



Ministry
of Justice

Factors influencing users' decisions to bring cases to the civil and family courts

A qualitative study of claimants and applicants

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Executive Summary

Background to the research

The Ministry of Justice (MoJ) commissioned Ipsos UK to conduct a qualitative research study to explore the factors influencing decisions to bring cases to the civil and family courts, including the role of court fees. Ipsos were commissioned to undertake a similar study with users of the civil and family courts in 2013–14. Whilst the aim of this new study was not to directly compare and contrast findings with the 2013 research, it sought to update MoJ's understanding of decision making in the current context given changes in court fee structure, wider policy context and financial help available since 2013.

Research objectives

The main objective of this research was to provide an up to date understanding of the role that costs, in particular court fees, and other factors play in influencing civil and family court users' decisions to go to court. This included exploring what alternative resolution options were considered and/or tried before going to court, as well as participants' experience of court processes and the information sources that were used to guide their decision making. A behaviour-research approach was adopted, using the 'COM-B model' of behaviour change (Michie et al, 2011).¹ This 'behaviour system' utilises a rational system approach in understanding the types of behaviour intervention by depicting how motivation, capability and opportunity interact to influence behaviour. The research objectives were to explore the following:

- **Motivation:** How emotional and financial factors influenced decisions
- **Capability:** How awareness of and ability to manage the court process influenced decisions
- **Opportunity:** How financial considerations influenced decisions
- Views on a potential increase to court fees
- Perceptions and experience of the court process

¹ The original paper can be accessed here: <http://www.implementationscience.com/content/6/1/42>

Methodology

A qualitative approach was adopted to explore court users' decision-making when taking a case to court. Recruitment was conducted through Ipsos UK's online panel, which consists of c. 300,000 households in the UK. The study included individuals and Small and Medium-sized Enterprises (SMEs) who had brought a case to court in England and Wales and that had concluded since 2019.² Interviews were conducted with 36 court users: 20 family court users and 16 civil court users. A mix of case types were included for both civil and private family cases³ as well as a mix of representation status (including those with paid-for legal representation upfront or through No Win No Fee agreements, legal aid-funded representation or who represented themselves) and age/gender of participant.

It is important to note that this research was a qualitative project that aimed to explore the decision-making of court users and therefore only reflects the views of the participants interviewed who had taken a case to court. It does not reflect the views of those who may have successfully resolved their case without court action, for example through prior mediation, or otherwise decided not to pursue legal action. Given the overall sample size for this piece of research (n=36 court users), the findings presented on experiences of alternatives to court are reflective of the views of a small group of participants who took their case to court and are not generalisable to the wider population. A further limitation is the small sample of SMEs who participated in the research (n=3). Whilst this report has commented on findings among this small group where an interesting insight has been identified, it should be considered in the context of the limited sample size as noted above.

Key Findings

This research has highlighted important differences in how and why different court users decide to take cases to the civil and family court and approach the court process. Whilst a direct comparison analysis with the 2013 research was not conducted, the key findings are

² Larger businesses and regular users of the courts (e.g. solicitors) were excluded from this study because of the different considerations likely to apply to their decision-making. A separate piece of research was carried out to explore decision-making within these audiences in 2013/14. This research report can be accessed here: [Trends in volume of claims \(justice.gov.uk\)](https://www.justice.gov.uk/consultations/2015/trends-in-volume-of-claims)

³ Cases included Applying for an order regarding a child or children, an order dealing with finances on divorce or dissolution of civil partnership, claiming a specific amount of money in a personal capacity, on behalf of an SME, Claiming compensation or damages in a personal capacity or on behalf of an SME, Applying to have a rental tenant, or a trespasser evicted. See Annex B 'Glossary' for more details

broadly consistent with what was found in the 2013 study in terms of the role that court fees played in decision making and some of the challenges that litigants can face when bringing cases to court.

Factors influencing decisions to go to court

- Across both family and civil cases, emotional motivations played an important role in influencing decisions to take a case to court. The term 'emotional' is used as a broad term in this context to convey motivations that were informed by how participants felt about their situation and their emotional responses to any needs and wants associated with their case. These emotional motivations were typically characterised by the desire for justice, the desire for recognition about the validity of the case, desire to share their personal experience, and the desire for emotional closure on a complex issue or traumatic experience.
- Civil cases were typically more likely to be financially motivated, particularly among the small number of SMEs interviewed and those making civil money or possessions claims. Financially motivated participants took a more analytical approach to decision-making and financial motivations were generally an important part of the wider desire for redress. However financial motivations were often interwoven with emotional motivations, particularly where participants expressed feeling entitled to financial compensation for the mistreatment they had experienced.
- Confidence and belief in capability to navigate court was also an important factor for participants' decision-making, along with belief in the validity of the case. Across both civil and family cases, representation status had an impact on participants' confidence in their capability and their actual capability to navigate the court process.
- Many participants involved in this study, across both civil and family cases, reported that they had tried to resolve their cases outside of court, with court typically seen as the last resort among these court users. Participants often reported that alternatives to resolving their issue outside of court, such as informal negotiations, telephone calls and sending letters were time consuming and could be expensive, both in terms of direct costs and indirect costs (e.g. cost of adding additional time to the overall timeline of resolving their case). Many felt that they

would have been better off starting court proceedings earlier, as their attempts at resolving the issue via alternatives to court were unsuccessful and, in their view, slowed down the overall process. The minority who explored mediation, mostly in family cases, had mixed views on the impact of the experience, with some reporting a lack of engagement from the other party and perceiving these unsuccessful attempts at mediation as adding additional cost and time to the court process in their case.

- In civil cases participants' knowledge and expectations of how to resolve issues were mixed. Many had done research online, or sought information and guidance from friends, family, and organisations like Citizens Advice. However, participants' ability to be informed about the court process, across both civil and family cases, depended upon how much time the participants had available and how easily they were able to understand and navigate the information.

