

Right time, right place: Improving access to civil justice

BRIEFING PAPER

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This paper discusses access to civil justice in England and Wales, and how policymakers can create a better functioning and more equitable system.

KEY POINTS

- Civil justice issues are ubiquitous: around two-thirds of people have experienced them in the last four years.
- Most are addressed without formal action or legal support, and many are not even recognised as legal in nature.
- The consequences can be severe: 53% of people experience stress, 33% financial loss, and in extreme cases, people may lose their jobs or turn to drugs or alcohol.
- Recent changes to legal aid have substantially limited affordable help – the number of publicly-supported cases are a fifth of what they were a decade ago.
- On the other hand, government efforts to move civil procedures online and make them more convenient and efficient have borne some fruit, though concerns remain over the digitally excluded.

RECOMMENDATIONS

Policymakers should:

- Reverse cuts to civil legal aid, which some estimates suggest would save the government money by limiting expensive downstream problems.
- Prioritise early, joined-up interventions, providing resources and incentives for legal and other services to collaborate. An example would be co-locating legal advice clinics with hospitals or GP surgeries.
- Collect better and more timely data, for example through a biannual Civil Justice Survey for England and Wales.

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FOREWORD FROM THE SPONSOR

In recent years, civil rights and social justice protests highlighting injustices have served as a catalyst for change, sparking important conversations about race, discrimination and social inequalities globally. Around the world, one of the most significant systemic barriers to social justice is the mistreatment of certain groups within legal systems.

Research into the ways women, ethnic minorities and low-income people experience justice reveals a broken system. These groups do not receive equal treatment or obtain equitable outcomes when compared to White people, high-income individuals, or men. This is unacceptable.

In England and Wales, for example, over half the women in prison report having suffered domestic violence, with 53% of women reporting having experienced emotional, physical, or sexual abuse as a child. Low-income individuals are more likely to end up in court and more likely to be convicted. Ethnic minorities are more likely to be charged, convicted, and imprisoned than white people. The UK population is 16% ethnic minority, but ethnic minorities make up 22% of people arrested and 27% of people in prison. These figures point to a criminal justice system that is not delivering equal justice for all.

AIG is committed to making a positive difference in the communities where our employees live, work and serve our customers by supporting organizations that help create a more resilient future for individuals, families and communities. AIG's commitment to criminal and social justice reform is a central part of our global corporate citizenship agenda and a key pillar of our Pro Bono Program.

Racial and social injustices continue to plague societies. A more equitable future requires a commitment to action from governments, businesses and society as a whole. AIG's pro bono support for social justice causes will enable us to make a meaningful difference in the lives of those most in need of legal and related support.

This is why we are delighted to be working with the highly respected Social Market Foundation (SMF) on this series of events and publications. We are also excited to be supporting the work of the three NGOs who are partnering with SMF on this series – the Centre for Women's Justice, EQUAL and LawWorks. By convening far-reaching conversations about inequities in the criminal justice system and ways to remove them, SMF is making a valuable contribution to the cause of social justice in the UK.

Tackling injustice is one of the biggest challenges of our time – in the UK and across the world. Our goal is to have these discussions and the published expert reports to follow not only inform the debate, but also serve as a call to action.

Lucy Fato

Executive Vice President, General Counsel & Global Head of Communications and Government Affairs

ABOUT THIS PROJECT

This briefing paper is based on a seminar organised by the Social Market Foundation in January 2022, as part of the *Justice in the Balance* project we are undertaking in partnership with AIG. The event, held under the Chatham House rule, brought together senior policymakers and experts in civil justice. The names of those who attended are private, but participants included senior MPs. While this paper anonymously reports some of the views expressed by seminar participants, the conclusions and recommendations made here are those of the SMF author's alone.

CIVIL JUSTICE AND WHY IT MATTERS

Civil justice issues are ubiquitous

Civil justice is less attention-grabbing than criminal justice, and as a consequence receives less focus from policymakers and the media. But it would be a mistake to overlook it. Issues of civil justice are extremely common, and can be deeply damaging to those that face them. There is also good reason to think they have been made worse by recent policy decisions, necessitating better and more effective support going forward.

