



Response to the Justice Select Committee's Inquiry into the work of the County Court

1. The Civil Justice Council (CJC) is an advisory public body, established under the Civil Procedure Act 1997. Its statutory duty is to review the civil justice system and make recommendations to the Lord Chancellor, the judiciary, and the Civil Procedure Rule Committee (CPRC) on the development of the civil justice system to make it more accessible, fair, and efficient. Improving access to justice for all underpins the CJC's work.
2. The CJC uses its influence to champion issues, and its convening power to build relationships and effect change. It operates primarily by setting up working groups to look at a particular issue or part of the civil justice system. Its recommendations are usually made in the form of a final report.
3. The CJC welcomes the Justice Select Committee's inquiry into the work of the County Court and concentrates, in this evidence, on addressing specific questions that it feels best placed to comment on.

What the current level of delay in the County Court is; the extent of any regional variations; and the effect of delays on litigants and the administration of justice

4. If the County Court is to secure justice effectively, equal access to justice must be obtainable to all litigants, irrespective of where in England and Wales they are and in which court centre they litigate. The CJC has been and remains concerned that the County Court is not able to do so to the extent that it should.
5. The CJC would draw the Inquiry's attention to HM Courts & Tribunals Service's (HMCTS) 2023 access to justice assessment on online civil money claims (OCMC), which found variations in timeliness to first full hearing by ethnicity. Further analysis highlighted that these variations in timeliness were being driven by court level differences. When all courts were ranked by the average number of days taken to reach a first full hearing, 8 in 10 of the bottom 20% were in London or the South East of England. Therefore, ethnic minority users are disproportionately affected by the court level and regional timeliness variations, which has clear implications for access to justice.¹

The ways in which the County Court engages with litigants in person, and how this could be improved

6. Reliable data on the number of self-represented litigants, or Litigants in Person (LiPs) is limited, however the available evidence indicates that more and more LiPs are

¹ <https://www.gov.uk/government/publications/assessing-access-to-justice-in-hmcts-services/assessing-access-to-justice-in-hmcts-services-december-2024#updates-on-previous-assessments>

appearing before the courts as a result of cuts to legal aid services, and the current economic climate.²

7. HMCTS publishes figures on the legal representation of civil claims that are defended each quarter as part of their Civil Justice Statistics Quarterly. In civil and family cases, HMCTS identifies self-represented parties by checking if the legal representation field in their case management systems is left blank. These figures should therefore be viewed as counting parties without a recorded legal representative, which does not necessarily mean they are LiPs. Additionally, the data may not reflect changes during the case progression.³
8. In its 2011 report on access to justice for LiPs, the CJC recommended further research into LiP numbers, makeup, trends and experience, including into the potential for knowledge-based, IT-assisted, systems that can help people analyse a problem and reach a decision.⁴ This recommendation is evidently still relevant today.
9. The CJC's 2011 report additionally considered what steps could be taken to improve access to justice for LiPs, particularly those steps that would not require material additional financial resources. The report acknowledges that even if all the recommendations that it makes are acted upon, they will not prevent the fact that, 'in many situations, as a result of the reductions and changes in legal aid, there will be a denial of justice...the recommendations are about making "the best of a bad job"'.⁵
10. Nevertheless, the report highlights that access to objective advice that can be trusted is crucial for LiPs. The report recommends that efforts should be made to increase the availability and accessibility of advice on merits, risks, and process, and that 'everything should be done to simplify and demystify the law and the system, including its language'.⁶
11. Whilst efforts have been made to improve the quality of advice available to LiPs, and to increase its availability – the User Experience & Insight Division at HMCTS produce web materials with information per service area that is available online –much more can be done, particularly by taking advantage of modern technology. Existing guidance, from both HMCTS and organisations such as Advicenow, should be reviewed and compiled into resources that can be found online, as well as shared with LiPs at court centres.
12. The CJC is aware of various working groups, including the Legal and Advice Sector Roundtable, the Jurisdictional Engagement Groups, and the Legal Support Strategy Delivery Group, which provide a useful forum for discussion and updates across the sector. It can however feel that there is a lack of communication between groups, risking duplication and/or work happening in silos.

