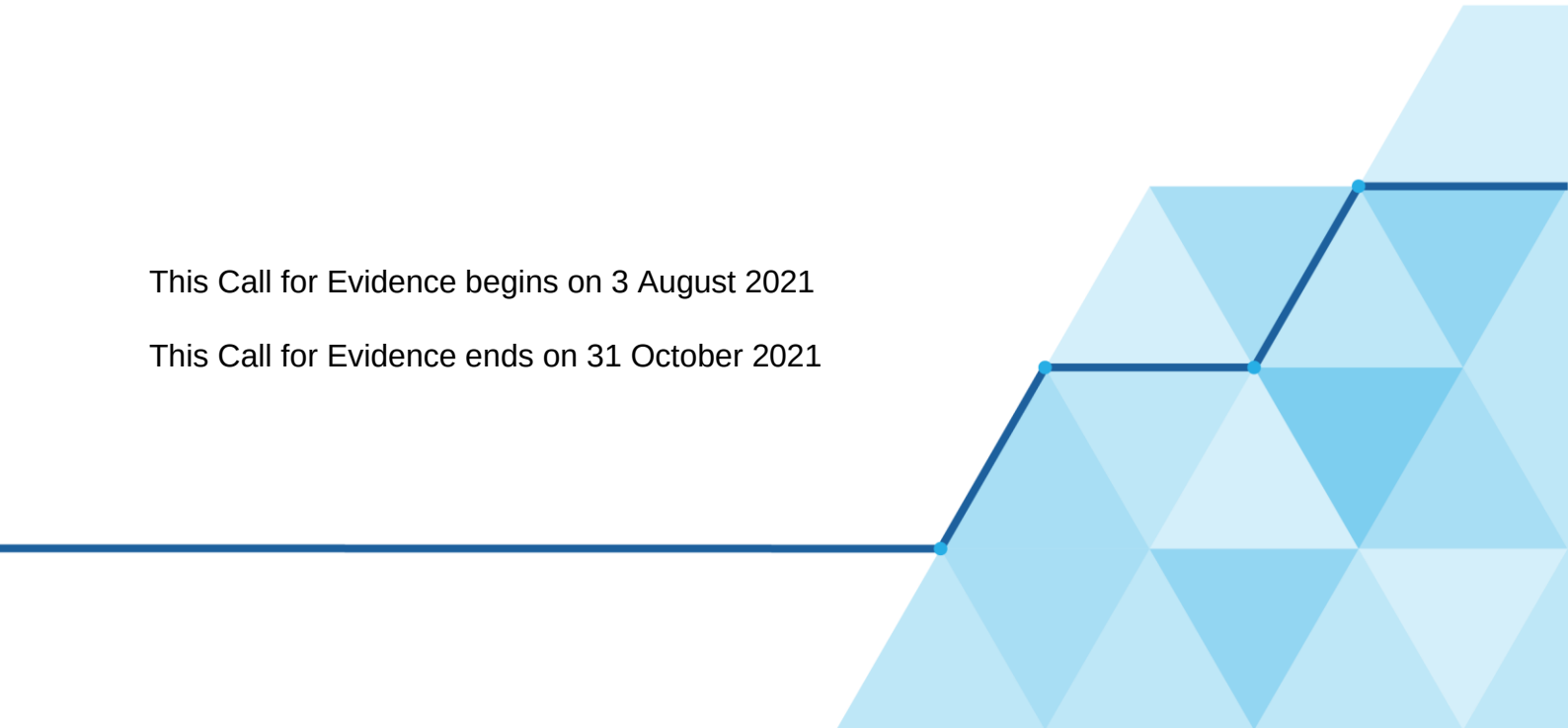
Ministry of Justice

Dispute Resolution in England and Wales

Call for Evidence

This Call for Evidence begins on 3 August 2021

This Call for Evidence ends on 31 October 2021



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Dispute Resolution in England and Wales

Call for Evidence

2021

A call for evidence produced by the Ministry of Justice. It is also available at https://consult.justice.gov.uk/digital-communications/dispute-resolution-england-wales-call-for-evidence

About this call for evidence

To:	All interested parties, the judiciary, legal profession, bodies representing Dispute Resolution providers including mediators, academics, Law and Technology experts, the advice sector, court and tribunal users - particularly those who have had experience of dispute resolution outside of the courts.
Duration:	**From 03/08/2021 to 31/10/2021**
Enquiries to:	Dispute Resolution Team Ministry of Justice 102 Petty France London SW1H 9AJ **Disputeresolution.enquiries.evidence@justice.gov.uk**
How to respond:	Please send your response by 31 October 2021 via the survey or submit to the Dispute Resolution Team Email address at: **Disputeresolution.enquiries.evidence@justice.gov.uk**
Response paper:	A response to this call for evidence will be published on a date to be confirmed.