Civil justice problems can arise from a wide array of everyday disputes. The Ministry of Justice's (MoJ) Legal Problem and Resolution Survey¹ outlines 11 types of issue¹:

- Problems with purchasing goods or services e.g. faulty goods, services not delivered as promised
- Problems with neighbours' anti-social behaviour
- Money problems e.g. recovering money owed, financial mis-selling
- Debt issues
- Problems with rented accommodation e.g. rent arrears
- Accidents or negligence
- Problems with owning or buying property e.g. planning permission, mortgage arrears
- Family problems arising from relationship breakdown e.g. division of property, contact with children
- Employment problems e.g. unfair dismissal, workplace discrimination
- Disputes over state benefits
- Problems with state education e.g. appeals over school places, access to special needs provision

A more recent survey on legal needs commissioned by the Legal Services Board and Law Society has a more granular list of 34 issues across eight categories.²

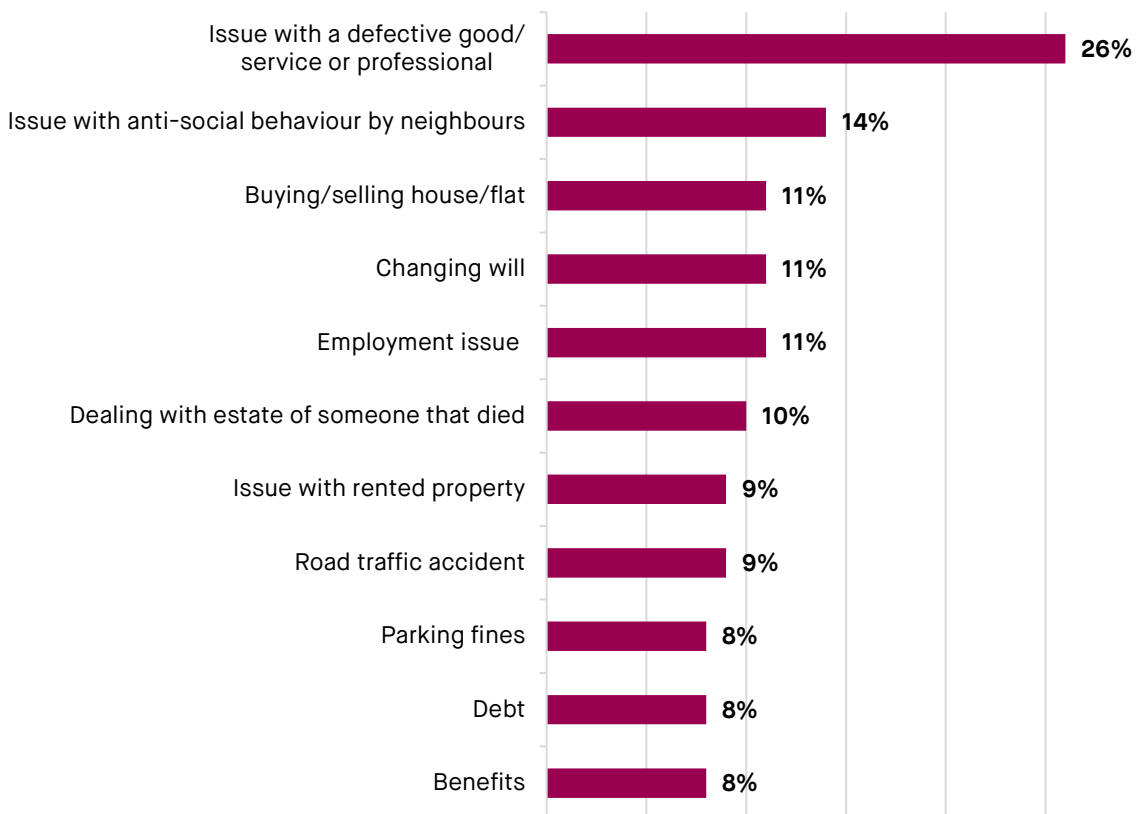
According to the MoJ's analysis, 32% of adults experienced a civil justice issue in the last 18 months. The Legal Services Board and Law Society estimate 64% had such a

¹ The last three are technically administrative justice issues, but are grouped with civil justice issues.

problem in the last four years. These two numbers could be consistent with one another – the MoJ survey asks people to look back on a shorter period of time, only 18 months as opposed to 48. However, the differences could also be due to question wording (the precise issues respondents were prompted with), or could reflect a genuine increase between the MoJ survey in 2014/15 and the Legal Services Board/Law Society survey in 2019.

In any case, what is abundantly clear is that civil justice issues are extremely common. Figure 1 shows the most prevalent civil justice issues. In both surveys, issues with purchasing goods and services and disputes with neighbours appeared most frequently, but there is a very long tail of significant problems.

