

Dormant client account balances

In some circumstances, firms are unable to return funds to the clients for whom they hold them. A client may stop responding to a firm for reasons which cannot be established, or a company may be dissolved with no clear beneficiary entitled to any residual funds. Professional rules allow firms to donate these funds to charity, subject to certain conditions.

Many firms already donate these balances to access to justice projects. They can also be donated to other charitable causes. It would be uncontroversial to explore whether there is any more that could be done to encourage more firms to donate dormant client account funds for access to justice purposes.

5. If limited funds were available, what would be the priority areas for spending?

Private law family legal aid

Research commissioned by the Law Society from Frontier Economics demonstrates that the provision of private law family legal aid (cases involving divorce and related child arrangements and financial settlements where there is evidence of domestic or child abuse) is financially unviable¹³.

The financial data demonstrates that the median legal aid provider made a loss of £16,000 per year from these cases and only a third of providers were able to cover the associated costs of provision. Providers are cross subsidising this work from private work but increasingly cannot sustain this loss. The number of family legal aid providers has reduced 17% in the last 6 years despite a tender round in 2024 and the introduction of more flexible tendering processes¹⁴.

These cases involve individuals seeking protection from violence and abuse for themselves and their children, but applicants are increasingly seeking protective injunctions on their own without the support of legal advice and representation. In the family courts there has been a growth in Litigants in Person seeking protective injunctions in domestic abuse cases by 340% since 2011.

Everyone should live free from fear of violence and abuse. The Government has committed to halving violence against women and girls in the next ten years. Committing

¹³ Frontier Economics (2024) *Research on the Sustainability of Civil Legal Aid: Final Report*. Commissioned by The Law Society. Available at: <https://www.frontier-economics.com> [Accessed 8 Sep. 2025].

¹⁴ <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-january-to-march-2025>

to invest in this vital public service is an essential part of achieving this goal. The cost of an increase in this area should be in line with proposed increases in immigration and housing civil legal aid, costing approximately £43m¹⁵.

Early advice

The scope of legal aid should also be widened to include access to early advice in social welfare and family law cases to ensure people are able to prevent their problems from escalating, and reduce the knock-on costs arising from financial, social, and health impacts of unresolved problems whilst relieving the burden on overstretched court resources.

Whilst an increase in legal aid fees across all areas is urgently needed, early legal advice is a priority area for investment due to its currently low level of remuneration and the high level of administrative and audit burden it is exposed to.

6. How are the legal services regulators responding to their obligation to improve access to justice under the Legal Services Act 2007?

The need for the Solicitors Regulation Authority (SRA) to focus on core activities

The obligation to improve access to justice is one of the statutory objectives of the regulators when setting standards and intervening in the operations of the profession. Despite this, recent incidents including the Axiom Ince and SSB Group failures, as well as ongoing issues with the Solicitors Qualifying Exam have shown a divergence from attention on core responsibilities.

In our response to the SRA Business plan proposals for 2025/26 we continued to strongly encourage the SRA to prioritise its focus on core compliance activities and protecting consumers regarding the regulatory objectives¹⁶. This is essential if it is to regain public confidence and the trust of the profession it regulates.

We encourage the SRA to use its convening powers to bring together stakeholders and take an evidence-based, proportionate approach to any regulatory changes. This includes sector wide areas such as the SRA's ongoing work on access to justice. The SRA should only undertake additional workstreams based on evidence of regulatory need, or specific gaps in responding to consumer needs.

Legal Services Board (LSB)

We welcome the LSB's more robust approach to strengthening regulatory oversight by monitoring regulators' performance and requiring greater accountability to the LSB where concerns are identified. This will directly benefit consumers as the legal market continues to change. This approach also helps to avoid repeats of collapses and consumer harm such as with Axiom Ince and the SSB Group. The LSB should also focus on addressing

¹⁵ This is based on a 27% increase in fees for private family law cases. This figure is the average of the increase proposed for Immigration and Housing legal aid cases. The most recently published figures for the spend on private family law is £160m. <https://www.gov.uk/government/calls-for-evidence/review-of-civil-legal-aid-call-for-evidence/review-of-civil-legal-aid-call-for-evidence#AnnexC>

¹⁶ <https://www.lawsociety.org.uk/campaigns/consultation-responses/sra-business-plan-and-budget-2025-26>

performance issues with the Legal Ombudsman and increase monitoring and evaluation of the Office for Legal Complaints.

