



Access to Justice and Welfare Advisory Services

The Government states that access to justice and the “ability of individuals to resolve their legal problems is vital to a just society and is a fundamental principle underpinning the rule of law”. Some of the issues affecting access to justice for people on low incomes include:

- Legal aid means-testing criteria.
- Criminal legal aid fee schemes.
- Court closures.
- Access to affordable advice.

In February 2019, the Government published its legal action support plan to deliver quicker and easier access to legal support services. It stated that the proposals were designed to ensure support was given to the most vulnerable in society to access justice. It included proposals to:

- Review the eligibility criteria and provision of legal aid.
- Review criminal legal aid fee schemes.
- Work with legal support providers and academics to develop web-based products and use funding to encourage the delivery of legal support through technology.
- Improve signposting advice and improve early support.
- Pilot face-to-face early legal advice in a specific area of social welfare law.

In February 2020, the Government confirmed that it would continue to work on resolving the issues affecting access to justice.

As well as support through legal aid, people on low incomes can get free or low-cost advice from organisations such as Citizens Advice, Law Centres and Advocate. However, the Law Society has identified “legal aid deserts” in large regions of England and Wales, where there are few or no legal aid providers in certain areas of welfare advice.

This briefing was prepared for a Lords debate on 26 March 2020. This is no longer taking place. Lord Howarth of Newport (Labour) was to move that “this House takes note of the current state of access to justice and the availability of advisory services intended to assist people on low incomes to exercise their rights to receive social security and benefit from public services.”

Sarah Tudor | 23 March 2020

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I. Access to justice: what are the barriers?

The Government has stated that the “ability of individuals to resolve their legal problems is vital to a just society and is a fundamental principle underpinning the rule of law”.¹

In February 2019, Theresa May’s Government published its legal support action plan to deliver quicker and easier access to legal support services. The Government stated that it was “imperative” that support was given to the most vulnerable in society to access justice.² It developed the plan following the evidence given to its post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).³

In February 2020, Home Secretary Priti Patel said that Boris Johnson’s Government would continue to work on resolving the issues affecting access to justice.⁴ Ms Patel explained that the work would take place through the cabinet committee on crime and justice, and through the work of the Home Office and the Ministry of Justice (MoJ). She also reiterated the pledge made in the Conservative Party’s 2019 manifesto to “establish a royal commission on the criminal justice process”. Ms Patel said the commission would address some of the concerns about access to justice.

Issues affecting access to justice, which have been identified by the Government, parliamentary committees, and other stakeholders such as the Law Society, include:⁵

- Legal aid means-testing criteria.
- Criminal legal aid fee schemes.
- Court closures.
- Access to affordable advice.

It is these factors that the following sections of the briefing will concentrate on.⁶ The briefing focuses on the situation in England and Wales.

I.1 Legal aid: means-testing

Legal aid eligibility criteria

Legal aid helps an individual to pay for all or some of their legal costs. The individual has to meet certain financial criteria to be eligible for the legal aid scheme, and the matter needs to be within

¹ Ministry of Justice, [Legal Support: The Way Ahead: An Action Plan to Deliver Better Support to People Experiencing Legal Problems](#), February 2019, CP 40, p 3.

² *ibid.*

³ Ministry of Justice, [‘Legal support action plan’](#), 7 February 2019.

⁴ [HC Hansard, 10 February 2020, col 573.](#)

⁵ Ministry of Justice, [Legal Support: The Way Ahead: An Action Plan to Deliver Better Support to People Experiencing Legal Problems](#), February 2019, CP 40; and Law Society, [Criminal Justice System in Crisis: Parliamentary Briefing](#), January 2019 and [‘Access to justice’](#), accessed 11 March 2020.

⁶ Information on other issues such as the courts’ processes and systems; and disclosure of evidence can be found in the sources listed in footnote 5.

scope.⁷ An individual would usually need to show: the matter is eligible for legal aid; the problem is serious; and the individual is on a low income.

For instance, an individual may get legal aid if:⁸

- they or their children are at risk of domestic violence or forced marriage;
- they are going to be made homeless;
- they need family mediation;
- they are being discriminated against;
- they are taking a case to court under the Human Rights Act; or
- they have been accused of a crime and could go to jail.

Means-testing works out if an individual is financially eligible for legal aid.⁹ The following factors are considered when deciding whether a person can get legal aid:

- Income.
- Family circumstances (such as number of children).
- Living costs (such as mortgage or rent).

There are two types of legal aid, covering criminal or civil cases.¹⁰ Civil cases include matters such as debt and family problems. Eligible civil cases can include disputes about government or local services, such as benefits or social care. In some cases, an individual may need to contribute to the legal costs. However, a person's financial situation is not an eligibility factor for civil cases about:¹¹

- mental health tribunals;
- children in care; and
- child abduction.

In criminal cases, an individual has the right to free legal advice if they are questioned at a police station.¹² Any legal advice or representation needed after they leave the police station is means-tested. If they are charged with a crime or have to go to court, a solicitor will check if the individual qualifies for legal aid.

Issues surrounding legal aid means-testing

The current civil and criminal legal aid schemes in England and Wales are governed by LASPO and by

⁷ Ministry of Justice, '[Legal aid: overview](#)', accessed 12 March 2020.

⁸ *ibid*; and Citizens Advice, '[Finding free or affordable legal help](#)', accessed 12 March 2020.

⁹ Law Society, '[Help with paying legal costs](#)', accessed 12 March 2020.

¹⁰ *ibid*; Citizens Advice, '[Finding free or affordable legal help](#)', accessed 12 March 2020; and Ministry of Justice, '[Legal aid](#)', accessed 12 March 2020.

¹¹ *ibid*.