Figure 1: Proportion of adults in England and Wales that have experienced legal issue in the last four years – most common issues, 2019

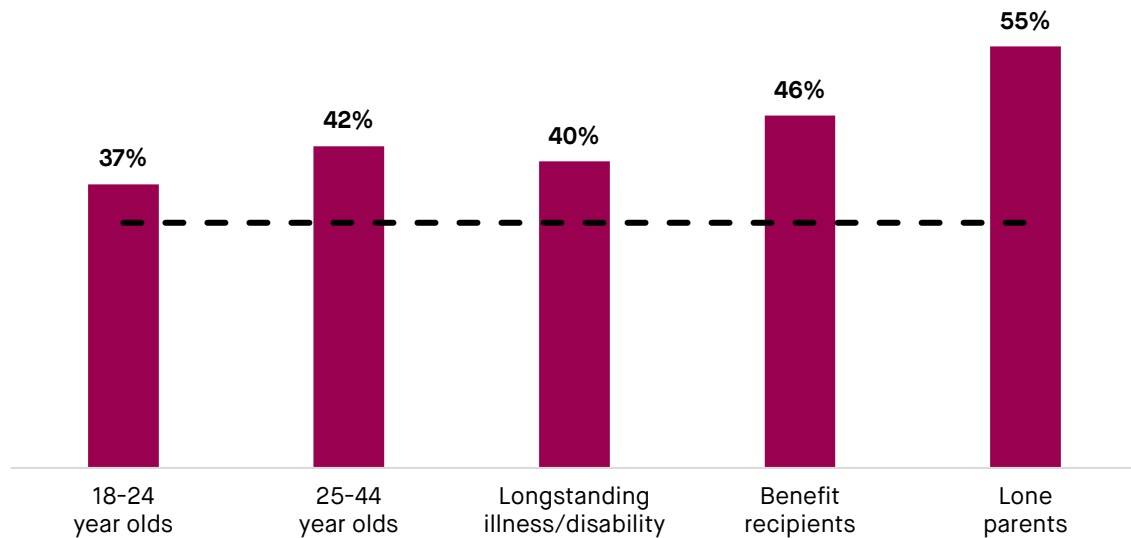


Source: Legal Services Board/Law Society, *Legal needs of Individuals in England and Wales*

The relationship between civil justice problems and socio-economic disadvantage is not clear-cut. The MoJ found no correlation with income, whereas the Legal Services Board/Law Society found in fact that richer and better educated people are *more* likely to have issues with the civil justice system.³ What does seem to be the case, though, is that civil justice problems have a tendency to cluster: the MoJ survey found that 50% of people with a civil justice problem in the last 18 months had more than one, and that 22% had at least four.⁴

At the same time, there are certain vulnerable groups that are more prone to civil legal problems. The MoJ report that 55% of lone parents, 46% of benefits recipients, and 40% of people with a longstanding illness or disability had such issues, which likely reflects their greater chances of being embroiled in legal issues around family breakdown, education, or welfare.

Figure 2: Proportion to have experienced legal issue in the last 18 months, 2014/15



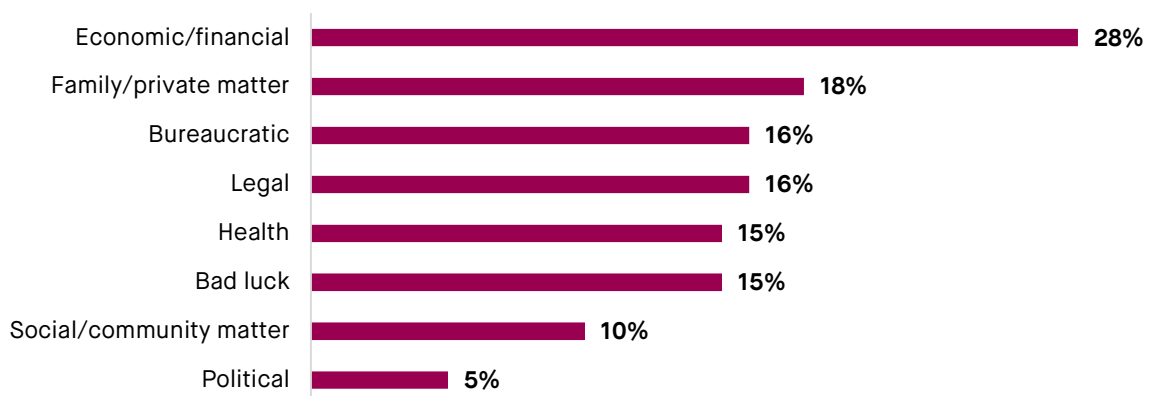
Dashed line represents overall average

Source: Ministry of Justice, Key Findings from the Legal Problem and Resolution Survey, 2014-15