We welcomed the LSB's move to continue to put access to justice front and centre of its business plan and agreed with the LSB's judgement that this area is a significant and growing concern. We support an evidence-based approach to identifying where regulation can improve access to justice and continue to contribute our wealth of research, knowledge, and experience in this area into the shaping of these options.

Any new regulatory levers to address unmet legal need must be carefully considered and evaluated for possible negative consequences. The issues facing access to justice have become progressively worse over time.

We have encouraged the LSB to consider its role in supporting a more holistic approach. We are keen to see the LSB address the risk of market failure in this area (particularly in the legal aid market) as a matter of urgency and in support of regulatory objective 6, encouraging an independent, strong, diverse, and effective legal profession. Linked to this there is a need for a focus on workforce planning to build the pipeline of future legal aid solicitors to provide this vital public service.

Our views in this area have been set out in full in responses to the Government¹⁷. Furthermore, like the LSB, we also await the response from the Government to the work carried out by the Civil Justice Council on third party litigation funding, and the Council's report on the review of the remuneration provisions in the Solicitors Act 1974, both of which will have a heavy focus on consumer protection.

In our final report as part of the 21st Century Justice project, we outline several practical opportunities to expand access to justice within the civil justice system¹⁸.

On regulation, we recommend that the SRA should take steps to collate data on which firms deliver unbundled legal services and be clear about the associated risks to both clients and firms, and that legal regulators should assess the supply and value chain of AI tools to ensure vendors and practitioners understand consumer needs and impacts and adhere to regulatory frameworks.

We have also engaged with the Solicitors Regulation Authority on its "Regulators Pioneer Fund" project to build the evidence base in relation to the use of online dispute resolution platforms. The final report for this project is yet to be published, and we plan to use the findings to inform our engagement with the work of the Online Procedure Rules Committee as it develops rules to govern the online pre-litigation landscape.

The research we carried out with practitioners as part of the project highlighted several areas where online dispute resolution had the potential to significantly expand access to justice. Further insight from our research with practitioners on online dispute resolution is outlined in response to question 9. However, we also found there is currently weak consumer protection, and the system is undermined by a lack of data standards. We would invite the LSB to draw on this work so that our joint focus might be on actions to address the challenges and opportunities.

¹⁷ <https://www.lawsociety.org.uk/topics/civil-litigation/fixed-recoverable-costs>

¹⁸ <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/21st-century-justice>

One of the many benefits of using a solicitor to assist in a legal matter is that they are regulated and covered by Professional Indemnity Insurance and therefore consumers have protection and right of redress if something goes wrong. In contrast, a key issue which has featured throughout our research into online dispute resolution is that the current pre-litigation online landscape is largely unregulated, leaving consumers with limited options for redress when something goes wrong.

Legal Ombudsman

It has previously been proposed that legal services regulation should be expanded to unregulated providers, including those providing online services, with consumers able to take a complaint to the Legal Ombudsman. It is in the public interest to address consumer protection gaps in the legal services market and the Law Society is supportive of this work.

However, we would be concerned about expanding the remit of the Legal Ombudsman to cover complaints relating to unregulated providers due to capacity issues and increased costs falling on the regulated professions and their clients. Nevertheless, the ombudsman model provides a useful solution to the current lack of consumer protections. We propose the OPRC and Ministry of Justice consider the creation of an online dispute resolution ombudsman.

7. How is pro bono work and free legal advice being used to support access to justice and what reliance is placed on it?

Law Society members continue to report that demand for pro bono is increasing in all areas of law. A survey of 78 firms conducted by Global Pro Bono Hub highlighted over 609,869 hours of pro bono work completed by solicitors in 2023, this amounts to 17.6 hours per solicitor¹⁹.