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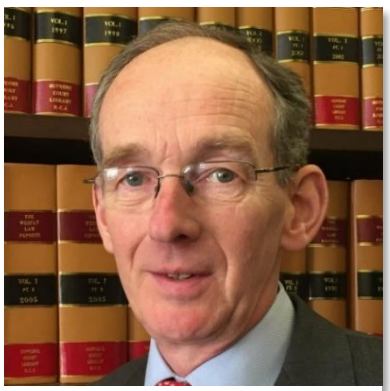
Foreword

The Rt Hon Robert Buckland QC MP. Lord Chancellor and Secretary of State for Justice

Lord Wolfson of Tredegar QC, Parliamentary Under Secretary of State

Sir Geoffrey Vos, Master of the Rolls and Head of Civil Justice



Sir Andrew McFarlane, President of the Family Division

Sir Keith Lindblom, Senior President of Tribunals

This year marks the 25th anniversary of Lord Woolf's seminal report on Access to Justice. The changes he recommended, given effect in the Civil Procedure Rules 2000, were intended to enable cases to be conducted proportionately and promote the use of pre-action protocols to bring about early settlement so that litigation would become a last resort. Since then, Mediation Information and Assessment Meetings (MIAMs) were introduced in family cases in 2014, and there have been similar initiatives in the Tribunals. The objective in each instance has been to maximise the chances of early consensual resolution.

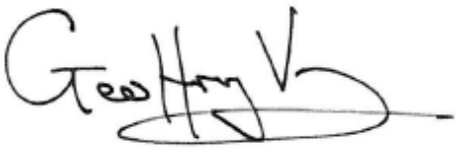
A quarter of a century after the Woolf report, litigation is still far from the last resort and too many cases still go through the court process unnecessarily. The provision of dispute resolution schemes remains patchy, even though there are welcome developments including a wide range of Ombudsman schemes, private dispute resolution services and judicial early neutral evaluation projects. But more still needs to be done to increase uptake of less adversarial options.

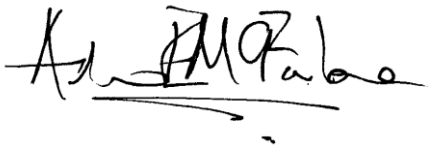
What have hitherto been regarded as "alternative" methods of dispute resolution need to be mainstreamed within online processes, and within the culture of the legal system, those who work within it, and the consumers and businesses it serves.

There has already been significant progress through the HMCTS reform project with civil money claims, damages, possession claims, enforcement, parts of the tribunals, and public and private law family applications moving online. But we need to build on this progress including utilising more innovative technologies with an integrated online dispute resolution process.

As we recover from the impact of the pandemic, we want to make the justice system better able to resolve disputes in smarter ways, combining pre-claim portals and court processes with integrated mediated resolution interventions.

We share a commitment to providing the strongest possible evidence base for the development of such an approach. We would like your help to achieve that. We are therefore launching this call for evidence and look forward to hearing from you.





Keith Lindblom [1]

David Watson

Robert Buckland

[1] The Senior President of Tribunals' remit extends to Scotland and Northern Ireland for certain chambers/tribunals. The Call for Evidence is limited to England and Wales for a number of reasons, including the fact that reserved tribunal functions in Scotland are intended to be devolved in the future. However, responses are very welcome from those based in Scotland and Northern Ireland.

Introduction

For far too long the so-called “alternative” approaches to court[2] have been seen as an add-on or diversion for people seeking to resolve a dispute. We recognise that most disputes are already dealt with outside the court system. However, for those within it or about to come within it, we want to ensure that the most appropriate form of resolution which may not be court, is accessible.

We want to support people to get the most effective resolution without devoting more resources than necessary – financial, intellectual and emotional – to resolve their dispute. Creating more proportionate and constructive routes to resolution avoids the need for these resources to be expended, saving the user’s time, as well as reducing their levels of stress at an already difficult time.

Our ambition is to mainstream non-adversarial dispute resolution mechanisms, so that resolving disagreements, proactively and constructively, becomes the norm. This is not simply about diverting people from litigation. We want to build a more proportionate system by giving people a fuller, more integrated, range of routes to get the best outcomes for their issue. Helping people to access the support they need at the right time to achieve a resolution, bringing disputes to a timely close without such frequent need for court-based litigation. The courts will, however, always remain as an option open to everyone; and we recognise that there will always be cases where people do need to go to court.