² <https://researchbriefings.files.parliament.uk/documents/SN07113/SN07113.pdf>

³ <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-july-to-september-2024/guide-to-civil-justice-statistics-quarterly>

⁴ [report-on-access-to-justice-for-litigants-in-person-nov2011.pdf](#)

⁵ Ibid.

⁶ Ibid.

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13. Access to justice and issues with accessibility to the County Court for LiPs continue to be raised and discussed each year at the National Forum, the CJC's annual conference on access to justice.

The use of technology in the County Court and how it could be used to improve the service provided by the County Court

14. The legal system is becoming ever more reliant on technology to support the delivery of legal services. Technology is moving at pace and, when used appropriately, it is an enabler to improve access to justice.
15. A properly functioning digital justice system which removes paper from the County Court, enables individuals to access the services they need, enables appropriate pre-action dispute resolution, and signposts appropriately would be transformational. The CJC notes the work of the OPRC with interest and supports its mission to improve access to justice for all by harnessing the power of modern digital technology in the pre-action space, in the civil and family courts and in the tribunals.
16. The County Court still sends out orders in the post where there is a legal representative on record. Modes of communication have changed, and the justice system should adapt to accommodate this. The County Court should make greater use of email and other online services; not only would this reduce unnecessary cost and administrative burden, but documents are more likely to reach individuals if they can be served electronically.
17. Nevertheless, the move towards digitisation could pose a potential barrier to access to justice if insufficient consideration is given to those users of the justice system who cannot access digital services for a variety of reasons including network access and affordability.
18. It is for this reason that the CJC's Futures Group has undertaken a workstream examining digital disadvantage, to begin to develop a better shared language about what is meant by digital disadvantage and to recommend next steps to prioritise inclusive service design in the development of accessible digital technology. The report, which will be published in 2025, recommends that principles of digital inclusion must be considered when designing digital legal systems to secure access to justice for all users of the justice system.

The effect of the court reform programme on the County Court, including the new Online Civil Money Claims service and the Damages Claims service

19. The CJC understand that there have been teething problems with the design and operation of the portals, which are contributing to the current delays in the County Court. Others will be best placed to go into detail about these issues, but the CJC would like to take this opportunity to express its hope that lessons have been learnt for

future releases and reforms, particularly for the OCMC, which we understand will become mandated for legal professional users in Spring 2025.

The current level of fees and the approach taken to costs in the County Court, and how the fees collected are used as part of the current funding arrangements for the County Court

20. The CJC is a statutory consultee on fees. Whilst it recognises the importance of fees to the civil justice system, any increase to court fees, even those in line with inflation, presents additional financial pressure for litigants and could impact access to justice.
21. When consulted in 2023 by the previous Government on the proposal to increase selected court and tribunal fees by 10%, the CJC expressed reservations about the proposal to increase fees to 'support HMCTS to continue delivering its services efficiently and effectively.'⁷ The CJC observed that the current delivery of legal services in the County Court is, in many cases, neither efficient nor effective, and that reduction in staffing in the County Court was not reflected in lower fees.⁸ Fee increases appear at odds with the anticipated efficiency savings publicised as the intended result of the HMCTS Reform Programme: the National Audit office found that HMCTS expects £220mn in savings 2025-2026.⁹ The CJC therefore expressed scepticism about the actual relationship between monies raised by fees, and the true cost, and quality, of delivery provided by the related service.¹⁰ The CJC would retain these reservations when considering any proposals to further increase court fees.
22. The CJC would draw the Inquiry's attention to recent reforms within the Civil Procedure Rules (CPR) that have implemented an extension of fixed recoverable costs, introduced an Intermediate Procedural Case Management Track and are about to start pilot schemes using a light touch approach to costs budgeting. These reforms, which the CJC has recently examined,¹¹ ought to improve access to justice in the County Court. The implementation of these reforms is at an early stage, and thus it is too early to assess their impact.

The current procedural mechanisms used by the County Court to resolve disputes.

23. The County Court and its procedures must be accessible equally to all litigants.
24. As detailed above, the County Court often deals with individuals who are unable to pursue or defend their claims with legal advice and representation.