Perceptions of the cost of going to court

- Most participants across both civil and family cases had to consider how they were going to pay for their court case including legal costs, court fees and other expenses. Some reflected that the biggest cost incurred related to their time. This sentiment was compounded by the additional disruptions caused by Covid-19, which led to many participants reporting significant delays to the court process.
- The affordability of legal representation was a key issue for participants in both civil and family cases. As such, seeking pro bono advice, accessing legal aid, and working with NWNF solicitors played a key role in enabling participants to access legal advice and representation for those who were otherwise unable to pay for it themselves. For some, this led them to litigate in person as they did not have the resources to pay for legal representation.
- Court fees played a small role in decision-making for most participants involved in this research, although there was some variation depending on the type of case and court user. The overall costs, including legal fees and other costs, were for most far more important in terms of decision-making. However, many participants reflected that the issue they were seeking to resolve was so important that they would have found a means by which to pay the overall cost regardless.

- Awareness and views on court fees was influenced by representation status, with many of those with legal representation reporting that they were unaware of the court fee amount. However, litigants in person were more aware of the cost of court fees and reported that they had played a larger role in their decision-making.
- For many, the court process was considerably more expensive than they had anticipated. Often those with legal representation reported underestimating the total cost of going to court at the start of their case. Those who had reported concerns about the cost of going to court often found the costs more difficult to manage.

Views on a potential increase to court fees

- As emotional motivations outweighed financial constraints for most participants involved in this research, they reported that a change in court fees would be unlikely to deter them and that they would find a way to pay, particularly for family cases. For some this had included borrowing money, paying via credit card, or taking out a loan.
- However, in civil cases, some participants reported that an increase in court fees may have caused them to reconsider whether it was worthwhile pursuing legal action, although this was dependent on several factors. This included the extent of the fee increase, participants' own financial position, the primary motivations for starting court proceedings (with those citing financial motivations often reporting that an increase in court fees would have a greater impact on their decision-making) and the size of the claim itself.
- Participants expressed that any increase to court fees would only be justified if the additional money were used to improve the court service. This related to both improving the efficiency of cases and the quality of information and service that they were provided. Across both civil and family cases participants also expressed concerns about the fairness of increasing fees. Participants considered that increasing financial barriers to court would prevent people from accessing justice.

Experience of the court process

- Participants had mixed experiences of going to court. Across both civil and family cases, participants reported varying levels of knowledge about the court process. Participants who received legal advice or legal representation tended to have a better awareness about the court process and their perceived capability to manage it by virtue of being represented. Those who litigated in person, particularly those who did so because they could not afford to pay for legal representation, typically reported higher levels of uncertainty about the process.
- Regardless of representation status, many reported underestimating how emotionally demanding the court case would be. For some, this was due to the reality of the experience differing to their expectations. Participants reflected that more guidance on logistics of what to expect in court hearings (e.g., layout of the court room, what they should wear, and realistic timings) would have helped them manage their expectations and may have led them to making more well-informed decisions during their case.

1. Background and methodology

1.1 Policy and research context

Policy context

This research focused on cases that had been brought by individuals or on behalf of a small number of Small to Medium-sized Enterprises (SMEs)⁴ to the county and family courts. Research conducted during 2014–15 showed that most adults in England and Wales with a legal problem did not go to court to resolve the problem, with only 5% of respondents reporting there had been a court or tribunal claim made by either side. Those bringing a case to court therefore represent the minority of those with a problem that may have a legal solution.⁵

Civil cases are mainly heard in county courts, with more complex cases or cases involving claims for large sums of money being dealt with in the High Court. Civil cases can be heard in open courts (where the public can attend) or heard privately by the judge. They tend to involve claims for money or property. Civil proceedings included in this research included money claims (claims for a specified amount of money), damages (such as personal injury claims, usually for an unspecified amount of money) and possession orders,⁶ which can be made by individuals or organisations. In the main, civil cases are dealt with out of court, often through mediation.

There are two types of family cases: private and public. Public family cases involve a local authority intervention to protect a child and are initiated by a local authority. Private family cases involve disputes between individuals and are initiated by a private individual.⁷ This research focused on private family law cases. As with civil cases, the family justice system

⁴ Larger businesses and regular users of the courts (e.g. solicitors) were excluded from this study because of the different considerations likely to apply to their decision-making. A separate piece of research was carried out to explore decision-making within these audiences in 2013/14. This research report can be accessed here: [Trends in volume of claims \(justice.gov.uk\)](https://www.justice.gov.uk/research-and-statistics/2013-14/trends-in-volume-of-claims)

⁵ The findings from this survey can be found here: [Findings from the Legal Problem and Resolution Survey, 2014–15 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/304842/Findings-from-the-Legal-Problem-and-Resolution-Survey-2014-15.pdf).

⁶ Annex B 'Glossary' includes a full description of civil and family case types covered in this research.

⁷ More information on public and private family law can be found here: [Guide to Family Court Statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304842/Guide-to-Family-Court-Statistics-GOV.UK.pdf)

encourages cases between private individuals to be resolved through mediation. When family cases go to court these are dealt with by magistrates and judges who have received specific training to deal with family law cases. Private family proceedings include divorce, the dissolution of civil partnerships, making arrangements for children and settling the financial arrangements for separating couples.

The court fee system is based on the need to ensure His Majesty's Courts and Tribunals Service (HMCTS) is funded and reduce the burden on the taxpayer, while protecting people's access to justice. Therefore, users who bring cases to the civil and family courts, as well as some tribunals, are usually charged a court fee. Court fees contribute towards the overall cost of running the court service. A Help with Fees (HwF) remission scheme⁸ is in place for those on lower incomes, in receipt of certain benefits or who otherwise meet certain eligibility criteria, to ensure they can access services. Those who are entitled to receive legal aid for their case are also exempt from paying court fees.

Fees of varying amounts are charged at different points during a case, depending on the case type and the stage the case has reached. Users may also pay other costs, such as solicitors' fees if they choose to have legal representation, and travel costs or costs associated with taking time off work if they must attend court. Some cases also include fees for expert witnesses.