This Call for Evidence is the first step on that journey. Your responses to this document will improve our evidence base to inform the development of the Government’s policy interventions.

The scope of this work includes the civil, family and administrative jurisdictions. The criminal jurisdiction is not in scope. We recognise that there is substantial breadth and diverse content and character across these areas. Different types of case will of course involve different issues and circumstances that will need to be considered in detail when it comes to developing policy options.

This Call for Evidence is seeking evidence from all interested parties, the judiciary, legal profession, mediators and other dispute resolvers, academics, the advice sector, court users. We are particularly interested in collecting evidence from individuals or organisations with data to share on the relevant questions; or those who have had experience of dispute resolution within and outside of the courts system to support the development of more effective dispute resolution mechanisms. We welcome frontline insights with tangible examples.

[2] We use ‘court’ to refer to courts and tribunals unless stated otherwise.

The issue

Improving dispute resolution offers opportunities to better the justice system across the civil, family and tribunals jurisdictions. Litigation is adversarial and can be subject to wide-ranging and detailed process and rules which can make it a complex, time-consuming and expensive process. For many people, it may not be the most appropriate route to resolve their disputes because of the type of the case. We want to support parties to use the best processes to achieve high quality, timely, cost effective, proportionate and enforceable resolution to their disputes.

Additionally, the Covid-19 pandemic has put extra pressure on the courts and the wider justice system, and a consequential effect of more people being equipped to resolve their disputes without needing to wait for a court would be a significant reduction in the burden on the current system, delivering better outcomes for parties and society at large.

Legal needs studies show that most legal problems are dealt with at an early stage without engaging formal justice services or the courts. Despite this, over 2 million civil proceedings were started in the County Courts alone in 2019, the majority of which were undefended "default" judgements allowing creditors to apply for enforcement. Nearly 300,000 claims were defended and the majority of those were settled or withdrawn before the hearing stage (just under 65,000 claims went to trial in 2019).[3] While the courts fulfil a vital role for resolution of many disputes, this attrition does highlight areas where problems might be dealt with in different ways. Evidence from surveying civil court users[4] shows that the majority would have preferred to avoid court and see court proceedings as a last resort (68% overall: 57% for damages claimants but rising to 80% and 81% among money and possession claimants respectively).

This programme dovetails with the work of the Civil Justice Council which published its report in 2018[5] on Alternative Dispute Resolution (ADR), setting out extensive recommendations on promoting the awareness of ADR, both in the general public, professions and judiciary; better regulation for ADR service providers; and a form of automatic referral to ADR. Although its terms of reference are restricted to the civil jurisdiction, there is read-across to the family and the tribunals system. The Civil Justice Council published their latest report on ADR in July 2021[6] advising that it was both compatible with Article 6 and desirable in certain circumstances to make some forms of ADR compulsory.

New court-based initiatives have been started in several jurisdictions, notably the Civil Online Money Claims service which integrates use of HMCTS' Small Claims mediation service and is piloting opt-out mediation for low value civil cases. Pilots have also been introduced that extend mediation to higher value civil claims. In the family jurisdiction it is

3 https://www.gov.uk/government/collections/civil-justice-statistics-quarterly

4 Civil Court User Survey (2015)

5 https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADR-Report-FINAL-Dec-2018.pdf

6 Civil-Justice-Council-Compulsory-ADR-report.pdf (judiciary.uk)

now – in most private law cases – a legal requirement to attend a Mediation Information and Assessment Meeting (MIAM) before making an application to court. The introduction of the family mediation voucher scheme enables a financial contribution of up to £500 towards the costs of mediation for eligible parties. Additionally, the Financial Dispute Resolution appointment has become an established feature of matrimonial financial remedies cases for over twenty years and has proved extremely successful in facilitating settlement of proceedings without a fully-contested hearing. The Whiplash Reform portal, which aims to reduce the number and cost of whiplash claims, has introduced a new pre-court process. This online Portal seeks to enable claimants and defendants to settle claims without the need for legal representation or to go to court. Another model of dispute resolution is the use of ACAS's early conciliation service for workplace disputes, introduced in 2014, under which any party intending to bring an Employment Tribunal complaint must inform ACAS, who will offer them free early conciliation as an alternative to court.