Despite the commitment of the profession, pro bono is not a substitute for a well-funded legal aid service. It is not available in every area of law and in some areas of practice it is quite limited. For example, family law cases tend to be complicated and lengthy which makes it unsuitable for pro bono help.

Pro bono is generally used by those who are not eligible for legal aid and most clinics and brokers will check this. The Law Society's Pro Bono Protocol provides that if you are eligible for legal aid, pro bono services should not be provided, as the limited resources available for pro bono need to be focused on cases where there is no alternative option.

Several pro bono clinics have had to close over the years due to cuts or lack of funding. Often, free advice clinics are competing for the same funding opportunities, and this makes some of them unsustainable or leads to cuts in their services.

While solicitors are proud to contribute with pro bono work, it can lead to a misguided assumption that these services are easily accessible which can then lead to an overreliance on what is effectively a small service when compared to a properly funded legal aid system.

8. How can advice, legal support or non-court dispute resolution, such as mediation and restorative justice, help the early resolution of disputes?

¹⁹ <https://www.globalprobonohub.com/resource/gpbh/uk-collaborative-plan-for-pro-bono>

Family

We understand the significant value of mediation and non-court dispute resolution in supporting the early resolution of disputes, without needing to go to court. However, we do not agree with making mediation compulsory in private family disputes. We recommend providing clients with a greater number of options to resolve their issues outside court in instances where court proceedings are not appropriate.

For mediation, or any other form of dispute resolution, attendance needs to be voluntary for it to be as effective as possible. The choice of a court hearing is vital in ensuring access to justice and we do not agree that barriers should be put in place if attending court is the preferred course of action for parties.

Our 2023 response to the MoJ's "Supporting earlier resolution of private family law arrangements", cited a six-month period of evaluation investigated through a 2018 Manchester Pilot. This showed that only 14% of the cases (171 out of 1190) were deemed suitable for diversion from court to mediation outside court²⁰. 86% were found to have too high a level of risk or legal need to be manageable out of court, in the judgement of the assessing Cafcass family court advisers.

The last month of the pilot saw this reduce to 80%, which perhaps signalled assessors' growing confidence in the interventions but even taking this into account, the findings suggest that 80-86% of cases were appropriately in court.

Most family disputes are settled outside court, with couples trying to avoid costly court litigation and a delay in resolution. The evidence demonstrates that the cases that do come to court, and therefore the ones that would be affected by a compulsory mediation scheme, are those that are more complex in the first place.

Our consultation response notes evidence that early legal advice promotes referrals to mediation. The number of cases undertaking publicly funded Mediation and Information Assessment Meetings dropped by 60% after public funding was removed for early legal advice.

If mandatory mediation is to be introduced, it must be in conjunction with an expanded package of publicly funded support to ensure those who may be at risk of domestic abuse are protected, and to support the success of any mandatory mediation scheme.

While non-court dispute resolution such as mediation and restorative justice can help the early resolution of disputes, it must be a part of a wider programme of investment in legal support so that people know the avenues they can explore to access justice.

Civil justice

In civil justice, there has been an increasing focus on mediation and other forms of non-court dispute resolution. The Law Society considers that it will frequently be in the

²⁰ The Law Society's consultation response to the Supporting earlier resolution of private family law arrangements: a consultation on resolving private family disputes earlier through family mediation - June 2023

interests of the parties to resolve their disputes through such mechanisms. However, we oppose making them mandatory for two main reasons.

First, there will be a cohort of cases where non-court dispute resolution is simply not appropriate. For example, if one party is not engaging in good faith, compulsory mediation will simply enable them to continue their bad faith refusal to engage for longer.

Secondly, where there is a significant imbalance of power between the parties, any settlement reached through non-court dispute resolution may not represent a just outcome.

Lastly, it has long been recognised that litigation should be a last resort. Making non-court dispute resolution a compulsory step after the issue of proceedings risks duplicating effort and wasting time and costs.