Most are addressed without formal or legal support

It is very common for people facing civil justice problems not even to recognise them as a legal issue. According to the Legal Services Board/Law Society survey, only 16% of people who faced a contentious civil justice issue described it in legal terms, being far more likely to see it as an economic, financial, or private matter rather than something relevant to the justice system.

Figure 3: Proportion of people who describe their contentious legal issue as the following

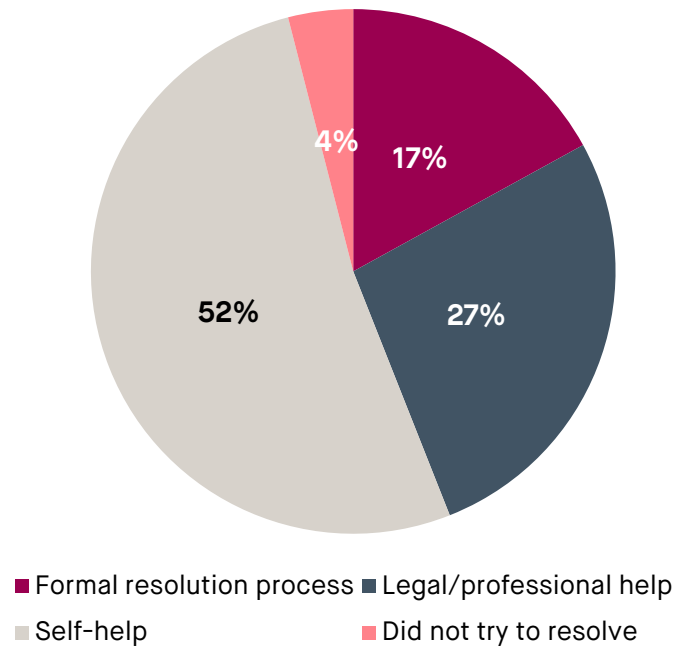


Source: Legal Services Board/Law Society, Legal needs of Individuals in England and Wales

Moreover, formal help and legal representation is (understandably) seen as extremely costly. 91% of people believe that lawyers are too expensive for most people to use when it comes to civil justice issues.⁵

Taken together, the failure to conceive of civil justice issues as legal problems, and the inability or unwillingness to pay the high cost of professional help mean that most people muddle through without formal resolution or legal support. According to the MoJ, 52% of people facing civil justice problems engaged in ‘self-help’.

Figure 4: Most formal resolution strategy used to resolve legal problem, 2014/15



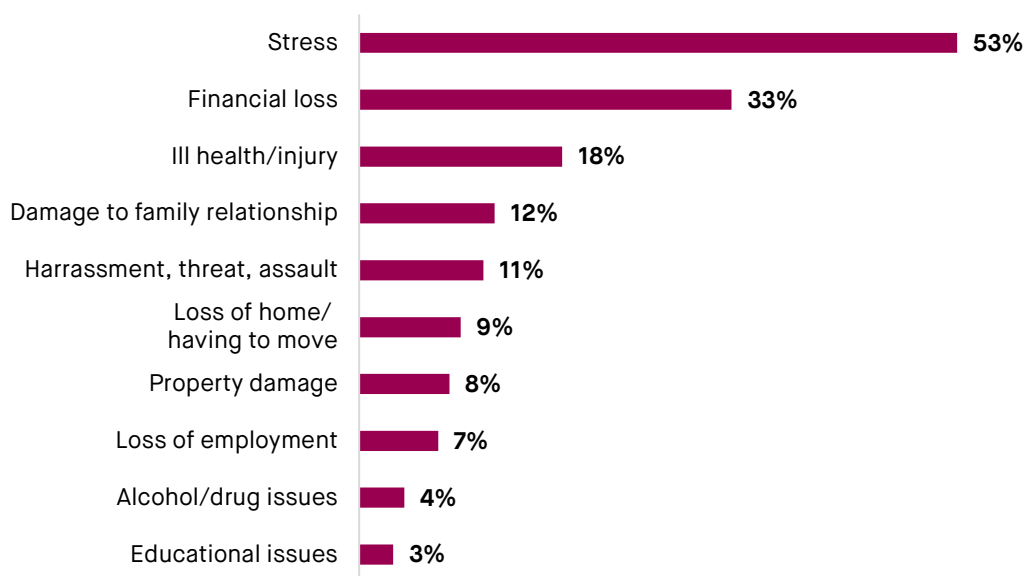
Source: Ministry of Justice, *Key Findings from the Legal Problem and Resolution Survey, 2014-15*