¹² *ibid*; and Law Society, '[Criminal Justice System in Crisis: Parliamentary Briefing](#)', 29 January 2019, p 2.

several pieces of secondary legislation.¹³ The Government stated that the aim of LASPO was to “ensure legal aid would remain sustainable by refocusing on those who most need it and delivering significant savings for the taxpayer”.¹⁴ The Act restricted the types of cases eligible for civil legal aid.¹⁵ It also introduced a means-test on an applicant’s capital and increased the maximum level of income-based contributions.

Commentators such as the Law Society argue that the legal aid means-test is preventing some people on low incomes from accessing justice.¹⁶ The Law Society states that the formula that determines if someone qualifies for legal aid does not take into account whether the person meets the minimum income standard—a standard set by the Joseph Rowntree Foundation, which indicates the income needed to reach a socially acceptable standard of living.¹⁷ The Law Society highlights a case before the Supreme Court in 2017, which judged that the employment tribunal fees were unlawful because households on low incomes were expected to sacrifice an acceptable standard of living to afford legal costs.¹⁸ The judge cited the minimum income standard in determining an acceptable living standard. The Law Society argues that the same impact can be seen in the means-testing criteria for criminal aid ie people below the minimum income standard can be deemed ineligible for criminal legal aid.

In its 2015 inquiry on changes to civil legal aid, the House of Commons Justice Committee concluded that the reforms had “harmed” access to justice for some.¹⁹ It suggested that government efforts to target legal aid at the vulnerable “have suffered from the weakness that they have often been aimed at the point after a crisis has already developed”. For example, in housing repossession cases when a person has already become homeless. The committee suggested that costs are not removed but are instead shifted from the legal aid budget to the courts or to local authorities. The committee called for more help for people at an early stage to resolve problems.

Recent government reforms

In October 2017, the then Lord Chancellor, David Lidington, announced that the MoJ would be conducting an evidence-based post-implementation review of LASPO.²⁰ The two-part review was published in February 2019 and its legal aid support plan was published alongside it.²¹

¹³ Information about the changes brought in by LASPO can be found in the briefings: House of Commons Library, [The Future of Legal Aid](#), 31 October 2018; and House of Lords Library, [Legal Aid and Advice Act 1949: 70th Anniversary](#), 23 July 2019.

¹⁴ Ministry of Justice, [Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#), 7 February 2019, CP 37, p 5.

¹⁵ Law Society, [Legal aid changes: key information and advice](#), 13 March 2013.

¹⁶ Law Society, [Criminal Justice System in Crisis: Parliamentary Briefing](#), 29 January 2019, p 4; and [Access to British justice increasingly only for the few: Law Society warns ministers](#), 28 September 2018.

¹⁷ Loughborough and the Joseph Rowntree Foundation conduct research on the minimum income standard. It is based on what households require as a minimum in order to meet key material needs and to participate in society: Joseph Rowntree Foundation, [A minimum income standard for the United Kingdom in 2019](#), July 2019; and Loughborough University Centre for Research in Social Policy, [Minimum income standards](#), accessed 12 March 2020.

¹⁸ Law Society, [Criminal Justice System in Crisis: Parliamentary Briefing](#), 29 January 2019, p 4.

¹⁹ House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid Under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15, p 4.

²⁰ [HC Hansard, 30 October 2017, col 14WS](#).

²¹ Ministry of Justice, [Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#), 7 February 2019, CP 37; and Ministry of Justice, [Legal Support: The Way Ahead: An Action Plan to Deliver Better](#)

The plan presented the Government's new approach. It set out how the Government intended to expand entitlement to legal aid. Commitments made in the plan included:²²

- **A review** into the thresholds for legal aid entitlement and their interaction with the wider criteria.
- **An increase** in the scope of legal aid for separated migrant children.
- To **reinstate** immediate access to face-to-face advice in discrimination, debt and special educational needs cases which are in scope. The mandatory requirement to use the telephone service in the first instance would be removed.
- To **extend** eligibility for non-means-tested legal aid for parents or those with parental responsibility who wish to oppose applications for placement orders or adoption orders in public family law proceedings.
- To bring forward **proposals** to expand the scope of legal aid to cover special guardianship orders in private family law.
- To **pilot and evaluate** several different forms of early legal support. To test the impact of early advice, the Government said it would pilot face-face early legal advice in a specific area of social welfare law. This would be tested against technological solutions.

In March 2020, the MoJ confirmed that the review into legal aid means-testing was still under way. It is due to conclude in late summer 2020, followed by a public consultation on potential policy changes.²³ It has also confirmed that work was underway to develop the pilots on early legal advice, in collaboration with academics.²⁴

1.2 Criminal legal aid fee schemes

Everyone has a legal right to be represented by a solicitor free of charge whilst under arrest or when voluntarily attending a police station and when being interviewed as a suspect.²⁵ In criminal cases, it is recognised that there is a common law right to legal advice, together with a right to legal representation under article 6 of the European Convention on Human Rights.²⁶

Most publicly funded criminal legal aid advice and representation is provided through payments from the Legal Aid Agency (LAA) to solicitors' firms and the independent bar.²⁷ The LAA administers payment through a range of fee schemes. There are different fee schemes for different areas of criminal legal aid work.²⁸ The schemes variously pay fixed or standard fees, hourly rates, or graduated fees.

[Support to People Experiencing Legal Problems](#), February 2019, CP 40.

²² Law Society, [Criminal Justice System in Crisis: Parliamentary Briefing](#), 29 January 2019, pp 6–7.

²³ House of Commons, '[Written Question: Legal Representation: Death](#)', 3 March 2020, 21897.

²⁴ [HC Hansard, 25 February 2020, col 173](#).