The scope of this call for evidence includes pre-hearing dispute resolution and aligns with the core outcomes central to the Legal Support Action Plan:[7] to prevent people's problems from escalating and to divert people away from parts of the justice system that they do not need to interact with; encourage the use of technology and innovation in ways that ensure people can access support in the way that best suits them; and continue to build an evidence base to inform effective policy interventions. This exercise also builds on the evidence gathered as part of the Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and which was published in February 2019.

We will build on these strong foundations as we consider the changes necessary to move towards a holistic system of dispute resolution, one in which users are supported and directed towards the dispute resolution option that is right for their circumstances. Therefore, this evidence will be a vital contribution to our future work.

The findings of the Call for Evidence will be made available in summarised form. No personal or identifiable information will be made available or used for other purposes.

Throughout this Call for Evidence we refer to "dispute resolution" processes as encompassing all methods of resolving disputes in the civil, family and administrative jurisdictions, apart from litigation. These include, but are not limited to, mediation, conciliation, arbitration, Ombudsmen schemes and similar, whether conducted via online platforms or with the assistance of other technology or not. We are not seeking views on the operation of the court service, except in so far as it engages with these other forms of out-of-court resolution processes.

[7] Legal Support: The Way Ahead (publishing.service.gov.uk).

This is a call for evidence relating to Dispute Resolution processes in England and Wales.

A Welsh language paper is available at:

https://consult.justice.gov.uk/digital-communications/dispute-resolution-england-wales-call-for-evidence

Copies of the call for evidence are being sent to a list of organisations with interest in Dispute Resolution who fit these broad categories:

- **The judiciary**
- **Legal profession**
- **Bodies representing Dispute Resolution providers, including mediators**
- **Academics**
- **Advice sector**
- **Court and tribunal users via associations**
- **Law and Technology experts**

The list is not meant to be exhaustive or exclusive and we would appreciate it if you could forward on to other organisations who you consider would have an interest. We welcome responses from anyone with data, interest in or views on the subject covered by this call for evidence.

Questions

1. Drivers of engagement and settlement

An understanding of the drivers of engagement and settlement will enable the development of policies and procedures that ensure access to justice in a way that best meets people's needs. Existing evidence points to reasonable settlement rates for pre-hearing dispute resolution schemes.

1. Do you have evidence of how the characteristics of parties and the type of dispute affect motivation and engagement to participate in dispute resolution processes?

2. Do you have any experience or evidence of the types of incentives that help motivate parties to participate in dispute resolution processes? Do you have evidence of what does not work?

3. Some evidence suggests that mandatory dispute resolution gateways, such as the Mediation Information & Assessment Meeting (MIAM), work well when they are part of the court process. Do you agree? Please provide evidence to support your response.

4. Anecdotal evidence suggests that some mediators or those providing related services feel unable to refer parties to sources of support/information – such as the separated parents' information programme in the family jurisdiction – and this is a barrier to effective dispute resolution process. Do you agree? If so, should mediators be able to refer parties onto other sources of support or interventions? Please provide evidence to support your response.

5. Do you have evidence regarding the types of cases where uptake of dispute resolution is low, and the courts have turned out to be the most appropriate avenue for resolution in these cases?

6. In your experience, at what points in the development of a dispute could extra support and information be targeted to incentivise a resolution outside of court? What type of dispute does your experience relate to?

7. Do you have any evidence about common misconceptions by parties involved in dispute resolution processes? Are there examples of how these can be mitigated?

2. Quality and outcomes

We want to ensure that parties are supported to use the best processes. As well as measures such as engagement/settlement rates and the perceptions of parties, it is important that parties achieve quality outcomes i.e. problems can be resolved effectively, fairly, and with minimal cost and delay for parties.

8. Do you have evidence about whether dispute resolution processes can achieve better outcomes or not in comparison to those achieved through the courts?

9. Do you have evidence of where settlements reached in dispute resolution processes were more or less likely to fully resolve the problem and help avoid further problems in future?

10. How can we assess the quality of case outcomes across different jurisdictions using dispute resolution mechanisms, by case types for example, and for the individuals and organisations involved?

11. What would increase the take up of dispute resolution processes? What impact would a greater degree of compulsion to resolve disputes outside court have? Please provide evidence to support your view.

12. Do you have evidence of how unrepresented parties are affected in dispute resolution processes such as mediation and conciliation?

13. Do you have evidence of negative impacts or unintended consequences associated with dispute resolution schemes? Do you have evidence of how they were mitigated and how?