MoJ wanted to understand the role of court fees in court users' decision-making process in order to build on their understanding of how potential changes to the fees structure might impact these decisions. Previous research has been conducted into the role of court fees in users' decisions to bring cases to the civil and family courts. Ipsos UK were commissioned to undertake a similar study with users of the civil and family courts in 2013–14.⁹ This research found that for individuals, emotional motivations to go to court to resolve a case often outweighed financial ones and that a case was only pursued through the courts when other alternatives had been exhausted.

⁸ More information on Help with Fees can be found here: [Get help paying court and tribunal fees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/get-help-paying-court-and-tribunal-fees)

⁹ This research report can be accessed here: [The role of court fees in affecting users' decisions to bring cases to the civil and family courts \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

However there have been a number of changes to the court system since the previous research was undertaken, such as the HMCTS Reform Programme¹⁰ (to make court processes quicker and simpler for court users by, for example, expanding online services), the court fee structure (including the introduction of enhanced fees in 2015 and aligning fees to cost recovery levels), wider policy context and help available (such as the changes to legal aid at the end of 2014), and fee increases in 2021 and the beginning of 2022. In this changed landscape, there is a requirement to update the research undertaken in 2013–14 to understand decision making in the current context.

Research context

A full evidence review was not within the scope of this research requirement and the findings of this study were not compared and contrasted with existing evidence during analysis. However, there are a number of additional reports in the public domain that can provide additional context and insight into some of the themes discussed in this report.

In addition to the 2013–2014 research conducted by Ipsos MORI outlined above, a further piece of research was conducted by MoJ with professional users of the courts at this time, including solicitor firms and other organisations issuing civil money claims to recover debt.¹¹ This research similarly sought to understand the role of court fees in these regular users' decision making. It found that for the large organisations interviewed, the main determinant in taking a case to court was whether a claim was likely to be decided in favour of the claimant and whether a judgement could be enforced. In such cases the fee would be recovered from the defendant. Nonetheless, these organisations did report that a rise in fees could encourage increasingly sophisticated methods to profile customers, ensuring that only the cases with the highest likelihood of success would be pursued.

There is also a wider body of evidence into the profiles, views, and behaviours of individuals with potential legal problems, including those who use the courts and who use other out of court means to resolve their issues.

¹⁰ More information on HMCTS Reform can be found here: [The HMCTS reform programme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/hmcts-reform-programme)

¹¹ The findings from this survey can be found here: [Trends in volume of claims \(justice.gov.uk\)](https://www.justice.gov.uk/consultations/2019/trends-in-volume-of-claims)

For example, the **Legal Problem Resolution Survey** (LPRS, 2014–2015)¹² measured adults experiences of legal problems (in the 18 months prior) and the strategies used to resolve them (such as the use of courts or tribunals, mediation, self-help or taking no action). The study found that the problems that resulted in formal legal action were a very small part of a much larger pool of problems that people experience and, for the most part, deal with alone or without legal or professional help. For the minority (14%) that did consider taking their issue to court but did not, court fees being too high was cited by 10% of these respondents. A new wave of this study will be carried out in 2023 and will investigate the issue of court fees and provide additional insight into the decisions of those outside of the scope of this study; who have a legal problem but did not bring their case to court.

The **Civil Court User Survey**, also conducted in 2014–2015,¹³ found that the majority of claimants reported that they would ideally have avoided court action and had sought advice on whether or not to make a claim before they did so. Another study conducted in 2015, **Varying paths to justice**,¹⁴ was a large scale qualitative study with a similar sample who had experienced a potential legal problem. This research found that procedural knowledge and capability were important in shaping how respondents handled legal problems and that litigants in person in family cases in particular often found the process stressful. This study did not explore court fees specifically but found that access to financial resources was an important enabler in problem types where using a solicitor was a likely or preferred pathway. A further predominantly qualitative study into the experiences of **Litigants in person in private family law cases** in 2014¹⁵ found that many of the litigants in person in this sample were in person because they were ineligible or unable to obtain legal aid and could not afford representation. This research found that litigants in person had difficulties with court procedures and legal issues involved in their case.

¹² The findings from this survey can be found here: [Findings from the Legal Problem and Resolution Survey, 2014–15 \(publishing.service.gov.uk\)](#) p. 50-51, 104.

¹³ The findings from this survey can be found here: [Civil Court User Survey \(publishing.service.gov.uk\)](#), p.1. This survey provides insight into the profile of civil claimants and steps taken to resolve their legal issue.

¹⁴ The findings from this qualitative project can be found here: [The Varying Paths to Justice \(publishing.service.gov.uk\)](#), p.1-3, 49, 72

¹⁵ The findings from this study can be found here: [\[Litigants in person in private family law cases\] \(publishing.service.gov.uk\)](#), p. 11.

1.2 Research objectives

The aim of the research was to provide an up-to-date understanding of the factors that affect the decision to take a case to court, what alternative resolution options were considered and/or tried before going to court, and the extent to which costs (particularly the court fees) influence the decision to progress a case through the courts. It also covered court users' experience of court processes and the information sources that were used to guide their decision making.

To meet this aim in deepening understanding of the decision-making processes of individuals and SMEs a behaviour-research approach was adopted, using the 'COM-B model' of behaviour change (Michie et al, 2011).¹⁶ This 'behaviour system' utilises a rational system approach in understanding the types of behaviour intervention by depicting how motivation, capability and opportunity interact to influence behaviour.

- **Motivation** is defined as all those brain processes that energise and direct behaviour, not just goals and conscious decision-making. It includes habitual processes, emotional responding, as well as analytical decision-making.
- **Capability** is defined as the individual's psychological and physical capacity to engage in the activity concerned. It includes having the necessary knowledge and skills.
- **Opportunity** is defined as all the factors that lie outside the individual that make the behaviour possible or prompt it.

Structuring the research and the qualitative topic guides around these dimensions enabled a greater depth of understanding of individuals' behaviours. Table 1.1 outlines the research objectives for this study, which this report is structured around, using the COM-B model as a framework.