²⁵ Law Society, [Criminal Justice System in Crisis: Parliamentary Briefing](#), 29 January 2019, p 2.

²⁶ House of Commons Justice Committee, [Criminal Legal Aid](#), 26 July 2018, HC 1069 of session 2017–19, p 2.

²⁷ *ibid*, p 7.

²⁸ Ministry of Justice, '[Criminal legal aid review: an accelerated package of measures amending the criminal legal aid fee schemes](#)', accessed 12 March 2020; and Ministry of Justice, [Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#), February 2019, p 199.

There are fixed and standard fees for crime lower work, which includes work at the pre-charge and police station stages, in the magistrates' courts and for prison assistance.²⁹ Solicitors carry out this work. In the crown court and higher courts, solicitors undertake litigation work and solicitor advocates and barristers undertake advocacy work.³⁰ For crown court cases, the litigators' graduated fee scheme (LGFS) is used for solicitors. The advocates' graduated fee scheme (AGFS) is used for advocates. Under these schemes litigators and advocates are paid "graduated fees" determined by different pieces of case information known as 'proxies'. These include: the offence type; the timing of any guilty plea entered; the length of the trial (if the case proceeds to trial); and the number of pages of prosecution evidence (PPE). The factors are weighted differently for each graduated fee scheme based on where the majority of the work is undertaken. For cases expected to go to trial for over 60 days, the very high cost case (VHCC) scheme is used.³¹

Reform attempts

There have been attempts by the Coalition Government and subsequent Conservative Governments to reform both the LGFS and AGFS.³² In 2014, the Ministry of Justice imposed an 8.75% reduction in LGFS fees as part of a phased implementation of a 15% cut. The second reduction, which was planned for the following year, did not take place.³³ Proposals for a new contracting model were also dropped. Fee rates for the AGFS scheme were not increased between 2007 and 2018 and had also been subject to various reductions.³⁴ However, a new AGFS scheme was introduced in December 2018. The Government stated that the new scheme was intended to focus on "better remunerating the 'work done' by more junior advocates".³⁵ It said that the estimated total additional spending on the scheme was around £23 million more than actual spend on 2016–17 cases. The new scheme brought forward a 1% increase to all fees from April 2019.

Impact on numbers of criminal defence lawyers

The Law Society published data in 2018 that suggested in five to ten years there would be insufficient criminal duty solicitors in many regions.³⁶ The Law Society argued that criminal duty solicitors were part of an ageing profession; it found that the average age of a criminal duty solicitor was 47 years old. It concluded that this could have a "catastrophic effect" on the criminal justice system, as members of the profession retire and leave a shortage of experienced practitioners.

²⁹ Ministry of Justice, '[Criminal legal aid review: an accelerated package of measures amending the criminal legal aid fee schemes](#)', accessed 12 March 2020.

³⁰ Solicitor advocates are solicitors who are qualified to represent clients at hearings in the higher courts, usually called higher court advocates.

³¹ Ministry of Justice, '[Criminal legal aid review: an accelerated package of measures amending the criminal legal aid fee schemes](#)', accessed 12 March 2020; and Ministry of Justice, '[Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#)', February 2019, p 199.

³² Ministry of Justice, '[Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#)', February 2019, pp 203–4.

³³ House of Commons Justice Committee, '[Criminal Legal Aid](#)', 26 July 2018, HC 1069 of session 2017–18, p 7.

³⁴ *ibid*, p 4.

³⁵ *ibid*, p 204.

³⁶ Law Society, '[Criminal Duty Solicitors: a Looming Crisis](#)', 17 April 2018, p 2. The figures were based on Law Society analysis of the Legal Aid Agency duty solicitor scheme data, cross referenced with the Law Society's Criminal Litigator Accreditation Scheme membership data from 2017–18.

The Law Society suggested that “one of the prime reasons” for the growing shortage was the low fees paid to criminal duty solicitors.³⁷ It argued that the low fee level was having a negative impact on the number of new and younger lawyers entering the duty solicitor profession and on retention levels.

Demoralisation among criminal defence solicitors?

The House of Commons Justice Committee inquiry into criminal legal aid in 2018 also heard evidence “indicating a worrying level of demoralisation among criminal defence solicitors”.³⁸ The committee suggested that the current system threatened the “sustainability of criminal defence firms”. In its evidence to the committee, the Criminal Bar Association (CBA) suggested that barristers undertaking criminal work were poorly remunerated. It said that “limited income prospects have led to a recruitment crisis for the criminal bar”.³⁹ However, chair of the CBA, Angela Rafferty, and chair of the Criminal Bar, Andrew Walker, argued that the issues with the schemes were not just related to pay.⁴⁰ Mr Walker argued that the need to provide proxies for the degree of case complexity and the barrister’s level of skill was problematic. In particular, he thought that the scheme made insufficient allowance for cases that were evidence-heavy or for more serious cases. He stated:

In any fixed fee scheme, there will be compromises. The problem, we feel, is that there were certainly too many compromises with the previous scheme, and there are still too many compromises.⁴¹

The committee concluded:

We recommend that the output from the criminal legal aid workstream within the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 be used to underpin a comprehensive and independent review of criminal legal aid.⁴²

Government reviews and consultations

In December 2018, the Ministry of Justice announced a review of criminal legal aid fee schemes.⁴³ The review was established to consider:

- **Pre-charge advice** at the police station, advice and advocacy services in the magistrates’ court and youth court, and advice and advocacy for prisoners.
- **Advice and litigation services** in the crown court through the LGFS.
- **Advocacy services in the crown court** through the AGFS.

³⁷ Law Society, ‘[Criminal Duty Solicitors: a Looming Crisis](#)’, 17 April 2018, p 2.