14. Do you have evidence of how frequently dispute resolution settlements are complied with, or not? In situations where the agreement was not complied with, how was that resolved?

15. Do you have any summary of management information or other (anonymised) data you would be willing to share about your dispute resolution processes and outcomes? This could cover volumes of appointments and settlements, client groups, types of dispute, and outcomes. If yes, please provide details of what you have available and we may follow up with you.

3. Dispute resolution service providers

We are keen to gain a greater understanding of the Dispute Resolution workforce and how they are currently trained, how standards of work are monitored and how quality is assured to users of their services.

16. Do you have evidence which demonstrates whether the standards needed to provide effective dispute resolution services are well understood?

17. Do you have evidence of the impact of the standard of qualifications and training of dispute resolution service providers on settlement rates/outcomes?

18. Do you have evidence of how complaints procedure frameworks for mediators and other dispute resolution service providers are applied? Do you have evidence of the effectiveness of the complaints' procedure frameworks?

19. Do you think there are the necessary safeguards in place for parties (e.g. where there has been professional misconduct) in their engagement with dispute resolution services?

20. What role is there for continuing professional development for mediators or those providing related services and should this be standardised?

21. Do you have evidence to demonstrate whether the current system is transparent enough to enable parties to make informed choices about the type of service and provider that is right for them?

4. Financial and economic costs/benefits of dispute resolution systems

We are keen to get more evidence around the possible savings of dispute resolution processes. We seek evidence to help us understand the economic differences between dispute resolution processes.

22. What are the usual charges for parties seeking private dispute resolution approaches? How does this differ by case types?

23. Do you have evidence on the type of fee exemptions that different dispute resolution professionals apply?

24. Do you have evidence on the impact of the level of fees charged for the resolution process?

25. Do you have any data on evaluation of the cost-effectiveness or otherwise of dispute resolution processes demonstrating savings for parties versus litigation?

5. Technology infrastructure

We are interested to learn what evidence informs the potential for technology to play a larger role in accessing dispute resolution.

Although we are aware of many domestic and international platforms, we must continue learning from new and novel approaches to digital technology that can remove barriers to uptake, improve the user experience, reduce bureaucracy and costs, and ultimately improve outcomes for parties.

26. Do you have evidence of how and to what extent technology has played an effective role in dispute resolution processes for citizens or businesses?

27. Do you have evidence on the relative effectiveness of different technologies to facilitate dispute resolution? What works well for different types of disputes?

28. Do you have evidence of how technology has caused barriers in resolving disputes?

29. Do you have evidence of how an online dispute resolution platform has been developed to continue to keep pace with technological advancement?

30. Do you have evidence of how automated dispute resolution interventions such as artificial intelligence-led have been successfully implemented? How have these been reviewed and evaluated?

6. Public Sector Equality Duty

We are required by the Public Sector Equality Duty to consider the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people in shaping policy, delivering services and in relation to our own employees.

31. Do you have any evidence on how protected characteristics and socio-demographic differences impact upon interactions with dispute resolution processes?

32. Do you have any evidence on issues associated with population-level differences, experiences and inequalities that should be taken into consideration?

7. Additional evidence

Please share additional evidence in relation to dispute resolution, not covered by the questions above, that you would like to be considered as part of this Call for Evidence.

Thank you for participating in this call for evidence exercise.

About you

Please use this section to tell us about yourself. including your experience of dispute resolution.

Full name	
Job title or capacity in which you are responding to this call for evidence exercise	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	

Experience of dispute resolution, if any:

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond. **If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

Please give us further information on your specialist area:

Please tick to confirm if you are happy to be contacted for follow-up discussion:

☐ **YES** ☐ **NO**

We will provide an automatic generated response to acknowledge receipt of your response to the Call for Evidence.

Contact details/How to respond

Please submit your response by 31 October 2021

Email: **Disputeresolution.enquiries.evidence@justice.gov.uk**

Complaints or comments

If you have any complaints or comments about the Call for Evidence process you should contact the Dispute Resolution Team at the address below:

Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: **Disputeresolution.enquiries.evidence@justice.gov.uk**

Further paper copies can be downloaded from:

https://consult.justice.gov.uk/digital-communications/dispute-resolution-england-wales-call-for-evidence

Publication of response

We may publish a summary of responses and may also meet with interested participants for further engagement to feed into the development of this work.

Confidentiality and Data Protection

Information provided in response to this Call for Evidence, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the Department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be ‘forgotten’ under data protection legislation, if Department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example ‘service provider’, ‘member of public’). Alternatively, you may choose not to respond.