¹⁶ The original paper can be accessed here: <http://www.implementationscience.com/content/6/1/42>

Table 1.1 Research objectives

Broad research objective	Specific objectives
Motivation: How emotional and financial factors influenced decisions	<ul style="list-style-type: none"> • Key motivations for going to court • Beliefs about the likelihood of achieving their goals • Awareness and experiences of alternatives to court
Capability: How awareness of and ability to manage the court process influenced decisions	<ul style="list-style-type: none"> • Differences in awareness of, and capabilities to manage, the court process by representation status • Represented parties (paid privately, via legal aid or No Win No Fee (NWNF)) • Litigants in person
Opportunity: How financial considerations influenced	<ul style="list-style-type: none"> • Perceptions of affordability of going to court • Financial considerations of different user groups • Additional costs incurred
Views on potential increase to court fees	<ul style="list-style-type: none"> • Attitudes to potential increased court fees • Perceptions of fairness and affordability of increased court fees
Perceptions and experience of the court process	<ul style="list-style-type: none"> • Overall experience of bringing a case to court

1.3 Methodology

Summary of fieldwork design

A qualitative approach was adopted to explore in depth the nature of participants' decision-making in taking a case to court. A total of 36 qualitative in-depth interviews were conducted with a range of civil claimants and family applicants.

Recruitment and sampling

This research included people who reported that they had brought a family or civil case to court in England and Wales that had concluded between 2019 and 2022. This was to ensure that cases had occurred recently enough for participants to recall their experiences, that participants had initiated the decision to go to court themselves, and to capture the experience of those who may have been impacted by the court fee increases which occurred in 2021 and the beginning of this year (2022).

Recruitment was conducted through Ipsos UK's online panel, which consists of c. 300,000 households in the UK who have volunteered to take part in research. A selection of questions were asked to identify participants who had been applicants in family cases or claimants in civil cases since 2019.¹⁷ This generated a sample of 760 individuals, from which 283 consented to being contacted about taking part in this research.

Qualitative sampling aims to reflect diversity rather than aspiring to a representative sample. The research was interested in exploring the factors which influence users' decisions to bring cases to civil and family courts, the role that court fees play in people's decision to take cases to court, and to gain an insight into their experiences of the court process. On this basis the primary sample criteria was case type in order to capture the views and experiences of those initiating civil proceeding and family proceedings. Within case type, a mix of participants with different representation statuses and methods of paying for legal help were also included as these were considered factors that may influence decision making and experiences (for example, the 2013 research found that court fees were particularly important in the decision-making process of litigants in person but less so for those who were represented).

For civil claimants, a mix of the following case types were included:

- Civil money claims (previously known as Specified money)
- Possessions claims (mortgage and rental possessions)
- Compensations/damages claim (which can include personal injury claims and previously known as Unspecified money)

This research covered individual claimants seeking financial redress/compensation for their own benefit and a small number of SMEs seeking financial redress/compensation in a business capacity. Large businesses and regular users of the courts (e.g. solicitors) were excluded because of the different considerations likely to apply to their decision-making.

¹⁷ See Annex D 'Online Recruitment Questionnaire' for details of the questions asked

For family claimants a mix of the following case types were included:

- Those making applications for child arrangement orders (whether in respect of 'live with' or 'spend time with' orders)
- Those making applications for financial orders in divorce and separation cases

The study covered applications made by both male and female applicants across a range of age groups who were living across different parts of England and Wales.

Across both civil and family cases, different levels of legal representation were also included to reflect the fact that legal representation status was likely to shape participants' experiences in bringing a case to court and their views of paying court fees. The sample criteria included those who had no legal representation (litigants in person); those who received legal representation they did not pay for themselves (e.g., through legal aid) or did not pay upfront, through a NWNF arrangement; and those who had funded their own legal representation.

Table 1.2 summarises the profile of the family and civil court user sample interviewed in this research.

Table 1.2: Overview of family and civil court user participant sample

	Family (number of interviews)	Civil (number of interviews)
Gender		
Female	10	6
Male	10	10
Age		
18–34	3	1
35–54	9	6
55–64	6	6
65+	2	3
Received legal help from a solicitor		
Yes	13	11
No	7	5
How the legal help was paid for		
Paid privately	10	2

	Family (number of interviews)	Civil (number of interviews)
Paid in full through legal aid	1	3
Paid partly through legal aid, partly through other means	3	0
On a “no win no fee” basis	1	3
Not paid – pro bono (free of charge) or other free advice	1	0
Case type		
Applying for an order regarding a child or children	11	n/a
Applying for an order dealing with finances on divorce or dissolution of civil partnership	9	n/a
Claiming a specific amount of money in a personal capacity, that is, for yourself	n/a	5
Claiming a specific amount of money on behalf of a business or organisation	n/a	3
Claiming compensation or damages in a personal capacity, that is, for yourself	n/a	6
Claiming compensation or damages on behalf of a business or organisation	n/a	0
Applying to have a rental tenant, or a trespasser evicted	n/a	2
Claimant type		
Individual	20	13
SME	n/a	3
Total	20	16

While quota sampling was used to ensure the sample captured a diversity of experiences, the quotas were not intended to facilitate detailed sub-group analysis or report specific sub-group differences – this is because, given the scale of the study, the sub-group numbers do not allow for robust analysis. Furthermore, the findings cannot be considered quantifiable as they are not drawn from a statistically representative sample. As such, the findings should not be treated as generalisable to the wider population.

Fieldwork and analysis

The fieldwork took place between 4th April to 13th May 2022, with each interview lasting around an hour. Interview participants were offered a choice of a telephone or video interview (Zoom or MS Teams) to suit their requirements. Most participants opted for a telephone interview. All interviews were audio-recorded with users' permission.

The audio recordings collected through qualitative interviews were fully transcribed (or written up based on notes if any interviews were not recorded, i.e., if the participant refused). Data was analysed through the Framework approach. This analysis code frame was developed in line with the key research questions that the research sought to address which allowed for other relevant themes arising from the research to be considered.