³⁸ House of Commons Justice Committee, [Criminal Legal Aid](#), 26 July 2018, HC 1069 of session 2017–18, p 3.

³⁹ *ibid*, p 21.

⁴⁰ *ibid*, pp 25–6.

⁴¹ *ibid*, p 26.

⁴² *ibid*

⁴³ Ministry of Justice, ‘[Criminal legal aid review](#)’, accessed 12 March 2020.

- **Litigation and advocacy services** for very high cost crown court cases through the VHCC scheme.⁴⁴

The Government stated that the review was established in response to concerns raised by the criminal defence professions and in light of wider reforms to the criminal justice system.⁴⁵ The Government stated that it would complete the review by summer 2020.

In June 2019, Theresa May's Government announced an accelerated package of measures in recognition of some of the issues identified in the early stages of the review.⁴⁶ The five areas to be fast tracked were:

- **Unused material:** to build a better picture of the volume, nature and distribution of unused material so the legal fee scheme could better reflect work done.
- **Cracked trials** in the crown court.⁴⁷
- **How advocates are paid** for paper heavy cases.
- **Early engagement by defence practitioners** (ie pre-charge advice).
- **Payment for sending cases** to the crown court.

In February 2020, Boris Johnson's Government launched a consultation seeking views on changes to four of the areas initially identified as needing accelerated action.⁴⁸ The Government proposed an estimated increase of between £32 million and £50 million in criminal legal aid funding. The total increase will be dependent on the volume of cases. The Government estimated that the amount would be split evenly between solicitor firms and barristers.

Proposals out for consultation include:⁴⁹

- **New payments for litigators and advocates for reviewing unused material:** paying litigators and advocates the equivalent of 1.5 hours work for up to 3 hours spent reviewing unused material disclosed to the defence. For those cases where more than three hours is spent, payment would be at hourly rates equivalent to the existing special preparation hourly rates for litigators and advocates.
- **Additional payments for advocates with high volumes of pages of prosecution evidence:** payments based on pages of prosecution evidence.
- **Increased payments for advocates on cracked trials:** raising the basic fee for advocates in cracked trials from 85% to 100% of the brief fee and extending this to all cases that crack after the first crown court hearing.

⁴⁴ Ministry of Justice, '[Criminal legal aid review](#)', accessed 12 March 2020.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ A cracked trial or proceeding does not begin on the scheduled date and the trial is not rescheduled, as a trial is no longer required. This is usually due to a guilty plea being entered or prosecution being dropped, for example, due to lack of evidence.

⁴⁸ Ministry of Justice, '[Up to £50 million on offer in first stage of criminal legal aid review](#)', 28 February 2020.

⁴⁹ *ibid.*

- **Additional payments for litigators for work done on sending cases to the crown court:** increasing litigators' fees to better pay for the work done ahead of cases being sent to the crown court.

The consultation is scheduled to close in March 2020.⁵⁰ Launching the consultation, the Government stated:

The aim of the fuller criminal legal aid review will be to ensure an efficient, effective and sustainable system, while delivering legal aid for the most vulnerable in society and value for money for the taxpayer.⁵¹

The Government stated that it will consult on a proposal to pay litigators for work engaging the police or prosecution ahead of a decision to charge after the new disclosure guidelines are issued by the Attorney General.⁵² The guidelines are currently out for public consultation.

1.3 Court Closures

Since 2010, the courts and tribunals estate has been the subject of a multistage reform programme.⁵³ This has resulted in several tranches of court closures.

Following Lord Justice Brigg's 2016 report into civil courts structure, broad ranging reforms to the justice system have been proposed and piloted as part of a 'modernisation' project.⁵⁴ This has included an increased focus on the greater use of technology in HM Courts and Tribunals System (HMCTS). An initial attempt to legislate for a broad range of reforms was dropped because of the 2017 general election. Theresa May's Government proposed further reforms in the Courts and Tribunals (Online Procedure) Bill, introduced in the 2017–19 session. The bill would have provided a framework for the more extensive use of online and online-only court and tribunal proceedings as alternatives to in-person proceedings. However, the bill did not complete its passage through Parliament before the 2017–19 session ended.

Number of closures

At the beginning of the 21st century, while most of the court service was under the Lord Chancellor's

⁵⁰ Ministry of Justice, '[Criminal legal aid review: an accelerated package of measures amending the criminal legal aid fee schemes](#)', accessed 12 March 2020.

⁵¹ Ministry of Justice, '[Up to £50 million on offer in first stage of criminal legal aid review](#)', 28 February 2020.

⁵² Attorney General's Office, '[Consultation on revisions to the Attorney General's Guidelines on Disclosure and the CPIA Code of Practice](#)', 26 February 2020. Disclosure is the process whereby relevant unused material, gathered during an investigation, is provided to the defence. In November 2018, the Attorney General published a review of the efficiency and effectiveness of disclosure in the criminal justice system. The Attorney General's *Guidelines on Disclosure* provide high-level principles and guidance for investigators, prosecutors, and defence practitioners carrying out disclosure duties. They are intended to clarify the processes that are required and the roles each relevant party must play, as well as setting out examples of best practice.

⁵³ House of Commons Library, '[Court Closures and Access to Justice](#)', 18 June 2019, p 1. This briefing provides an overview of these changes and the impact it has had on the provision of courts and tribunal services.

⁵⁴ *ibid*, p 1.

direct jurisdiction, the magistrates court was administered locally.⁵⁵ However, the courts system under the Labour Government was unified in HM Courts Service in 2005. The Labour Government closed 125 magistrates' courts and opened 25 new ones between 1997 and 2009.⁵⁶ It also closed 24 county courts between 1997 and 2008.⁵⁷

Further reforms to the courts and tribunals estate continued under the Coalition Government and successive Conservative governments. In total, 295 court facilities closed between 2010 and 2019.⁵⁸ This total includes:

- **162 magistrates' courts** have closed out of 323.
- **90 county courts** have closed out of 240.
- **18 dedicated tribunal courts** have closed out of 83.
- **17 family courts** have closed out of 185.
- **8 crown courts** have closed out of 92.⁵⁹

The Coalition Government began its court estate reform programme (CERP) in 2010, with regional consultations on closing 103 magistrates' courts and 54 county courts.⁶⁰ The consultation set out a number of guiding principles which would inform CERP, including ensuring access to courts and that most of the public were to be within an hour commute of their nearest court by public transport.⁶¹

However, travel times were not to be the "sole or primary concern". The Government stated that it was more important for access to justice for the courts to be efficient and provide a good service.⁶² The 2010 CERP consultation resulted in the closure of 140 courts across England and Wales from the then total of 530 operational buildings.⁶³

In 2011, the tribunals system came under the remit of HM Courts Service and the organisation was renamed HM Courts and Tribunals Service. A further 75 tribunals were added to the estate.⁶⁴ By 2015, the HMCTS estate contained 460 court and tribunal buildings.⁶⁵

⁵⁵ House of Commons Library, [Court Closures and Access to Justice](#), 18 June 2019, p 2.

⁵⁶ [HC Hansard, 20 October 2009, cols 1373–4VVA](#).

⁵⁷ [HC Hansard, 5 February 2009, col 1401W](#).

⁵⁸ House of Commons Library, [Court Closures and Access to Justice](#), 18 June 2019, p 4. The House of Commons Library sourced the data from Ministry of Justice personal communication. Please note that the numbers may not tally with those reported elsewhere because some sources count the closure of premises and others count the closure of services in a given location.

⁵⁹ *ibid*.

⁶⁰ Ministry of Justice, '[Proposal on the provision of courts services: consultation paper](#)', 23 June 2010, DEP2010-1340.

⁶¹ For example: Ministry of Justice, [Proposal on the Provision of Court Services in Greater Manchester](#), 23 June 2010, CP09/10, p 3.

⁶² [HC Hansard, 14 December 2010, col 816](#).

⁶³ *ibid*; and House of Commons Library, [Court Closures and Access to Justice](#), 18 June 2019, p 5.

⁶⁴ House of Commons Library, [Court Closures and Access to Justice](#), 18 June 2019, p 5.

⁶⁵ Ministry of Justice and HM Courts and Tribunals Service, [Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), July 2015, p 6.

In July 2015, the Conservative Government under David Cameron published a consultation on its proposals for reforming the court and tribunal estate. It contained three key principles:⁶⁶

- Ensuring access to justice.
- Delivering value for money.
- Enabling efficiency in the longer term.

Respondents raised concerns on issues such as:⁶⁷

- Increased travel times for court users.
- Courts closing before technological alternatives were in place.
- Delays as a result of reduced court capacity.
- Impact of cuts to access to justice.
- Impact on vulnerable individuals.

The Government responded that access to justice did not depend on access to a physical court.⁶⁸ It expressed confidence there was sufficient capacity in the estate, which increased use of technology would expand. The Government stated that changes to estimated travel times would be small. In 2018, the Government explained that closures resulting from the 2015 consultation together with further ones in 2016 meant a reduction from 460 operational court buildings to 339.⁶⁹

In 2018, Theresa May's Government published the *Fit for the Future* consultation paper. It sought views on the closure of eight more courts. On 24 July 2018, the Government announced that seven of the eight would be closed.⁷⁰

Greater use of technology

In 2015, the then Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, commissioned two independent reviews into court reform. Lord Justice Briggs published two reports on civil court structure and Sir Brian Leveson conducted a review of efficiency of criminal proceedings.⁷¹

The reviews provided the basis for a broad range of proposed reforms, set out in the document *Transforming our Justice System*. The Lord Chancellor and Lord Chief Justice published the document in

⁶⁶ Ministry of Justice and HM Courts and Tribunals Service, [Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), July 2015, pp 7–8.

⁶⁷ Ministry of Justice and HM Courts and Tribunals Service, [Response to the Proposal on the Provision of Court and Tribunal Estate in England and Wales](#), 11 February 2016, pp 2–20.

⁶⁸ *ibid*, pp 14–18.

⁶⁹ Ministry of Justice and HM Courts and Tribunals Service, [Fit for Future: Transforming the Court and Tribunal Estate](#), January 2018, p 12.

⁷⁰ Ministry of Justice and HM Courts and Tribunals Service, '[Government announces changes to court estate](#)', 24 July 2018.

⁷¹ Judiciary of England and Wales, [Civil Courts Structure Review: Final Report](#), July 2016; and [Review of Efficiency in Criminal Proceedings](#), January 2015.

September 2016.⁷² It advocated a shift away from the default position of “advocacy before a judge in a physical courtroom” to a “mixture of online, virtual and traditional hearings as best meets the circumstances of the case”. The document proposed replacing physical courtroom hearings with virtual ones (where parties participate via audio or video link) or with fully online dispute resolution systems and digitising paper processes and case management.

Following this paper, the Government set out its two main strategies for reform in the *Fit for the Future* consultation:⁷³

- Maintaining and in some cases **enlarging HMCTS presence in major towns and cities with good transport links**, serving large populations.
- **Making greater use of other types of buildings in less populous areas** for some types of hearings with the use of later starts and earlier finishes to enable continued access to justice. It would retain some sites in remote areas where it made more sense economically.

In its response to the consultation, the Government addressed concerns about journey times for court users and suggested that greater use of technology would address some of the issues raised.⁷⁴ It provided guidance as to what would be considered a “reasonable” journey. The expectation would be that:

The overwhelming majority of users would be able to leave home no earlier than 07:30 to attend their local court and return by 19:30 using public transport if necessary.⁷⁵

Future assessments would also factor in the frequency of public transport, the number of changes needed, the cost of journeys, and the needs of vulnerable users.⁷⁶ The Government reiterated its view that the need for physical court buildings would decrease as the use of technology and digital hearings increased. The Government pointed to the increasing use of local video links and hearings in local authority buildings. It stated that it expected this would develop, with a range of hired venues being used.

The legal support action plan, which Theresa May’s Government published in February 2019, stated that HMCTS was spending £1 billion on its court reform programme.⁷⁷ It highlighted several ways that

⁷² Ministry of Justice, Lord Chief Justice of England and Wales, and Senior President of Tribunals, [Transforming our Justice System](#), September 2016, p 6.

⁷³ Ministry of Justice and HM Courts and Tribunals Service, [Fit for Future: Transforming the Court and Tribunal Estate](#), January 2018, pp 23–30.

⁷⁴ Ministry of Justice, [Response to ‘Fit for the Future: Transforming the Court and Tribunal Estate’ Consultation](#), 10 May 2019, pp 5–6.

⁷⁵ *ibid*, p 6.

⁷⁶ *ibid*.

⁷⁷ Ministry of Justice, [Legal Support: The Way Ahead: An Action Plan to Deliver Better Support to People Experiencing Legal Problems](#), February 2019, CP 40, p 31.

technology was being piloted in delivering legal services. The public could:⁷⁸

- Apply for uncontested divorce online.
- Apply for probate online.
- Make pleas online for low level offences (such as traffic offences).
- Respond to jury summonses, track social security and child support appeals online.
- Respond to civil money claims online.

According to the document, over 65,000 people had used these pilots and the public feedback had been “extremely positive”.⁷⁹ It stated that HMCTS was developing a new digital process in the Social Security and Child Support Tribunal to allow people to submit, track and manage their appeal online.

Courts and Tribunals (Online Procedure) Bill

In May 2019, the Government introduced the Courts and Tribunals (Online Procedure) Bill.⁸⁰ This would have established an Online Procedure Rule Committee (OPRC) to make rules for online court and tribunal proceedings in civil and family courts. It would have been able to decide whether proceedings normally held physically in a court could, in whole or in part, be conducted online. The bill did not complete its passage before the 2017–19 parliamentary session ended. During a debate on the Queen’s Speech in the House of Lords in January 2020, peers asked whether the Government would reintroduce the bill.⁸¹ The Minister of State at the Home Office, Baroness Williams of Trafford, confirmed the Government was “committed to modernising the whole criminal justice system”. Baroness Williams stated that the Government would bring forward any necessary legislation to ensure it is “fit for purpose”.

Impact of court closures

In October 2019, the House of Commons Justice Committee published its report on court and tribunal reforms.⁸² The committee stated that the court closures that took place between 2010 and 2018 had created “alarming difficulties” for many court users.⁸³

The committee cited concerns about travel time. It recommended that HMCTS adopt a revised travel benchmark: the overwhelming majority of users should be able to reach their nearest court or tribunal hearing centre within 1.5 hours by public transport.⁸⁴ It recommended HMCTS “urgently establish more supplementary venues”, such as pop-up courts in non-traditional courts buildings. The

⁷⁸ Ministry of Justice, [Legal Support: The Way Ahead: An Action Plan to Deliver Better Support to People Experiencing Legal Problems](#), February 2019, CP 40, p 31.

⁷⁹ *ibid.*

⁸⁰ [Courts and Tribunals \(Online Procedure\) Bill 2017–19 \[HL\]](#).

⁸¹ [HL Hansard, 8 January 2020, col 289](#).

⁸² House of Commons Justice Committee, [Court and Tribunal Reforms](#), 31 October 2019, HC 190 of session 2017–19.

⁸³ *ibid.*, p 3.

⁸⁴ *ibid.*, p 42.

committee stated these should be established in every area where there has been a court closure in the past 10 years.⁸⁵

About the increased use of technology, it stated:⁸⁶

- Poor digital skills and limited access to technology “raise barriers against access to new services provided by digital means”. HMCTS had not taken sufficient steps to address the needs of vulnerable users.
- HMCTS must expedite planned investment to upgrade the video equipment and Wi-Fi facilities which had been found to be unreliable across the criminal courts estate
- The MoJ should commission research on the impact on justice outcomes of video hearings and video links in the UK.
- Existing access to online justice processes only via the gov.uk website should be discontinued and “replaced without delay”.

The committee advocated no further closures until independent analysis was carried out on the impact of the closures already implemented.⁸⁷

National Audit Office report

In September 2019, the National Audit Office (NAO) published a progress report on the courts and tribunals reform programme.⁸⁸ The NAO found that there had been delays in the national roll-out of new digital services, specifically probate, divorce and social security and child support services.⁸⁹ This was because of technological problems. The NAO found that people were not able to move through the entire process online. It also reported that the tool for scheduling and listing cases had been “significantly” delayed from 2019 to December 2020. The bulk scanning tool which was expected to reduce the reliance on paper documents in courts and tribunals was not fully delivered.⁹⁰ The NAO asserted:

The ultimate impact of the delays was that HMCTS failed to meet its targets to reduce the number of hearings in physical courtrooms and the number of people it employs.⁹¹

The NAO reported that HMCTS had scaled back and delayed its plans to close further sites as a result.⁹² HMCTS has also committed to having clear evidence that reductions in physical hearings were happening before it decided to close any further sites.

⁸⁵ House of Commons Justice Committee, [Court and Tribunal Reforms](#), 31 October 2019, HC 190 of session 2017–19, p 3.

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ National Audit Office, [Transforming Courts and Tribunals: A Progress Update](#), 13 September 2019, HC 2638 of session 2017–19.

⁸⁹ *ibid.*, p 16.

⁹⁰ National Audit Office, [Transforming Courts and Tribunals: A Progress Update](#), 13 September 2019, HC 2638 of session 2017–19, p 16.

⁹¹ *ibid.*

⁹² *ibid.*, p 36.

The NAO also found that HMCTS’s approach to estimating the impact of closures on access to justice did not address concerns expressed during the 2018 consultation process; HMCTS’s response to the *Fit for the Future* consultation indicated that it would make decisions on a site-by-site basis when determining whether a journey was reasonable.⁹³ The NAO stated it was “not clear” how HMCTS planned to do this.

The MoJ informed the NAO that it intended to do an overarching evaluation of reform.⁹⁴ The evaluation was expected to examine three themes around: access to justice; costs to court users; and fairness. At the time of the NAO report, the then Government expected to produce an interim report in 2021–22, with a final evaluation report in 2024–25.

2. Accessing affordable benefits advice: what is available?

Free or affordable advice about benefits can be accessed by people on low incomes from a number of sources. This includes advice on eligibility, the claim process and legal issues surrounding accessing those benefits.

2.1 Advisory services on claiming benefits

Citizens Advice

Citizens Advice is a network of charities that gives free, confidential, impartial and independent advice on what individuals can get if they are on a low income. This includes advice on:⁹⁵

- Legal aid.
- Housing benefits.
- Working child tax credits.
- Jobseeker’s allowance.
- Pension credit.
- Income support.
- Council tax reduction.
- Universal credit.
- Using a food bank.
- Help with living costs.

Citizens Advice provides advice online, face-to-face and through a helpline. In 2018/19, this included:

- 28,500,000 visits to its website.
- 1,273,000 people helped face to face.

⁹³ National Audit Office, [Transforming Courts and Tribunals: A Progress Update](#), 13 September 2019, HC 2638 of session 2017–19, p 36.

⁹⁴ *ibid*, p 38.

⁹⁵ Citizen’s Advice, [‘Help on a low income’](#), accessed 16 March 2020.

- 867,000 people using its phone service.
- 287,000 people getting help by email or webchat.⁹⁶

According to its annual report for 2018/19, Citizen's Advice helped 2.7 million people, "saving government and public services £485 million".⁹⁷

Citizens Advice receives government funding to run several services, including:⁹⁸

- **Help to Claim:** provides support in the early stages of a universal credit claim, from the application through to first payment. It receives funding from the Department for Work and Pensions.
- **Witness Service:** provides free and independent support for both prosecution and defence witnesses in every criminal court in England and Wales.

It also receives funding from Money and Pension Service for Pension Wise. This is a guidance service for pensions, including advice on pensions credit.

Specialised advice

There are several organisations that provide help and advice in connection with specific issues. For example:

- **Age UK:** provides advice and information on its website and through an advice line about issues relevant to older people.
- **Disability Law Service:** a charity which provides free information and advice in areas such as community care and employment law.
- **Gingerbread Single Parent Helpline:** provides support for single parents, including advice on benefits and tax credits.
- **Money Advice Service:** provides free advice about personal finances through its website and helpline.
- **Macmillan:** provides advice on benefits and financial support for people affected by cancer.
- **Shelter:** provides information and advice on their website and through their helpline on issues such as housing, repossessions and evictions.

2.2 Accessing affordable legal advice on benefits

If an individual cannot afford legal advice or support, they may be able access free or cheaper help.

⁹⁶ Citizens Advice, '[Introduction to the Citizens Advice service](#)', accessed 16 March 2020.

⁹⁷ Citizens Advice, [Annual Report 2018/19](#), p 5.

⁹⁸ *ibid*, p 40.

This includes legal advice on social security matters. Sources of legal advice include:⁹⁹

- **Legal aid:** an individual has to meet certain financial criteria to be eligible for the legal aid scheme, and the matter needs to be within the scope. Section I of this briefing provides further information.
- **Exceptional case funding (ECF):** sometimes people can get legal aid even though their case is not in the scope of LASPO.¹⁰⁰ An ECF team within the Legal Aid Agency (LAA) deals with these cases.
- **Law centres:** offer free and independent legal advice from within their local communities. They often specialise in social welfare law.
- **LawWorks website:** can be used to search for a free legal advice clinic.
- **Advocate:** a charity that finds free legal assistance from volunteer barristers. Individuals need to get a referral from a law centre, their local MP or Citizens Advice.
- **Trade unions:** an individual may be able to get free legal help, such as finding and paying for a solicitor. They are not always limited to helping with work problems.

Awareness of legal support for benefit claims

Several reports have highlighted that more needs to be done to advertise the availability of legal aid, mediation and wider legal support options.¹⁰¹ For example, in 2015, the House of Commons Justice Committee asserted that the underspend in the civil legal aid budget was because the MoJ had not done enough to encourage those who were eligible to access the support.¹⁰² The committee stated that a lack of public information was a factor.

The Government's 2019 legal support action plan acknowledged this issue. It recognised that early support often led to resolution of cases before the matter reached court or tribunal proceedings.¹⁰³ The Government heard evidence during the LASPO review that many advice providers have had to reprioritise their services away from early support towards supporting people once they had reached crisis point.¹⁰⁴ The Law Centres Network provided evidence showing that this reduction in supply of early support had been particularly felt in matters such as housing and welfare benefits.¹⁰⁵ In its evidence to the review, the Law Society suggested that the lack of early support was, in some cases, leading to people coming to court when alternatives like mediation would have been more suitable.¹⁰⁶

⁹⁹ Citizens Advice, '[Finding free or affordable legal help](#)', accessed 16 March 2020. Further information can be found in the House of Commons Library briefing, [Legal Help: Where to Go and How to Pay](#), August 2019.

¹⁰⁰ Ministry of Justice, '[Legal aid](#)', accessed 13 March 2020.

¹⁰¹ Law Society, [Response of the Law Society of England Wales to the Civil Justice Council ADR Working Group Interim Report](#), December 2017; and House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15.

¹⁰² House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15, p 3.

¹⁰³ *ibid*, p 6.

¹⁰⁴ *ibid*, p 19.

¹⁰⁵ Law Centres Network, [LASPO Act 2012 Post Implementation Review Submission from the Law Centres Network](#), September 2018.

¹⁰⁶ Ministry of Justice, [Legal Support: The Way Ahead: An Action Plan to Deliver Better Support to People Experiencing Legal Problems](#), February 2019, CP 40, pp 19–22.

The Government set out proposals in its legal support action plan for increasing awareness of available legal help.¹⁰⁷

- Work collaboratively with providers to develop web-based products that bring a range of legal support tools together in one place.
- Work with academics and practitioners to build on existing evidence to pilot and research the best methods for delivering legal support.
- Improve signposting advice and support available.
- Test a series of changes to improve access and signposting to support offered as part of the Civil Legal Aid Telephone Advice Service.¹⁰⁸
- Use funding to encourage the delivery of legal support through technology.
- Recognise that a comprehensive service may offer people an opportunity to support themselves, and government should work collaboratively with the legal and advice sector to evaluate the impact of legal support hubs.

Legal aid deserts for welfare claimants

In 2016, the Law Society published data which showed that there was a shortage of legal aid providers for housing.¹⁰⁹ It found in that in large areas in England and Wales there was little or no provision. It described these areas as “legal aid deserts”. It published further data in April 2019.

In summary the Law Society found:¹¹⁰

- In 2016, almost **a third** of legal aid procurement areas in England and Wales had one or no local legal aid housing advice providers.¹¹¹
- In 2019, **over half** of all local authorities in England and Wales had no provision for housing legal aid services.¹¹²
- In 2019, **37% of the population** lived in local authorities which did not have a single housing legal aid provider, **and 59% of the population** lived in local authorities which had one or no housing legal aid provider.¹¹³

The Law Society concluded that many people on low incomes who were facing serious housing

¹⁰⁷ Ministry of Justice, [Legal Support: The Way Ahead: An Action Plan to Deliver Better Support to People Experiencing Legal Problems](#), February 2019, CP 40, p 6.

¹⁰⁸ An individual may be able to get free and confidential advice from Civil Legal Advice (CLA) as part of legal aid. If eligible, they can get help on problems such as debt; housing; a child being taken into care; and special education needs. Ministry of Justice, ‘[Civil legal advice \(CLA\)](#)’, accessed 16 March 2020.

¹⁰⁹ Law Society, ‘[Parliamentary briefing: Legal aid deserts](#)’, 24 April 2019.

¹¹⁰ Law Society, [Parliamentary Briefing: Housing Legal Aid Deserts](#), 24 April 2019.

¹¹¹ In 2016, the Law Society developed an interactive heatmap using data from the Legal Aid Agency.

¹¹² This map is based on local authority boundaries, whereas the 2016 map was based on legal aid procurement areas.

¹¹³ This is based on the Law Society’s analysis of legal aid providers in England and Wales, combined with Office of National Statistics population data.

situations, such as eviction or homelessness, were struggling to get local face-to-face advice that they were legally entitled to.¹¹⁴

Shortage of providers?

In January 2020, the Law Society published data which showed there was also a shortage of providers across England Wales for community care law. It found:¹¹⁵

- **More than 37 million people in England and Wales** lived in a local authority area without a single community care legal aid provider, including over 7.5 million people aged 65 and over.
- **78% of local authorities in England and Wales** did not have a single community care legal aid provider.

The Law Society concluded that cared-for people “fighting to get vital welfare services” or remain in their own home were being “denied” support by a shortage of community care legal aid provision.¹¹⁶ It has urged the Government to:

- Independently review the sustainability of the legal aid system.
- Make sure every area in England and Wales has an acceptable number of legal aid providers.

In July 2018, the Joint Committee on Human Rights published its report on enforcing human rights.¹¹⁷ The report concluded that “legal aid deserts” were a result of practitioners withdrawing legal aid services because they could no longer afford to do the work.¹¹⁸ The committee argued this was because of reductions in legal aid funding by “successive governments over the past three decades”.

In response to the committee’s report, the Government stated that it was assessing the provision of legal aid as part of its post-implementation review of LASPO.¹¹⁹ Information on the Government’s review and its legal support action plan can be found in section one of this briefing.

¹¹⁴ Law Society, ‘[End legal aid deserts](#)’, accessed 17 March 2020.

¹¹⁵ *ibid.* These findings were based on analysis of data from the Legal Aid Agency directory of providers (September 2019) and the Office of National Statistics (2017).

¹¹⁶ *ibid.*

¹¹⁷ Joint Committee on Human Rights, [Enforcing Human Rights](#), 19 July 2018, HL Paper 171 of session 2017–19.

¹¹⁸ *ibid.*

¹¹⁹ Ministry of Justice, [Government Response to the Joint Committee on Human Rights Tenth Report of Session 2017–19: Enforcing Human Rights](#), September 2018, Cm 9703, p 3.