⁷ <https://www.gov.uk/government/consultations/implementing-increases-to-selected-court-and-tribunal-fees/implementing-increases-to-selected-court-and-tribunal-fees>

⁸ <https://www.judiciary.uk/wp-content/uploads/2024/02/20231222-SENT-CJC-to-Minister-Freer-Fees-Consultation.pdf>

⁹ <https://www.nao.org.uk/wp-content/uploads/2023/02/progress-on-courts-and-tribunals-reform-programme-1.pdf>

¹⁰ <https://www.judiciary.uk/wp-content/uploads/2024/02/20231222-SENT-CJC-to-Minister-Freer-Fees-Consultation.pdf>

¹¹ <https://www.judiciary.uk/wp-content/uploads/2023/05/Civil-Justice-Council-Costs-Report-FINAL-May-2023.pdf>

25. The need for concrete steps to be taken to make the County Court's procedures more accessible for LiPs, both pre-action and once a claim has commenced, remains pressing, as does the need to make hearings more accessible.
26. It is important that accessible digital support is provided, and that comparable alternative support is provided to those individuals who are, for whatever reason, unable to access digital support effectively.
27. Only a very small proportion of cases issued in the County Court reach the stage of a final hearing. Leaving aside the cases where claimants discontinue the action, parties are routinely reaching settlements post-issue. Therefore, the issues of capacity, efficiency and performance within the County Court need to be viewed, in part at least, by acknowledging that a very high proportion of cases issued in the County Court could and should have been resolved pre-action.
28. If Officers and Judges working in the County Court environment are proactive in encouraging and/or ordering the use Alternative Dispute Resolution (ADR) processes fewer cases will end up in the County Court system.
29. The CJC has recently reported on recommendations for the amendment and use of Pre Action Protocols (PAPs) across the civil justice system,¹² which necessarily includes the County Court. Any perception within the County Court system or from court users (whether LiPs, solicitors, and other advisors) that PAPs are not relevant or applicable needs to be corrected. By exercising the Court's powers where parties, in particular represented parties, have failed to engage pre-action, future users are more likely to use PAPs in a meaningful way. This cultural shift, in time, will help to reduce the number of cases issued in the County Court.
30. As a result of the Court of Appeal's decision *Churchill v. Merthyr Tydfil CBC* [2023] EWCA Civ 1416 (*Churchill*) (and consequential changes to the CPR), the County Court has a key role to play in using the power, as confirmed in *Churchill*, to order parties to engage in a form of ADR, such as mediation. Where such an order is made, the Court is also likely to order a stay of the action until the outcome of the mediation is known. Anecdotal evidence suggests that, at present, there is variable consistency in the use of the power to order parties to mediate. As the excellent Small Claims Mediation Service (SCMS) is already demonstrating, automatic mediation is having a positive impact on the number and timing of settlements post-issue.¹³ Whilst empirical data may not yet be available in respect of the use of the County Court's power to require parties to mediate (or some other form of ADR), the success outcomes of mediation generally¹⁴ and the experience of settlement outcome in the SCMS are strong

¹² <https://www.judiciary.uk/wp-content/uploads/2024/11/CJC-Review-of-Pre-Action-Protocols-Phase-Two-Report-1.pdf>

¹³ <https://www.gov.uk/government/news/faster-resolution-for-small-claims-as-mediation-baked-into-courts-process>

¹⁴ CEDR's Tenth Mediation Audit reported an overall settlement rate for cases mediated in the UK at 92% in 2022 (compared with 93% in 2020 and 89% in 2018), see page 7 of the CEDR Audit report. (<https://www.cedr.com/wp-content/uploads/2023/02/Tenth-CEDR-Mediation-Audit-2023.pdf>)

indicators that the County Court should, in all appropriate cases, actively promote ADR and use its case management powers, confirmed by the Court of Appeal in *Churchill* and now embodied in the updated CPR, at the earliest opportunity.

31. The proper operation of these aspects of the broader civil litigation framework is essential for the effective administration of justice in the County Court, as well as for securing just, speedy, and timely dispute resolution for litigants.