Internal thematic analysis sessions were held throughout the data analysis phase of the project, to discuss and consolidate themes, identify and challenge findings; focussing on comparison across the different court settings in order to address the research questions. These analysis sessions provided an opportunity for the research team and MoJ to discuss the themes emerging from the data collected from the research. A final analysis session to discuss emerging themes was held to inform the development of the final written report.

Interpretation and representation of data

Limitations of the sample

Qualitative approaches are used to explore the nuances and diversity of views, and the factors which shape or underlie them. This was a small-scale qualitative research study. Logistical considerations, including the length of time available for the research project, informed the sample size and research design. Whilst this limited the number of interviews that could be conducted, the sampling approach sought to ensure key user groups of interest were included, including case type, representation type and core demographics.

By its nature, qualitative research is not designed to be statistically representative. As such, the findings generated by this research are not statistically representative of all claimants and applicants of the civil and family courts. Instead, this research is intended to provide insight into the perceptions, feelings and behaviours of participants who have used civil or family courts. Therefore, although this report includes some indications of how

typical views or experiences were across the sample or within subgroups interviewed for the research, this should be considered within the context of those interviewed. It does not give a measure of the prevalence of different views among the population of civil and family court users.

It is also important to note that this research aimed to explore court users' decision-making and therefore only presents the views of the participants interviewed who had taken a case to court. As such it does not provide insight into:

- The decision-making and experiences of those who successfully resolved their case without court action, or their experiences of alternatives to court
- The decision-making and experiences of those who did not pursue legal action because they may have been unable to afford to go to court, or their experiences of alternatives to court

A further limitation is the small sample of SMEs who participated in the research (n=3). Whilst this report has commented on findings among this small group where an interesting insight has been identified, it should be considered in the context of the limited sample size as noted above.

Self-reported views

This research is based on participants' self-reported views and behaviours and relies on participants describing their reasons for making decisions. It also explored the potential impact that changes to court fees could play on decision making in the future. Participants were asked how likely they would be to change their behaviour (in terms of bringing their case to court or not) if court fees were increased. Whilst these findings provide an indication of how court fees may influence future behaviour, the aim was to further assess the role court fees play in decisions rather than test behavioural responses to specific fee amounts. Therefore whilst this provides an indication of how court fees may influence the participants' future behaviour it was outside the scope of this qualitative research to robustly measure or quantify the factors which may influence behaviour change. Participants may be limited in the extent that they can meaningfully predict their future behaviour in different circumstances. This should be noted when interpreting the findings.

Reporting conventions

Throughout, this report refers to “participants” and provides evidence through verbatim quotes where these illustrate findings. To protect participant anonymity, quotations have been attributed to key characteristics. For each quote, details are provided about gender, case type, representation status and how representation was paid for.

Research materials

It was important for the topic guides to be flexible and responsive to the experiences of participants, and the different court processes they experienced. On this basis separate guides were developed for family and civil court users. When developing the guides, time was built in to allow for participants to raise their own issues and experiences. As such, the guides were developed to be participant-led.

1.4 Ethical considerations

Given the personal and potentially sensitive nature of discussions around participants' experiences of their court cases, especially in family cases, some of which included discussion of domestic abuse, there were a number of ethical considerations to factor into the study design. The project was submitted to a full internal ethics review by Ipsos UK's internal research ethics committee (REC) which provides an advisory and review function for all projects conducted. Ethical concerns were considered and mitigated where possible in the following ways:

- **Depth interviews** were conducted rather than focus groups, given the potential sensitivities that may exist and the focus on individual user decision making. Although a face-to-face approach would be preferable for sensitive research topics, the situation around Covid-19 at the time of fieldwork in particular meant this was not feasible. Participants could express a preference for telephone or online interviews.
- Comprehensive **information leaflets** were provided to participants to support their understanding of the project and ensure participants were providing informed consent. This made clear that taking part was voluntary and they had the right to withdraw from the research at any time should they wish to.
- **Support information leaflets** for participants were also developed, should any participants have felt re-traumatised by the discussion and wish to speak to a

professional following the interview. These leaflets provided the contact details of relevant resources and support organisations.

- A **disclosure procedure** was in place should any participants indicate that they, or someone they know, is at risk of serious harm, which was communicated to participants at the start of the interview.
- The fieldwork team working on this project were experienced qualitative researchers with **training in, and experience of, conducting research sensitive subjects**, often with vulnerable groups. Discussion guides were designed to be **flexible and responsive** to participants' experiences, to allow space for participants to raise their own issues and experiences.
- **Researcher wellbeing processes** were also in place to support the fieldwork team. For example, researchers had a touchpoint discussion with another researcher in the fieldwork team following interviews that may have involved discussing harmful or distressing topics.

1.5 Report structure

The main body of the report comprises the following chapters:

- **Chapter 2.** Motivation: How emotional and financial factors influenced decisions
- **Chapter 3.** Capability: How awareness of and ability to manage the court process influenced decisions
- **Chapter 4.** Opportunity: How financial considerations influenced decisions
- **Chapter 5.** Views on potential increases to court fees
- **Chapter 6:** Perceptions and experience of the court process
- **Chapter 7:** Conclusions

2. Motivation: How emotional and financial factors influenced decisions

This chapter explores how participants' motivations impacted on their decisions and expectations of going to court. Exploring the underlying motivations for starting court proceedings will help aid understanding of the extent to which fees and costs factored into users' decisions, and the extent different participant groups were influenced by costs, which is explored in more detail in section 5.1. This chapter also explores what alternatives, if any, participants had explored to help resolve their issue outside of court and considers the experiences of alternatives to court such as negotiation, verbal demands, writing letters and mediation.

This chapter considers emotional and financially based motivations in users' decision making. The term 'emotional' is used as a broad term in this context to convey motivations that were informed by how participants felt about their situation and their emotional responses to any needs and wants associated with their case. This term is used to reflect participations' motivation for their issue to recognised and for justice to be sought alongside emotional closure.