Those that do seek assistance often go to non-expert. The Legal Services Board/Law Society survey found that 36% sought support from family and friends, 22% a solicitor and a substantial 14% went to see a doctor for help (particularly for injury and employment issues, but also those related to financial and benefit disputes).

The personal and societal consequences can be severe

Dealing with a civil justice issue can be deeply difficult and unpleasant. As Figure 5 shows, in around half of cases, people find the experience stressful, and around one in three are financially worse off as a result. A significant minority – around a fifth – say that it damages their physical health. Family breakdown, harassment, threats, and assault are all significant risks associated with civil justice problems as well.

Figure 5: Proportion of people who had the following experience as a result of a contentious legal issue



Source: Legal Services Board/Law Society, *Legal needs of Individuals in England and Wales*

For some, the implications can be very dramatic indeed. In the Legal Services Board/Law Society survey, 7% said they had lost their jobs and 4% had problems with drinking or drugs as a result of their civil justice issue(s). In the Ministry of Justice's survey, 1% said they had become homeless.⁶

The adverse consequences of civil justice issues extend beyond the individuals concerned. Creditors struggle to get their money back. Employers have less healthy, focused, and productive workers. There are costs to the exchequer – for example, the burden on the health service of mental and physical health problems suffered in the course of civil justice processes, or the cost of benefit payments resulting from unemployment or housing issues.

These sorts of negative experiences fuel scepticism and disenchantment towards the justice system as a whole. 59% of people say that civil justice issues are not usually resolved promptly and efficiently. 71% of people believe that those with less money generally get a worse outcome when it comes to civil justice issues.⁷

RECENT TRENDS IN CIVIL JUSTICE POLICY

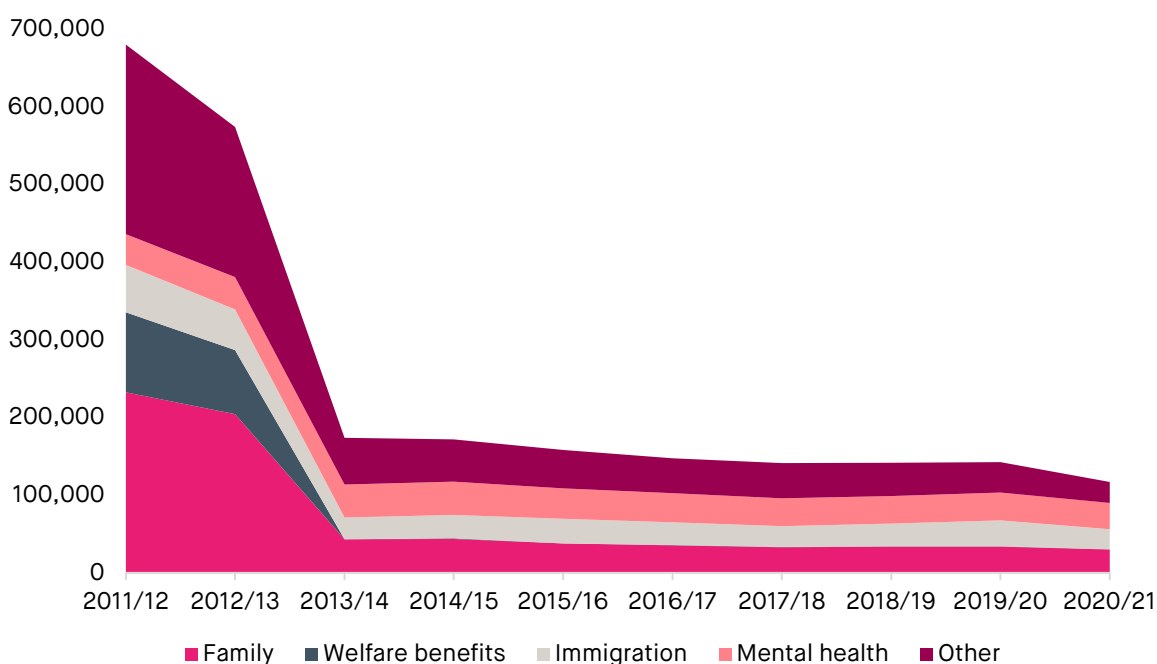
Fewer people qualify for legal aid, limiting their access to civil justice

