



**ALEX CHALK MP KC, LORD CHANCELLOR**

**CIVIL JUSTICE COUNCIL NATIONAL FORUM**

**FRIDAY 17<sup>TH</sup> NOVEMBER 2023**

Can I thank Sir Geoffrey very much for inviting me and can I begin, if I may, by recognising the important, and indeed exceptional, work he has been doing on access to justice. Aside from chairing the CJC, he is also the very first chair of the Online Procedure Rule Committee, which he adverted to earlier, and he has long advocated for a truly digital justice system; all of which will be vital for securing and advancing access to justice.

Before I came into politics I practised as a barrister, mainly in criminal law but I did also practice in clinical negligence and the law of costs at 6 Pump Court. Crime inevitably takes up so much of the media attention, but of course civil justice and the work you do is so important, and that is something that when I first went into the department in 2020, I was very keen to emphasise and indeed, underpinned work that I began on Early Legal Support and Advice.

Because beyond the life-changing implications for individual litigants as the Lady Chief Justice has indicated, it has national implications too. An effective civil justice system facilitates innovation and investment; it creates jobs, it supports businesses, and indeed, social mobility. The OECD, no less, highlights a positive correlation between confidence in the justice system and GDP growth. Quick resolution of disputes and enforcement of contracts frees up businesses to focus on productive economic activity. Conversely, lengthy civil proceedings can be a drag on it.

So, when policymakers talk about social mobility, the health of civil justice is an essential determinant of it. It's part of the plumbing that makes the grand design

habitable. As we chart the way ahead, I think that we need to ask three important questions.

**First, can disputes be resolved more quickly and, in some cases, without the need for legal action or assistance? After all, sometimes the best legal advice is ‘You don’t need legal advice’.**

In 2019 we published the Legal Support Action Plan with a range of commitments to support people to resolve their problems at the earliest possible opportunity, which was delivered alongside investment of more than £20 million in projects to support litigants in person.

I am pleased to announce today the publication of a number of reports that evaluate some of these projects. This includes an evaluation of the Legal Support for Litigants in Person grant, which invested a little over £3m in testing a variety of interventions at the local, regional, and national level, and found that around 60% of people resolved their legal problem before going to court as a result of early intervention.

There are also two reports on projects exploring the impact of co-locating advice services in healthcare settings, including an implementation report on a new service that the Ministry of Justice has helped to fund in a health centre in the Wirral, and a progress report on a wider evaluation of similar health-justice partnerships.

In addition, we are publishing a summary of our findings related to the design and implementation of an online signposting tool for individuals exploring housing disrepair legal problems. Launched in March 2021, this tool currently averages over 1,000 users every month. 1,000 people getting support that might otherwise not be received.

These publications further contribute to the body of evidence generated by the Legal Support Action Plan and will help us in developing our future vision for the Civil, Family and Tribunals system, with an emphasis on diverting people away from protracted legal battles *where appropriate*; and I underscore in triplicate ‘where appropriate’.

But when legal action is unavoidable, we must ensure that proceedings can be concluded as quickly as possible.

Since its launch in 2021 – following the passage of the Civil Liability Act 2018 – over 635,000 claims have been brought via the Official Injury Claim portal, providing those who suffered a minor road traffic accident swift and simple access to justice without the need for the courts to become involved.

We're going further. In part building on the CJC's reports, we are fully integrating mediation for small claims up to £10,000 in the County Court, meaning tens of thousands of people can access a free session with a court-employed mediator. We are starting with specified money claims, but the intention is to expand it to all small claims in due course.

And the reason that we're doing so is because currently, only 19% of small claims cases take up the free, one-hour mediation session with the Small Claims Mediation Service. But of those that do, 52% reach a settlement. Evidence suggests that most parties do not voluntarily opt for mediation and that's partly because they either misunderstand the role of the mediator, they don't know what it will involve, or they don't understand the benefits. We have tried to provide better information and nudge parties towards choosing mediation, but the reality is, and we have got to face reality, that it hasn't shifted the dial substantially.

So, in July, we announced that we will make attendance at a free, one-hour telephone mediation session with the Small Claims Mediation Service an integrated step in the process. This will mean that at least 184,000 parties will be required to take up the opportunity to try to resolve their specified money small claims case more swiftly and consensually, rather than waiting for the case to be decided by a judge. On average that takes about a year, which is, of course, a long time for a business to wait to recover a debt or indeed, for individuals to get the justice that the Lady Chief Justice referred to. But I want to stress, of course, that parties will and must be under no obligation to settle at mediation, and using the service will not slow down cases being heard by a judge.

HMCTS has already begun the expansion of the Small Claims Mediation Service with recruitment and training of 39 new mediators in advance of integrated mediation going live. And, of course, we have been modelling the impact it could have. We have been conservative on this and recognise that there may be a dip – we hope only initially – in

settlements once attendance is no longer voluntary. Nevertheless, we believe there could be a settlement rate of up to 55% - that's what the modelling suggests at the moment.