2.1 Key motivations for going to court

In both family and civil cases, participants reported that reflective motivations,¹⁸ such as making plans and evaluating things that have already happened, informed their decision to bring a case to court. Across most cases, these reflective motivations manifested in two ways: emotional and financially based motivations. In some cases, motivations were purely emotional, and in others they were purely financial. Many participants reported a combination of both emotional and financial motivations. However, in the **majority of**

¹⁸ Motivation refers to the internal processes which influence our decision-making and behaviours. Motivation is made up of multiple components, one of which is 'reflective motivation', such as making plans and evaluating things that have already happened. More information can be found here: https://social-change.co.uk/files/02.09.19_COM-B_and_changing_behaviour_.pdf

cases participants expressed emotional motivations outweighed financial motivations when deciding to bring their case to court.

Emotional motivations

In both family and civil cases, **emotional motivations were one of the key factors influencing participants decision to bring their case to court.** As illustrated in Table 2.1 there were some differences between the emotional motivations depending on case type. However, participants across both civil and family cases expressed a desire for formal recognition of the unjustness they had experienced, an opportunity to be heard, and for emotional closure on a difficult issue.

Table 2.1: Table of key emotional motivations by case type

Case type	Emotional motivations
Family case	<ul style="list-style-type: none"> • Concern over the welfare of a child or children in their family • Desire to reach a final agreement between two parties • Desire for emotional closure on a complex issue or traumatic experience • Desire for recognition about the validity of the case
Civil case	<ul style="list-style-type: none"> • Desire for justice • Desire for recognition about the validity of the case • Desire to share their personal experience • Desire for emotional closure on a complex issue or traumatic experience

In many family cases, particularly orders regarding a child/ren, the emotional motivations for bringing a case to court were inextricably linked to the specific family circumstances or issue they wanted to resolve. For example, in cases that involved child arrangement orders, related to **concerns over child welfare or contact with children**, emotional motivations were the most important factors influencing a decision to take a case to court. In these cases, seeking redress through the family court was about providing an opportunity to remedy the issues that they and their child/ren were experiencing. For most participants in these situations, these concerns outweighed any other concerns or barriers they faced when taking the case to court.

“I was so angry because I just felt like, ‘I cannot believe that I have to beg for something that I should have already,’ I am her mother, and I hadn’t done anything wrong, so I had to fight it” Female, Family case – order regarding a child, Represented (self-funded)

“I would have done it regardless of cost. It was the principle of what’s best for the child. I wouldn’t hesitate, no matter the cost.” Male, Family case – order regarding a child, Litigant in person

In civil cases, participants’ emotional motivations tended to arise from their strong **desire to share their personal experiences and receive validation and redress after experiencing a perceived injustice**. Participants reported anger and frustration about their experience of not being taken seriously by the other party in their case and saw the civil court as a means to receive formal recognition from a judge that they had been treated unfairly. Two participants representing SMEs felt it was important to defend their business reputation. In addition, there were cases whereby the claimant could not contact the other party, or that their attempts to do so were unsuccessful. Therefore, taking court action was seen as a means to progressing the situation.

Often participants had spent considerable time pursuing out of court resolution alternatives. These included out of court discussions between parties or taking to social media to illustrate their perceived injustice and provoke a reaction from the defendant. Often, when it was perceived that all avenues were explored, court action was deemed a logical and necessary next step. Engagement from the other party was often dependent upon court action being initiated.

Therefore it was often reported that bringing the case to civil court was the means to hold the other party accountable. Some reflected that although financial compensation was the punishment, it had not been their primary motivation for taking the case to court. This was primarily observed in compensation and damages cases, and some civil money claims.

“The greatest influence in taking court action was the principle. I was so disgusted at how the company had treated us, with utter disregard for our health or wellbeing. It needed to be formally acknowledged that what they had done was wrong [...] I wanted them to be held accountable and to ensure this wouldn't happen to others” Female, Civil case – Compensations/ damages claim, Litigant in person

In family cases, **recognition and validation of unjust treatment** was also a key motivator for participants applying for orders dealing with finances related to divorce proceedings. This was particularly notable in cases where the participant experienced unjust treatment from their ex-partner, for example, in cases where their partner had been unfaithful, abusive, or violent. Although the family court order related to finances, some reported that they were not motivated by seeking a specific amount of money, rather they saw the division of assets as a means by which to punish their ex-partner for the way they had been treated during the marriage.

“I'm happy I went through that. Just for the judge to say, 'it's not fair to put your ex-wife in this situation,' I'm even happy that I spent that amount of money, just so somebody could hear my story and say, 'you are right' and that 'your ex has not been fair to you'.” Female, Family case – order regarding finances on a divorce, Represented (Legal aid)

In both civil and family cases, participants reported that taking their case to court was a **means to obtain some form of emotional closure**, most notably for cases involving a complex issue or traumatic experience. This was often reported to be a strong motivation in family cases where all alternatives had been exhausted, or where there were no alternatives available. As such, many participants reflected on the immense sense of relief they felt once the court proceedings were over, and the issue had been resolved.

“The court process formally acknowledged that my daughter was officially mine. That the adoption process was over, and she could finally come home.” Male, Family case – order regarding a child, litigant in person

“What I really wanted out of it was a clean break, that was my number one goal, this didn't change throughout the process, if anything it got stronger. I was increasingly determined to fight it through to the end” Female, Family case – order regarding finances on a divorce, Represented (self-funded)

Those with a strong desire to obtain emotional closure reported finding delays to the court process particularly difficult to manage. In a small number of cases, this led to the decision to end court proceedings early.

Figure 1.1: Case study 1 – Emotionally motivated court case

Female, Family case – order regarding a child, Represented (self-funded)

The participant had separated from the father of their child and, following issues with access arrangements, applied for an order regarding child arrangements. This was a result of the father having taken their child's passport to prevent the participant from travelling with their daughter, following a disagreement with the participant.