The quality of data available on the work of the County Court

32. The CJC recognises the challenges with regards to collecting data on the County Court, however it remains concerned about the quality of available data. A common theme in much of the CJC's work is the absence of reliable and high-quality data across the civil justice system.
33. The CJC's 2020 rapid review into the effects of Covid-19 measures on the civil justice system and particularly the County Court, conducted with the support of the Legal Education Foundation, demonstrated the value in investing in robust systems for capturing data in order to review the operation of the civil justice system.¹⁵ This research is the largest research of its type to date.
34. When producing its report on the procedure for determining mental capacity in civil proceedings (published in November 2024), the CJC found that there was a lack of data on the number of litigants who lack litigation capacity, which made it difficult to assess the scale of the problem. One of the report's recommendations is that data should be collected by HMCTS on the number of adults in civil cases who act through a litigation friend.
35. Likewise, the CJC's 2020 report on vulnerable witnesses and parties within civil proceedings identified the existence of what was observed to be a 'data desert' in the tracking of parties.¹⁶ Following the recommendation of the CJC's report on vulnerable witnesses, the Directions Questionnaire was amended so that respondents could report vulnerabilities to the court at the earliest opportunity and request particular support or adjustments from the court. We understand that HMCTS does not hold this data in a way that can be extracted and reported on.
36. The CJC's report on anti-social behaviour and the civil courts, published in July 2020, highlighted the lack of available data recorded in the civil courts concerning the use and efficacy of anti-social behaviour injunctions (ASBIs) in comparison to what had previously been available in the criminal courts before the introduction of the Anti-Social Behaviour, Crime and Policing Act 2014¹⁷ Without such data to enable comparison between the pre- and post-2014 regimes, the Working Group concluded

¹⁵ <https://www.judiciary.uk/guidance-and-resources/civil-justice-council-report-on-the-impact-of-covid-19-on-civil-court-users-published/>

¹⁶ <https://www.judiciary.uk/wp-content/uploads/2020/02/VulnerableWitnessesandPartiesFINALFeb2020-1.pdf>

¹⁷ <https://www.judiciary.uk/wp-content/uploads/2022/07/ASBI-final-accessible.pdf>

that ‘there can be no adequate empirical overview of how the legislation has “worked” or its “effectiveness”’.¹⁸

37. The CJC’s Data Group, established in July 2023, examines how data is collected, presented, and shared in order to provide better insight into the operation of the civil justice system. It is currently conducting a mapping exercise to identify what data is being collected by HMCTS across the civil justice system, and where this data is held. The Group aims to record data at each stage of the civil litigation process, following the model of the criminal justice services landscape mapping exercise conducted by MOJ in 2016.¹⁹ The challenge that the Group has found is that, within the civil justice system, there is far more variation across claim types and a wider use of different systems.
38. Without reliable and high-quality data, it is harder to accurately understand how the civil justice system is currently operating, to identify opportunities for improvement, and to make evidenced recommendations for change that can be implemented and monitored effectively. Improving the data that is collected is vital to shaping a more accessible, fair, and efficient civil justice system.

What future reforms to the County Court should be considered

39. The CJC encourages Government and others to take notice of the recommendations for reforms made in its reports. As an example, the CJC reported in 2024 on the procedure for determining mental capacity in civil proceedings. The report’s recommendations include that a clear procedure is needed for cases in which the court is required to determine a party’s litigation capacity; and that a fund of last resort be established by Government to ensure access to justice for litigants who may lack the capacity to conduct their own litigation.²⁰
40. The CJC is currently undertaking an exercise to track the progress of the recommendations that it has made and would be happy to discuss any of its previous reports and recommendations with the Committee.
41. The CJC would also welcome any future work requests, which will be assessed against its work prioritisation criteria.

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¹⁸ <https://www.judiciary.uk/wp-content/uploads/2022/07/ASBI-final-accessible.pdf>

¹⁹ <https://mojdigital.blog.gov.uk/2015/12/01/opening-up-data-in-the-criminal-justice-system/>

²⁰ <https://www.judiciary.uk/wp-content/uploads/2024/11/CJC-Procedure-for-Determining-Mental-Capacity-in-Civil-Proceedings-Nov-2024.pdf>