This not only means that parties can potentially resolve their disputes more quickly and cheaply, which is a good thing, but critically, it can free up capacity in the system and reduce the waiting time for those more complex cases that need to be heard by a judge. Or indeed, not necessarily more complex, but where simply a mediated settlement is not possible and is not just.

**So, the next question is, how do we ensure access to justice is affordable when other routes have been exhausted?**

In the last year we have spent around £1 billion to ensure civil legal aid gets to the right people. And our Review of Civil Legal Aid is focused on using the evidence to make the system more effective and efficient for the people who rely on it, but also more sustainable for the professionals who provide legal assistance, like many of you.

Our aim is to publish interim findings ahead of the Review's conclusion in March next year. We will then consult on proposed options for reform, where your voice and your experience will be crucial to making sure we get it right. I want to hear those voices.

We have also strengthened the provision of advice through the Housing Loss Prevention Advice Service, launched in August this year. This represents an additional £10 million in funding for legal aid, providing it for tenants as soon as they have been given written notice by their landlord asking them to leave their home, rather than at a much later stage of the possession proceedings.

Many of you engaged extensively with the Government on the Legal Aid Means Test Review, for which we are hugely grateful. Our response has already removed the means test for people under 18, parents facing the withdrawal of life-saving treatment for their children, and support in inquests where a family member has died.

With thanks to your input, when the changes are fully implemented, they will mean more than 6 million more people will be able to access support without the need for a means test.

For those people who do need to consider fees, we're also reforming the system to make access to justice more affordable.

Last month we published our response to the Help with Fees Consultation, confirming plans to increase thresholds for eligibility for the scheme significantly, reducing the cost of justice for thousands more people.

And, Fixed Recoverable Costs, which was just referred to a moment ago. In October we also implemented the extension of FRC, providing a boost for access to justice at proportionate cost.

We think that this is an important reform. It addresses one of the main drawbacks of civil litigation: the uncertainty that surrounds how much litigants will have to pay in costs. It's something that not only acts as a deterrent to litigation, as we know, but can also lead to costs being increased in the hope that higher costs will be recovered at the end of the case. These changes will help control the outlay in advance, providing clarity and transparency.

Now, I know there are concerns about the impact of these reforms on the ability to pursue some cases, mainly around the level at which the costs have been set. The figures for the costs were based on data, analysis, and consultation. We have updated them fully for inflation, and I can confirm that we will do so again from April next year. And we will continue to keep the regime under review: we will be led by the evidence.

Some further refinements to the scheme are still being considered by the Civil Procedure Rule Committee. I understand that the CPRC and its costs sub-committee, have been considering the detail of the rule drafting for many months, and I want to put on record my gratitude to all those working behind the scenes to make these and other reforms workable in practice.

### **The third and final challenge is, do we have the right infrastructure in place to support access to justice?**

Our justice system is admired around the world. Politicians always say this, but I can say as someone who has been to Strasbourg recently, who has been to Japan, they really do admire our system around the world and that is built on the outstanding independent judiciary, widely admired as an international leader. Our lawyers too, have a global – and well-deserved – reputation for excellence. When you go to Strasbourg and you speak to the President of the Court there, as I did, she absolutely emphasized the quality of the lawyers that come before her and that is a matter of great pride for me and I hope, by extension, for you.

Ours was also one of the only justice systems across the world to continue operating at the height of the pandemic due to the reforms that had made, users' willingness to make them work, because you believe in the system, and the effort of judges, lawyers, and the advice sector.

The civil courts continue to enhance their position as the trusted jurisdiction of choice for international disputes, while becoming easier to use for everyone, and more proportionate in the resolution of simpler disputes.

Our reforms promote the full range of methods of settling disputes more swiftly, at less cost and with greater choice. Our Civil reforms are designed to minimize combative hearings and help parties settle their disputes with the minimum of stress and acrimony.

And then there's our court and tribunal buildings. It is critically important that our judges are able to host hearings in a digital age and that they give confidence to both court users and practitioners like you. We've allocated £220 million over the next two years for essential modernisation and repair work to keep the estate up to scratch. That is one of the most powerful messages that we can send about the esteem with which we hold the justice system, the esteem and value which we attach to the rule of law, and the conditions that we think are right for litigants, judiciary, and court users to be in.

I hope that we are asking the right questions. But I've been clear in the Ministry of Justice that no department and certainly not mine, can expect to have a monopoly on wisdom. So, it's crucial that we work together, collegiately – the Government, the judiciary, the sector – to continue building a system where access to justice is strengthened and enhanced.

Investment will, of course, always need to be targeted where it can have the most impact. Taxpayers demand nothing less and they also expect fairness. But that shouldn't limit our ambition. I want to see us redoubling our focus on what users really need: on better, earlier legal support, on swifter dispute resolution, on making access to justice affordable and ensuring financial support is there for those who need it most, and on seamless digital access and a world-class estate. Everything we do should be geared towards making sure there is a route to remedy for every person who needs one – no matter their individual circumstances. I'm looking forward to setting out more about what some of this will look like at the launch of the OPRC on Monday.

Thank you for listening.