The participant had tried to resolve the issue through negotiation and mediation, but the father did not engage. The participant reflected that she had no choice but to go to court after mediation was unsuccessful. She reported that her emotions had a significant impact on her decision to go to court, as she was angry and upset about the situation she was in.

“I didn't want to just give in to someone who was in the wrong. I knew what I wanted to achieve, and what I was asking for was quite straightforward, and it wasn't anything extra or what I didn't deserve. And I felt like I had no other choice.”

The participant reflected that the process was emotionally and financially draining. The father did not cooperate and made counter claims over the duration of the court process, which was time consuming.

“Very, very stressful. Actually, it was worse than I expected it to be. I would never want to go through this again [...] it was a constant fight. And every time you come to court; you don't know what to expect”

The participant reported being aware of the court process being costly; however, she felt that resolving the issue was too important not to pursue. As she opted to seek legal representation, the total costs were around £10k, with the biggest expenditure being legal fees. The participant reflected that the cost was difficult to bear, having to rely on savings and money loaned by her parents, but ultimately she felt it had been worth it to achieve her desired outcome.

“I knew that going through court is a long and expensive process, but I didn't really want to just keep on waiting and hoping for a miracle which may never happen.”

Financially based motivations

Financial redress was an important issue cited across a range of civil and family cases, where a financial order was being sought. Unsurprisingly, the **desire to obtain financial compensation was an important factor in civil cases, particularly those bringing a civil money claims or possessions claims**. As discussed above, although in civil cases financial motivations were often bound up with emotional reasons for taking cases to court, for some participants' the desire for financial compensation was the most important driver in their decision to go to court.

Among civil cases, **financially based motivations were particularly strong among the three SMEs** involved in the research, who reported that their decision-making was primarily informed by their analysis of the potential costs and benefits of starting court proceedings. However, although participants representing the three SMEs were explicit about their motivations being financial at the outset, there was some **acknowledgement that emotions did play a key role in their decision-making** as the process developed.

“I didn't want to hang around once I decided to take legal action because we're all struggling [financially] and I wanted to ensure I could pay everyone. I felt especially indignant because we had been putting ourselves at risk throughout the pandemic, why should we be treated so unfairly?” Female, SME, Civil case – civil money claim, Represented (self-funded)

Due to the complex and emotive nature of many of the family cases, particularly orders regarding a child, most participants with these types of cases **reported that financial gain played little to no part** in their decision to bring their case to court. Indeed, some users reflected that it was difficult to think about the factors which influenced their decision-making from a financial perspective as they could not put a price on the success of achieving their end-goal.

“When it comes to the safety of a child, you can't put a price on that, you do what you have to do.” Male, Family case – order regarding a child, Litigant in person

However, financial motivations did impact on users' decision-making in some family cases. This was typically cases in which the participant had applied for an order for finances related to divorce proceedings or dissolution of civil partnership which involved adultery or

domestic abuse. In these contexts, participants expressed feeling **entitled to some form of financial compensation** for the mistreatment they had experienced as well as obtaining a degree of financial security to comfortably establish a life apart from their former partner.

“When it came to down to it, I just felt like I deserved something. I had taken loans out for this man, had brought up our children and I wanted him to bear some sort of responsibility.” Female, Family case – order regarding finances on a divorce, Represented (Legal aid)

In both civil and family court cases it was not always possible for participants to accurately calculate the costs they would incur when bringing a case to court. As such, it was often **difficult for participants to analyse the financial risks** and make a ‘rational’ decision. To some extent, this was due to participants’ strong emotional motivations, but in some cases, participants found it difficult to understand the financial burden involved in taking a case to court (discussed further in chapter 4).

“My divorce proceedings went on for years; how could you ever expect that. I had no prior experience within this realm, only what I had seen on TV and that’s not that realistic. I just felt like I was chucking money into a bottomless pit, but what else could I do?” Male, Family case – order regarding finances on a divorce, Represented (self-funded)

Figure 1.2: Case study 2 – Financially motivated court case

Female, Civil case – possessions, Represented (self-funded)

The participant rented a property to an elderly man who had recently passed away. She found out that his daughter had been living with him and, although this was a breach of contract, she agreed that the daughter could become a tenant if she was able to pay the rent.

The daughter initially paid rent in full but then stopped paying. The participant attempted to contact the tenant on multiple occasions to establish if there was an issue.

After several months without rental payment the participant sought legal advice, and eventually decided to take legal action. By the time the court proceedings begun the participant had lost around £4k in unpaid rent and experienced damage to the property. The primary goal was to collect the unpaid rent and have the tenant evicted to prevent any additional damage to the property.

“The biggest concern was what the tenant was doing to the property. We needed to get it back to safeguard it so we accepted we were going to have to pay X many thousands to get it sorted [...] we knew we had to do it, there was no option. It had to be done because we were losing money on rent.”

In some cases, as the court journey progressed, emotional motivations compounded financial ones, and vice versa. For example, in some family cases, specifically those dealing with finances related to divorce proceedings or dissolution of civil partnership, some participants started out with financial motivations. However, as their case progressed, they expressed feeling a strong emotional motivation to ensure the outcome of the case gave them closure on a challenging period of their life, as discussed in the previous section.

“The feeling of closure was much more important to me, I needed to get my life back on track.” Female, Family case – order regarding finances on a divorce, Represented (self-funded)

2.2 Beliefs about the likelihood of achieve their goals

In addition to emotional and financial motivations, it was also important that participants strongly **believed in the validity of their case**. Even in instances where participants felt they ought to win, they emphasised the importance of feeling confident about their likelihood of achieving their end-goal. Beliefs about the likelihood of achieving their goals was, therefore, an important factor for participants when making the initial decision to bring their case to court.