While the recently introduced mandatory mediation scheme for small claims appears to be working reasonably so far, this is because parties become aware of the avenue in cases where mediation is appropriate. Because parties are usually unrepresented, they will often not have considered mediation before the point at which their case is referred.

Moreover, in small claims the speed and low cost of a mediated settlement is more likely to be a proportionate outcome even if parties do not get everything they wanted. Care needs to be taken, however, to ensure that creditors are not abusing the system to get away with paying less than they are legally liable to pay.

9. What role is there for digital innovation and data collection in supporting access to justice?

Technology-enabled justice represents a key avenue through which the Government can address pressures in the justice system and improve access to justice. Through technology such as digitising the courts and creating a single-entry point to the civil justice system²¹, the Government can modernise the system. However, this is dependent on the quality and quantity of data collected by the courts to inform where processes can be digitised and how to effectively deploy technology across the UK.

In our AI and LawTech policy work, we have engaged with the Government on digital innovation for justice, including responding to the computer evidence in criminal proceedings call for evidence and supporting with the implementation of the Industrial Strategy's AI and LawTech elements²². The AI Action Plan for Justice, recently published by the Ministry of Justice, is a good first step to consolidating and identifying the different ways in which the Government can support the adoption of technology to close justice gaps.

Online dispute resolution

The digital justice landscape has witnessed a growth in ODR providers in recent years. ODR providers use technology to help resolve disagreements between individuals or businesses without going to court.

²¹ <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/21st-century-justice>

²² <https://www.lawsociety.org.uk/topics/ai-and-lawtech/ai-lawtech-policy>

The Law Society carried out research last year with solicitors on barriers to online dispute resolution. This was done in conjunction with the SRA and the Access to Justice Foundation, as part of the SRA-led Regulators' Pioneer Fund project.²³ The research demonstrated there is significant potential to address unmet legal needs in certain areas, such as employment law and disputes between small and medium-sized businesses. A Small/micro business solicitor noted in the report that:

"ODR has benefits against litigation... there is more opportunity to preserve face-saving positions, commercial relationships in a way that solves things without it being finite and detrimental to a relationship."

However, the project also highlighted concerns around safeguarding and ensuring the best outcomes for people experiencing particularly stressful legal problems, those with limited financial resources or those who are digitally excluded. Evidence from those practising in private family law suggested this area of law is particularly ill-suited for encouraging people to settle their case through ODR. The intricate and emotional nature of family law, especially involving finances, children and domestic abuse, means human interaction is key to minimise stress and to ensure fair treatment and outcomes for all.

"They [vulnerable clients] are going to lose because the online system is going to beat them, work against them. But if you've got someone whose life is so difficult that they struggle to manage and they've got someone like me and a landlord who's good at managing those sorts of things... then all of that is levelled up."
Social welfare and housing solicitor

As part of our 21st Century Justice project, we also shared the findings from this research with the Online Procedure Rule Committee (OPRC) to inform the development of their pre-action model and inclusion framework²⁴.

The Digital Inclusion Framework set out in the OPRC's Public Engagement Document outlines a robust set of standards and measures for ODR services, particularly around data collection/publication standards. It also promotes inclusive user-centred design which the Law Society has previously called for. The Pre-Action Model mentioned in the OPRC's consultation contains many measures that the Law Society supports, for instance a requirement that providers should 'ensure safeguards for vulnerable user to prevent power imbalances' and that they should make provision for publishing key performance indicators as required. Private ODR providers are also instructed to "establish and maintain a clear and accessible complaints procedure". However, what that procedure should be is not specified. In our 21st Century Justice project, we called for the creation of an ODR Ombudsman scheme to provide a suitable level of redress.

However, both the Inclusion Framework and Pre-Action Model are currently intended to be voluntary, although that this may change in the future. Given the voluntary nature of both Inclusion Framework and Pre-Action Model, there will be a real tension for ODR providers between costs and inclusion, as the measures set out for providers will have cost implications.

