
Access to Justice

Access to Justice: A Discussion

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Some of the authors in this section got together to discuss some of the common themes and challenges arising from the issues they canvassed in their papers.

A very obvious difficulty occurred when all services quickly went online; the 7% of the population who is unable to access the internet was doubly disadvantaged as the agencies normally available to help them access online services (libraries; community centres; advice groups) went fully virtual so the 7% were left without support and further marginalised. With respect to legal advice, telephone advice has been made available in some cases, as has online chat and text services, however it can be quite expensive for individuals to obtain telephone advice unless there are clear call-back arrangements in place. One can query, perhaps, whether legal advice and service providers were overly cautious in their approach to lockdowns. At the height of the lockdowns, one needed a reasonable excuse to go out and meet someone. Perhaps as a sector we need to consider whether we should have been more flexible in accommodating vulnerable individuals who could not access the internet with in-person meetings.

With domestic abuse cases, accessing advice remotely when both victim and perpetrator are in the same household has been very difficult; however, there is very limited data available about what alternatives were put in place and whether they worked effectively. Furthermore, these access to justice gaps must be understood in a wider context in which law firms have been progressively limiting their legal aid agency work in the light of the impact of legal aid reform.

Another area which requires further attention is “litigants in person”. For normal courtroom hearings there is a system of support in place which works relatively effectively in some locations. The Essex Law Clinic had already been planning to develop a student-led support project for “litigants in person”. It appears that these litigants have not been receiving support in virtual hearings.

It is important that virtual hearings reflect the principles of open justice, as well. It is crucial to be able to scrutinise what is happening in the virtual court room, but observations have become more difficult. It is less straight-forward for researchers and members of the public

to find out why an applicant wants to dial-in to a hearing. It is also unclear whether virtual observations are perceived as more or less intrusive by litigants. Further research is needed on this point.

The structural challenges to access legal aid in England and Wales stem from the strong reliance on the private sector, as well as the progressive cuts to legal aid provision under austerity policies. This differs, for example, from the approach taken in Australia (described in Hansen’s paper), where large public bodies deliver services directly to the public. The access to justice crisis in the UK invites us to look more fundamentally at the way we organize ourselves to deliver legal services, though there is not a natural organization to take the central role, given the fragmentation within legal aid service delivery.

It was recognised that the pandemic constitutes an important learning experience, in which all pre-existing problems with access to justice have been magnified. In the field of mediation, for example, it is not simply access to justice but comfort with the justice environment which contributes to successful justice outcomes. As mediation requires an open exchange addressing human needs and a dialogue in which parties gradually enter a deeper layer of their experience, concerns and wishes, videoconferencing is not the optimal channel for all mediations and for all individuals. A number of factors may negatively impact on parties' experience of video mediation, reducing the likelihood for a successful resolution or achieving the best possible outcome. On the other hand, for those individuals who experience extreme stress from the courtroom experience or in-person face-to-face mediation, they may have a better online experience. Importantly, whilst at present practitioners are working on establishing trust with phone calls or web-based conflict resolution, after the pandemic, it will be essential that they carefully consider all factors in each individual case when advising on the best communication channel for mediation and conflict resolution.

Overall, in all areas of legal advice including ADR, it is important to ensure that advice providers are able to treat the needs of their clients holistically. It is not only the narrow legal problem that deserves attention but the wider impact it is having on the person, and similarly how issues extraneous to law impact on legal problems. Whilst this idea was present in the past, for example as a precursor of the mediation movement, the realisation of the need for a holistic approach has been fortified in the pandemic across various areas of the law, legal casework and conflict resolution. In this regard, advice providers should be prepared to engage with issues related to clients' trauma associated with the pandemic, which may have a delayed impact. Such an approach should be incorporated into our learning and advice methodologies to best serve clients' needs.

Similarly, there is a sense that legal education, unlike medical education for example, has traditionally been less focused on ensuring that future lawyers are trained to respond to legal emergencies where the need for advice may be massive in both size and scope and urgent, such as pandemics. It would be important to integrate this into clinical training and the legal curriculum.

There was a strong sense that detailed evaluation was needed of the virtual and other measures which were instituted to enable access to justice during the lockdown, and their effectiveness. There are advantages and disadvantages to the virtual systems and it would be important to identify what worked well and integrate it into the post-Covid justice systems. There is a need to look deeply at service delivery and to identify how blended approaches could be employed to increase both access to justice and the quality of the justice experience.