The availability of support to help people through civil justice issues has been significantly curtailed as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2013 (LASPO). This involved several reforms. First, many areas of law were largely removed from the scope of legal aid and so no longer receive public support. These include private family, employment, welfare benefits, housing, clinical negligence, and non-asylum immigration law matters. Moreover, in those areas that did remain, means-tests were made stricter. Those on benefits are no longer

automatically eligible for legal aid, and limits on the maximum income or capital a person needs to qualify were lowered.⁸

Taken together, these measures represented a substantial constriction of civil legal aid, with budgets cut by 34% over the course of the 2010s.⁹ As a consequence, people’s ability to access formal legal representation has been severely limited. Moreover, funding has also been cut for ‘legal help’ – initial advice, assistance, casework support, or mediation that need not be provided by trained lawyers. Such legal help is an essential part of the civil justice system that relied upon legal aid contracts. For example, Citizens Advice Bureaux estimates that it lost £19 million funding as a result of the changes.¹⁰

Figure 6: Legal help and controlled legal representation matters started



Source: MoJ/ONS, *Legal Aid Statistics*

Figure 6 shows how the number of publicly supported legal help and representation cases has declined since the introduction of LASPO. The overall number is less than a fifth of what it was in 2011/12, with over half a million fewer taken on compared to a decade ago. The decline in family law cases has been even starker, dropping by 87% over that period. In 2011/12, over a hundred thousand welfare benefit cases were supported with legal aid. Today, there are virtually none.¹¹

LASPO was intended to discourage unnecessary and adversarial litigation, target legal aid better at those who need it most, deliver better value for money, and deliver cost savings.¹² There can be no doubt that it has reduced government spending, at least looking narrowly at the legal aid budget – though many believe this is a false economy, leading to higher spending in other areas. However, a 2015 House of Commons Justice Committee report concluded that it had failed to achieve its other three objectives.¹³ A 2019 government review attempted to paint the reforms in a more positive light, though it was only able to claim “mixed success” in discouraging unnecessary

litigation and its claim that value for money had improved was caveated with an admission that it is not clear how much saved costs have been transferred to other departments.¹⁴ In 2021, the Justice Committee described it as “frustrating, and yet unsurprising” that so little evident progress had been made on the issues on legal aid in the past six years – for example, the number of people unable to access legal aid, inadequate fees, more litigants defending themselves, and failure of the exceptional case funding system.¹⁵

Digital access to justice has improved

At the same time, recent measures have made significant progress in promoting digital civil justice. Making proceedings more convenient, user-friendly, and potentially more efficient has likely improved many people’s experiences of the system. Under the HM Courts and Tribunals Service Reform Programme, over 426,000 people have made use of online services since 2018 easing pressure on courts. The Online Civil Money Claims service allows people to issue and respond to claims up to £10,000, 80% of divorce applications are made online¹⁶ and there are now online systems for probate (allocation of assets in a will), as well as appeals against Social Security and Child Support decisions.

The Government is able to point to encouraging signs of improvements as a result of these changes. The average time to settle small financial claims is five weeks under the online system, compared to 14 weeks previously.¹⁷ Online divorce applications are substantially less likely to be returned for user error, with the rate falling from 40% under the old system to less than 1%.¹⁸ User satisfaction is relatively high, with 85-95% of users offering positive assessments of their experiences.¹⁹

However, this has raised understandable concerns about the digitally excluded and their ability to make use of such tools, especially if they are used to compensate for the decline of existing services. Proponents of digital justice suggest such fears are overblown, pointing out that over 90% of adults are internet users and that many of the remainder are ‘users by proxy’, able to get help from others that are more tech literate.²⁰ On the other hand, digital exclusion is a broader concept than the matter of whether a person has basic internet access – it is also a function of a person’s skills, confidence, and motivation. Over 11 million adults are believed to lack basic digital skills, and so may struggle to make the most of online resources.²¹ Others may have difficulties with connectivity and cost. Worse still, the digitally excluded are more likely to be drawn from vulnerable groups: older, lower income, disabled or non-native English speakers. And there are particular worries around ‘highly excluded’ people, such the homeless or those detained by the state.²²

IMPLICATIONS FOR POLICY AND PRACTICE

Reverse cuts to civil legal aid

It is hard to find a public service that would not benefit from additional funds, and so it sometimes feels glib or even impractical to say that the answer to a policy problem is simply to throw money at it. Yet civil legal aid is one of the most dramatic examples of cuts anywhere in government, with large swathes all but eliminated – as Figure 6

showed. It is hard to imagine an effective civil justice system without returning spending to something closer to its previous level.

Participants in our seminar described ways in which the system has adapted to this loss of resources. In particular, there has been a significant growth in pro bono legal advice clinics. For example, the number of clinics in the LawWorks network rose from 175 in 2014 to 300 in 2021.²³ Moreover, there has been greater ‘secondary specialisation’, with lawyers developing their capacity to offer in-depth advice on areas beyond their day-to-day practice – for instance, building experience in benefits cases.

Yet for all the professional pride in the sector around the pro bono system, there is a clear consensus that this cannot be a substitute for an adequately resourced legal aid system. Advocates of pro bono support insisted that it works best as part of a “rich ecosystem of legal advice provision”. Whereas certain sorts of cases lend themselves well to pro bono support – in particular, one-off cases in more simple areas of law, where procedures are more clear-cut – others are less amenable. As a result, one of the major challenges facing pro bono lawyers in recent years has been the loss of specialist organisations to pass clients onto.

The Bach Commission, convened to review legal aid for the Labour Party, described cuts to legal aid as “one of the least cost effective cuts”, with Lord Lowe telling the commission that it represents a necessary investment because of its preventative value.²⁴ For example, family law support can encourage people to make use of mediation rather than engaging in expensive litigation. Following the implementation of LASPO, uptake of mediation fell significantly, likely because people were no longer in contact with the legal aid solicitors that accounted for over 80% of pre-reform referrals to mediation.²⁵ Similarly, legal aid for employment issues can prevent issues being taken to tribunal. For these sorts of reasons, a 2010 Citizens Advice study estimated that for every £1 legal aid expenditure on:

- *Housing advice*, the state saves £2.34
- *Debt advice*, the state saves £2.98
- *Benefits advice*, the state saves £8.80
- *Employment advice*, the state saves £7.13²⁶

Moreover, legal aid is not, relative to government budgets, especially expensive. For example, a 2017 Law Society report estimated that restoring family legal aid would only cost £14 million a year.²⁷ Both the Bach Commission and Legal Action Group’s Low Commission on the Future of Advice and Legal Support called for £100 million fund for legal advice, with half the funds coming from government and the other half coming from other local and national statutory, commercial, and voluntary providers.²⁸

Early, joined-up interventions should be prioritised

A 2014 Law and Justice Foundation of New South Wales report identified four principles for improving civil justice interventions.²⁹ It argued that they should aim to be:

- *Targeted*: focused on those in greatest need
- *Joined up*: well co-ordinated with other services
- *Timely*: available to people when they are most useful and effective
- *Appropriate*: suited to the needs and capabilities of the users

These principles were broadly endorsed over the course of the seminar discussion, as we considered what sort of measures ought to be prioritised to ensure that any additional investment in civil justice has maximal impact.

In particular, there was widespread agreement on the importance of early intervention. It was observed that civil justice issues have a tendency to cluster and compound. As we saw above, 22% of people facing civil justice issues have four of them. Moreover, these issues can cause and exacerbate one another: for example, domestic violence and family breakdown are linked, and can lead people to lose their homes, which can contribute to financial, debt, and employment problems.³⁰ As one participant put it, *“you get a snowball effect, so getting in early can avoid crises occurring”*.

At the same time, other participants pushed back against some of the excitement around early intervention: *“it sounds very snappy and very straightforward, but actually in the context of sometimes quite chaotic lives what early intervention is, can be or should be is quite difficult to pin down”*. The people that would be most likely to benefit from early intervention can often be hard to reach and unwilling to engage. As we have already seen, civil justice problems are often not conceived of in legal terms. As a result, focusing too heavily on early intervention risks missing those that are not in a place to take advantage of it, and at worst picks off the ‘low hanging fruit’ and fails to help the most severely disadvantaged. That is why the Law and Justice Foundation called for “timely” intervention, waiting for people to reach the ‘tipping point’ when they are ready to access help and being available when needed.

Joining-up civil legal support with other services was seen as critical to this effort. The key, some participants argued, is to *“take the services to where people go, don’t expect them to find you”*. To this end, many people argued that legal advice services should more often be co-located in places like council offices, libraries, hospitals or GP surgeries.

Medical settings seem to be particularly critical. As one participant put it, many people *“don’t necessarily know what it is that they need, but they’re going to talk to a doctor about their problems”*. Indeed, as we saw above, one in seven people with a civil justice problem consult their doctor about it, the third most popular source of help after friends/family and professional solicitors.

Medical-legal partnerships have operated in the USA and Australia for several decades, but British institutions are beginning to look more closely at some aspects of the model. A report last year from the Administrative Justice Council examined a number of cases of advice centres set up within hospitals, helping people to deal with issues like housing benefits, disability, and debt.³¹ These services are believed to produce cost savings for the hospitals because they can free up beds (e.g. in cases where patients cannot be discharged due to outstanding housing issues), limit

clinician time spent on administrative and welfare issues and, hopefully reduce the chances of people falling sick again in the long run.

However, such benefits are only likely to be realised if there is genuine collaboration and integration between legal and other services, with effective communication and knowledge sharing. In practice, even in countries with well-established integrated institutions, like Australia, that does not always happen, and there is a risk of organisations merely co-existing side-by-side.³² ‘Joining-up’ legal and other services carries a range of challenges, including a lack of resources, weak relationships, and differences in professional strategy, culture and ways of working.³³ It should also be approached pragmatically. Integration can be more or less formal, running from ad hoc shared projects to written contracts and memoranda of understanding. It need not take the form of multiple organisations operating from a single location, either – for example, individual members of staff can be ‘posted’ to partner offices.

Policymakers have a role to play in supporting such forms of coordination and integration. They can develop infrastructure and resources that help relevant people to find and get to know one another – for example, collating directories, supporting forums for networking and providing legal education. For instance, the Community Legal Service Partnerships introduced in England and Wales in the late 1990s employed regional managers to bring relevant stakeholders together, and offered seed funding for partnership activities. However, their success varied from place to place, in part due to local conditions, but also due to limited resources and tight timescales, and they were eventually phased out.³⁴ Policymakers can also incentivise or compel relationship-building through funding structures. The Community Legal Advice Centres introduced under New Labour forcibly integrated organisations to try and produce ‘one stop shops’ for advice across a range of areas of law before they were scrapped by the Coalition government.

Australian governments have picked up the baton and made more progress in coordinating civil justice with other services. Legal Aid New South Wales runs Cooperative Legal Services Delivery program partnerships, coalitions that bring together community legal centres, court services, family and domestic violence services among other stakeholders. They work together to identify unmet needs and ensure those in need are referred as quickly as possible to the appropriate services.³⁵ Partnerships are facilitated by a regional coordinator, and meet four times a year. Along a similar model, Queensland runs what are called Regional Legal Assistance forums.³⁶

This dynamic, with other countries taking inspiration from and building on innovations in England and Wales, was seen by some in the seminar as reflective of the countries’ declining international position in the area of civil justice:

“It used to be 10 years ago that everybody looked to England and Wales when we were talking about access to justice, whereas now the UK has become rather peripheral.”

Collect better and more timely data

We saw above that the most recent official government analysis of the prevalence, nature and consequences of civil justice issues comes from 2014/15. That was, clearly, quite a long time ago – particularly since fairly radical policy changes have bedded in over the intervening period, not to mention the disruption of the pandemic. If we are to understand the state of civil justice in this country, to show that it matters, and to appreciate the impact of policy, we need more regular and timely data. To their credit, the Legal Services Board and the Law Society have attempted to fill this gap with their own survey, but the government should not be outsourcing data collection on such a key issue in this way.

One seminar participant described themselves as “*genuinely shocked*” by the current state of affairs. As they put it:

“if you’re looking at a system that, realistically, I think we all know is broken, then you need to have the data to work out where its broken... it points to a lack of prioritisation in this area.”

Another participant indicated that the Ministry of Justice is looking at repeating its legal needs analysis soon. This would be extremely valuable, as such an exercise is long overdue. However, it should look to move beyond ad hoc exercises and give civil justice the prominence and attention it deserves, by regularly and routinely monitoring the state of civil justice in the country. For example, the Ministry of Justice could conduct a biannual Civil Justice Survey for England and Wales.

ENDNOTES

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