²³ Solicitors Regulation Authority, [Solving legal issues through technology](#), 2024

²⁴ <https://www.lawsociety.org.uk/campaigns/21st-century-justice>

10. How could the current system of legal aid be improved to provide a cost-efficient and cost-controlled service, with suitably remunerated legal practice across civil, criminal and family law?

Criminal defence firms

We recommend the MoJ undertakes a costs comparison between private firms and the Public Defender Service (PDS). One of the original stated aims of creating the PDS in the 'Modernising Justice' paper published in 1998 was to enable the MoJ to obtain an indication of the costs of running a legal aid practice²⁵.

In June 2000 the LSC (Legal Services Commission; now the Legal Aid Agency) produced, on behalf of the Government a consultation paper on "Establishing a Salaried Defence Service and Draft Code of Conduct for Salaried Defenders Employed by the Legal Services Commission"²⁶ in which the objectives of the PDS included:

- Providing good or better-quality services than private practice at equal or lower costs.
- Because salaried defenders would not be motivated by profit to maximise the price paid for their services, there would be a better alignment in objectives between the LSC and the PDS than would be possible with private practitioners.
- To provide the LSC with access to management information on the supply of criminal defence services that would not otherwise be available to it through contracting.
- To provide a test or benchmark for the cost and quality of the criminal defence services provided by private practitioners under contracts.²⁷

The only evaluation that was undertaken into the PDS in 2006 found however that the PDS costs were much higher than when the service is delivered by private firms.²⁸

In 2001-2 Public Defender Office average costs across all research offices were:

- Just over twice as high as those of private practice for lower standard fee claims in the magistrates' courts.
- Over two and half times higher for police station attendance claims,
- Over three times higher for advice and assistance only and early hearing claims in magistrates' courts²⁹.

Although this comparison was made almost 20 years ago and there were some caveats related to PDS start-up costs, there have until the past couple of years been no increases in fees, and those recent increases do not come close to making up for inflation in the interim. It is likely that private firms are still very cost effective compared to the PDS.

²⁵ Modernising Justice, London, HMSO, 1998, paras. 6.18-6.19.

²⁶ Criminal Defence Services: Establishing a Salaried Defence Service and Draft Code of Conduct for Salaried Defenders employed by the Legal Services Commission, London, Lord Chancellor's Department, June 2000.

²⁷ Ibid, paras. 55-67.

²⁸ EVALUATION OF THE PUBLIC DEFENDER SERVICE IN ENGLAND AND WALES - [The Context of the Public Defender Service in England and Wales](#)

²⁹ Ibid. p.2011 (2015 on downloaded version).

Civil legal aid

In the Frontier Report into the sustainability of legal aid (question 1) we highlight that the administrative burdens of running legal aid contracts are high. Legal aid work often involves significant unpaid compliance costs, including screening clients, applying complex means testing, managing contracts, and working with complex cases.

Throughout the research for the report, providers also raised concerns about the unpredictability of timing for payments. The report notes delays of up to 2-3 years due to court backlogs. Recovering these fees creates a significant cash flow issue as capacity which could be used on cases is being diverted towards chasing owed fees.

There is also no ability to claim for interim payments throughout the life of the case in many areas of practice. This includes not being able to claim for disbursements, such as, interpreters or expert's fees.

These issues create barriers to entry and growth for both new and existing firms and has led to widespread market exit leading to the emergence of legal aid deserts, leaving many without access to justice.

Unpaid bureaucracy

There is an urgent need to review the amount of unpaid bureaucracy in the legal aid contracts. For example, firms are required to pay experts up front for their reports, yet in the magistrates' court they cannot claim this money back - which can cost thousands of pounds - until the end of the case. It would be far more efficient if the LAA could pay experts directly, so that firms would not have to carry large amounts of money for months or in some cases, years.

The LAA also sometimes reduces the expert's fee, meaning that the firm has to engage in time consuming appeals in order to get back the full amount that they have paid. It would be more efficient for the expert to negotiate the fee directly with the LAA.

The LAA already conducts numerous audits of legal aid firms, so the service is 'cost-controlled' quite closely. These audits require firms to undertake a large amount of unpaid work preparing for the audit and on the day of the audit itself. It would reduce unpaid bureaucracy for firms and help cost-efficiency if the LAA could streamline their audits more effectively, e.g. have them all on the same day, or use the same set of files for several audits.

Understanding the costs and revenues of legal aid provision is fundamentally important for enabling the Government to set funding rates at a level that ensures sustainable service provision. A clear foundation of regular reviews for fees and overall funding enhances certainty and predictability in the sector, enabling providers to undertake long term planning and for the Government to have visibility of issues and the ability to intervene where necessary. The lack of such certainty both drives market exit and deters new entrants, thus exacerbating the age profile of the sector.

11. What has been the impact of the Legal Aid Agency cyber-attack, revealed in April 2025, on recipients and providers of legal aid work, and how have the Legal Aid Agency and Ministry of Justice responded?

Lack of compensation for additional work

As a result of systems being taken offline, providers have been tasked with undertaking huge amount of unpaid administration as payments are having to be processed manually. Providers already exist on the boundaries of financial viability and this additional work further strains their financial stability. In our 10-point plan to get the justice system back online, we highlighted the need for compensation, which we have subsequently raised with the LAA, but they refuse to consider offering compensation³⁰. One family firm estimated at least 30 hours additional unpaid work per week. This means that fewer clients can be seen because the firm can't absorb that level of unpaid work.

Delays due to systems being taken offline

In Crime, the CRM4 forms – applications for prior authority for an expert report – are taking 9-10 days to process instead of the 2 days before the data breach. This is causing huge problems for firms as they often have to pay the expert themselves in order to have the report in time for the hearing. If they wait for the LAA to process the application the application this can mean requesting adjournments, which can meet limited sympathy from judges.

Lack of contingency measures

Once the breach was identified and the extent calculated and system taken offline, the LAA was slow to institute sufficient contingency measures to keep payments flowing as firms continued providing legal aid services. While plans we're eventually in place, the pressure and uncertainty suffered by firms was significant. The Law Society previously raised the risk of cyber-attack due to the LAA's antiquated system, and it is clear that plans should have been in place in the case of a breach.

The Government must commission a review the LAA's response to the data breach, so that lessons can be learned and recommendations made across government to ensure that contingency arrangements are in place should vital systems be breached again.

Lessons to learn as the new system begins operation

The operationalisation of a new Legal Aid Agency (LAA online system represents an opportunity to re-set the relationship between the LAA and practitioners and to simplify contract requirements.

Following the cyber-attack, the LAA and the wider system has relied significantly on good will on the part of the profession to keep the system going, without sufficient contingency planning, when it represents a huge amount of financial uncertainty on their part.

The attack has demonstrated how onerous the micromanagement of legal aid contracts is and that there is the possibility of being more flexible in extending delegated functions. However, new more streamlined approaches will only work if there is a relationship of trust between firms and the LAA, which is not presently the case. As the new system comes online, and the LAA starts to review the decisions firms have made under delegated functions, it is vital that the profession's goodwill is repaid and that providers

³⁰ <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/ten-steps-to-get-the-justice-system-back-online-after-cyber-attack>

are not penalised for decisions they have made in good faith. Decisions must be honoured unless they are ultra vires or there is proof of bad faith on the part of the firm.

Longer term, there are lessons to be learned in terms of reduced cost and improved efficiency from running the system on a “high trust” basis, building on experiences in other European countries including the Netherlands³¹.

It is also vital that the restart is managed well, ensuring there is an overlap period of contingency payments while bills are submitted and payments are processed to ensure cashflow. The recoupment of contingency payments that have accumulated should also not start until systems are operating effectively, that payments of bills are being made and cashflow for firms can be assured. The IT systems are fragile, and restart must be managed in a way that ensures firm’s financial stability.

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³¹ <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/21st-century-justice>