However, for other participants, their belief in the validity of their case was not accompanied with the same degree of confidence. Some reported feeling sceptical about the civil and family court process. This scepticism often related to a general mistrust of the judicial system, apprehension about how the other party would engage in the court process, and concerns about the extent to which the other party would comply with the final ruling. Participants who reported feeling sceptical about whether going to court would help to resolve their issue were typically reluctant to pursue legal action in the first instance, often making attempts to resolve issues out of court. For these participants, court was seen as a last resort. Some reported that their **emotions were compounded by unsuccessful attempts to resolve matters using alternatives**. These participants tended to be more emotionally invested in the outcome of the court case having exhausted alternative options to resolve their issue outside of court.

In some family cases, taking their case to court was the only option available to participants to reach their end goal. Due to the importance of their court case, some participants reported feeling anxious or uncertain about the likelihood of achieving their goals, despite having strong convictions about the validity of their claim.

“No one knew which way it would go. As we ran a family business, dividing assets was so complicated, it was high stakes at both sides.” Female, Family case – Order dealing with finances on divorce, Litigant in person

Where participants' decisions were driven by financial motivations, there tended to be a far stronger conviction that they would achieve their goal. This was typical in the civil cases brought by SMEs, or possession-related cases, where participants carefully **weighed up the validity of the case, the costs they may incur bringing it to court, and the likelihood of recovering the money sought** alongside other risks before deciding to go to court. Taking the time to consider these risks meant that participants felt more confident about the likelihood of achieving their end-goal.

“We were fairly confident about the outcome. As long as we had our paperwork in order, we would eventually get possession. However, we were a bit naïve and didn't appreciate all of the steps.” Female, Civil case – possessions, Represented (self-funded)

Across both family and civil cases, those who had legal representation reported that the endorsement of a **solicitor tended to reaffirm their own beliefs about the validity of their case**. This also provided greater reassurance about their decision to take the case to court and increase their confidence about the likelihood of achieving their goal. This is discussed in more detail in chapter 3.

2.3 Awareness and experiences of alternatives to court

In general, prospective civil claimants and family applicants are expected to attempt to resolve matters without the need to start court proceedings, such as by considering alternative dispute resolution processes. This can include informal negotiations, telephone calls, sending letters, and, in some cases, entering a formal mediation process. In both civil and family cases, participants expressed a desire to resolve matters without going to court. Many reported **attempting, and exhausting, alternatives to court before initiating proceedings**. For some, the process of attempting these alternatives had taken months, and consisted of several stages.

“It took me about a year before I made the decision. I tried in all the possible ways to deal with the matter outside of the court, and I was hoping until the very last minute that I would be able to do this, but no. It was difficult.” Female, Family case – order regarding a child, Represented (self-funded)

Motivations to go to court were compounded by participants' **negative experiences of trying to resolve their issue using alternatives** to court. In both civil and family cases, several participants reported feeling frustrated by communication breakdowns between the two parties whilst attempting to resolve issues, and by refusals of the other party to comply with requests or compromise. For example, some civil claimants reported that they had made several attempts to achieve their goal and had been driven to using the courts as a last recourse because the other party had ignored letters, telephone calls and attempts at meetings and negotiation.

“There was a lot of communication between myself and the business prior, so I feel as though it was an easy decision to eventually enter court proceedings. I knew I wasn't getting anywhere and at this point was frustrated so it felt like the right decision.” Male, Civil case – civil money claim, Litigant in person

In some cases, putting in a court order was deemed necessary to achieve a response to their queries and the issue being dealt with out of court.

“When I sent the invoice for my work, that is when communication stopped. I would have understood if they had said they were having issues with money, but I heard nothing back, at that point I thought they'd moved, so I decided to put in an application in small claims court so then at least I could get some sort of reply. Putting in the court order enabled me to get the response I'd been hoping for and I could properly invoice them for the work I'd done” Female, Civil case – Specified money claims, Litigant in person

Despite considerable efforts to resolve issues, the complex and emotional nature of some participants' family issues made resolution difficult. Participants described **resolution attempts as being emotionally draining, often putting significant strain** on themselves and their wider family. Breakdowns in communication were commonplace, and participants reported a range of frustrations resulting from attempts to speak to the other party.

Awareness and experiences of mediation

Most participants who referred to having awareness or experience of mediation, which was a minority of participants overall, related to family cases. There were two references made to mediation in relation to civil cases. Both viewed it as helpful and for one case it led to the case being resolved through the small claims mediation process before needing to be heard at the small claims court.

In family cases, most participants were aware of the possibility of mediation, and some reported that they had attempted some form of mediation before taking their case to court. Participants expressed a range of opinions about their experience of mediation, and how useful they thought it was, although it is important to note that this research only included participants who went to court and does not therefore represent the experiences of those for whom mediation may have been more successful (and had thus enabled them to resolve their issue without going to court).

For most family cases a Mediation Information and Assessment Meeting (MIAM) is legally required before a financial claim within a divorce case reaches the family courts, or the

start of most cases involving children. A MIAM is a meeting with a specially qualified family mediator to consider whether the issue can be resolved without going to court. There are some MIAM exemptions where mediation is not appropriate.¹⁹ It is important to note that participants interviewed in this research did not specify whether they had attended a MIAM or full mediation and therefore the findings discussed in this section are based on participants' experiences of mediation more generally, some of which may have included attending a MIAM only.

In the small number of cases where participants were aware of mediation and both parties were willing and able to engage, there was some reported discrepancy between experience and expectations. Despite having an awareness of mediation there were instances mentioned by this minority of participants that suggested **a lack of understanding about the end goal** and what would be expected during the sessions. For example, one participant whose partner had arranged the session reported that they entered mediation unaware about the purpose. As such, they had assumed that it was a form of marriage counselling which may help reconcile the relationship. On reflection, the participant felt it would have been beneficial to receive clearer guidance about what the fundamental goals of mediation were.

“I thought mediation meant we would try and get back together again. I then realised that it was about how to divide assets. This was very difficult for me. I wish mediators would have more clarity along their job title so it's an understood part of the process – once we got into this process, it was difficult to go back, I had really wanted to try and fix this marriage.” Male, