

Baroness Carr of Walton-on-the-Hill
Lady Chief Justice of England and Wales
Civil Justice Council National Forum 2024

1. It is my great pleasure to be here at the 13th National Forum of the Civil Justice Council, discussing one of the most pressing and critical priorities of our justice system: ensuring fair and equal access to justice. We have heard much today about the Civil Justice Council's current working programme, including reviewing litigation funding and the importance of pro-bono representation, ensuring that opportunities for improvement within the civil justice system are fully capitalised upon.
2. The mission is one of real importance; guaranteeing access to justice is a necessity for any country that is committed to the rule of law. It is at the very bedrock of a fair and equitable society. Access to justice is the principle that all individuals, no matter where they live, the language they speak, or their economic or financial status, should have the understanding, resources, and support to be able to effectively navigate the legal system and vindicate their rights. The principle is a simple one – yet in the UK and globally, impediments to accessing justice mean that too many people face obstacles in exercising that right. Challenges in ensuring efficient access to justice have existed since civilised societies came into being, although modernity has generated both solutions, as well as more problems.
3. One of the primary, and most apparent, obstacles is the cost of legal advice and representation. Where an individual is reliant on legal representation but can neither access legal aid nor afford to pay for a lawyer, they are left in a veritable no-person's land, with the options of either attempting to navigate the system on their own, or never engaging in the system from the outset. This issue has given rise to the cynical saying: "how much justice can you afford?" New research puts this starkly into perspective: recently published data found that 42% of people on low incomes had no legal assistance or representation in court, compared to only 19% on higher incomes¹. And, extremely concerningly, eight out of 10 believe that people with less money get a worse outcome in the civil justice system². Let's put it frankly: this is a crisis of exclusion and inequality. And, this is not an issue confined to the UK. In the US, almost half of those who did not seek legal help for one or more legal problems cited concerns about cost as a reason why³. If people are unable to access justice because of the size of their purse – we simply cannot call it justice. These figures spotlight how much work there is still to be done.
4. The difficulty in securing legal representation is another frequently cited barrier to accessing justice. Across the UK, disappearing availability of legal aid across housing, welfare, education, community care and immigration has left millions without access to local legal aid providers⁴.
5. Another impediment to access is the complexity of the legal process, as well as the law itself – the problem has been described as "grappling with the virus of complexity"⁵. On occasion, there is no way around complexity, and indeed, there can

¹ <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/mind-the-justice-gap>

² <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/mind-the-justice-gap>

³ <https://justicegap.lsc.gov/>

⁴ <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/civil-legal-aid-millions-still-without-access-to-justice>

⁵ <https://www.judiciary.uk/wp-content/uploads/2021/07/ENGLISH-LAW-AND-DESCENT-INTO-COMPLEXITY-1.pdf> [7]

be clarity in complexity⁶. However, the need for non-Byzantine legal rules which ordinary people can comprehend is at the heart of access to justice. The words of Lord Bingham ring true that “the law must be accessible, and *as far as possible*, intelligible, clear and predictable”. The law simply cannot be accessible if it is unduly unclear or complex, and this will, of course, disproportionately affect more societally disadvantaged groups. But complexity has also crept into the legal process. Litigants in person increasingly struggle to navigate a system designed for use by lawyers, and which, consequently, is exceedingly complex, granular, and obscure for the lay person representing themselves⁷. It, plainly, was not designed with them in mind. Backlogs and increasing delays within the system are only compounding these issues. Even the very setting of justice itself, in draughty Victorian buildings, with lawyers in wigs, may seem exclusionary, intimidating, and inaccessible.

6. And intimately linked to this is the fear of judicial or state authority, or the belief that the system is biased or rigged, which also presents itself as a barrier to access to justice. This is a sentiment that is particularly prevalent in underrepresented groups who have felt traditionally disenfranchised by the judicial process. This particular barrier is amorphous, difficult to perceive, and deeply nuanced. Nonetheless, it should not be underestimated. A UN Development Programme report published in 2013 concluded: “There is no access to justice where citizens, especially marginalized groups, fear the system, and see it as alien”⁸. An appreciation of this distrust of public institutions and justice systems must inform the types of measures that can be adopted to facilitate access to justice, through an intersectional approach. In a 2014 report published by the International Bar Association, it was noted that a respondent felt that jargon and legal technicalities were used deliberately within the judicial process to inhibit comprehension of the key issues⁹. We can see how this links to the previous point about over-complexity. Barriers to justice do not operate in a vacuum, independently of each other. As each barrier interacts with another, it intensifies its impact.
7. And so, this point brings me back to the theme of today, which is ‘working together’. I think it is a perfect one. Access to justice should not be conceived as a monolithic issue. Rather, it is an ecosystem that requires nuanced approaches based on individual needs. No single strategy will bridge the access to justice gap, and no single party is responsible for implementing such strategy. In addressing barriers to justice, initiatives should take account of the varying ways in which barriers interact with each other and reinforce one another. An effective access to justice ecosystem will look much like a spiderweb, involving individualised support for those who need it, taking into account the additional hurdles faced by particular communities, alongside broader process improvements and solutions for all service users. This, to me, is the essence of ‘working together’.

⁶ <https://www.judiciary.uk/wp-content/uploads/2018/04/speech-lj-irwin-pnba-complexity-and-obscurity-16042018.pdf>

⁷ <https://www.judiciary.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf>

⁸ <https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/Access-to-justice.pdf>

⁹ J Beqiraj and L McNamara, International Access to Justice: Barriers and Solutions (Bingham Centre for the Rule of Law Report 02/2014), International Bar Association, October 2014

8. We have heard today how this most urgent and important mission is at the heart of the work of the Civil Justice Council. And, across the pond, it is also the primary function of the Office for Access to Justice, which is a stand-alone department within the United States Department of Justice. We are incredibly fortunate today to welcome the Director of the Office, Ms Rachel Rossi, to speak about her work in leading policy initiatives to address barriers to justice across the United States. The Office has worked on everything from increasing pro bono to developing the first health-justice partnership in federal prisons in the United States.
9. The Office for Access to Justice also plays a key international role in promoting access to justice. Last year, the Office offered technical assistance during negotiations culminating in the UN General Assembly adopting the first-ever UN resolution on access to justice¹⁰.
10. Ms Rossi has been the Director of the Office since May 2022, but her dedication to addressing the justice gap has been long-standing. Ms Rossi began her career in law as a public defender, which is a state or government-provided criminal lawyer, who represent those charged with a crime who are unable to afford a private lawyer. And it was in this role, in which Ms Rossi worked for nearly a decade, that she noted the link between poverty and socio-political ostracisation, and exclusion from – and distrust in – the judicial process. It is no surprise that the Office for Access to Justice under Ms Rossi has developed tools, resources, and support to help public defenders fulfil their critical mission of making the justice system fairer, more equal, and more just¹¹.
11. Subsequently, Ms Rossi served as Counsel to Senate Judiciary Committee Chair Richard Durbin. In this role, she was the lead staffer on the First Step Act, a major bipartisan criminal justice reform bill that reduced some mandatory minimum sentences, and opened pathways to early release for low-risk prisoners. Following this, Ms Rossi was recruited as Counsel to the US House of Representatives Committee on the Judiciary, Subcommittee on Crime, Terrorism and Homeland Security, working on criminal justice reform legislation. This included the reauthorisation of the Violence Against Women Act, as well as policies aimed at reducing firearm violence and combating hate crimes.
12. Somehow, Ms Rossi also found the time to serve as the Deputy Associate Attorney General in the Office of the US Associate Attorney General, Vanita Gupta. She was, unsurprisingly, named one of the US' top 40 lawyers aged under 40 by the National Bar Association¹².
13. I wish to finish with words from Ms Rossi herself, upon which I cannot hope to improve, spoken at the UN High-Level Political Forum this year:

“I’ll conclude by centering us on the reason we are here: the far too many individuals who are simply not able to access justice in the U.S. and around the world. In these grand halls, with sweeping views.... with the expansive goals set

¹⁰ <https://www.justice.gov/opa/speech/director-rachel-rossi-delivers-welcoming-remarks-united-nations-high-level-political>

¹¹ <https://www.latimes.com/politics/story/2022-05-19/former-la-public-defender-to-lead-federal-criminal-justice-office>

¹² <https://www.prnewswire.com/news-releases/2019-national-bar-association-40-under-40-award-recipients-announced-300867568.html>

forth by an impressive Sustainable Development agenda, it can be easy to forget the people this work is for....To pursue this work effectively, we must consistently center the perspectives of the communities we serve and the real-life impact of our mission”¹³.

14. Ladies and gentlemen, admittedly our halls may be less grand and our views less sweeping. But the mission is the same. Without further ado and with the greatest pleasure, I will hand over to Director Rossi.

¹³ <https://www.justice.gov/opa/speech/director-rachel-rossi-delivers-welcoming-remarks-united-nations-high-level-political>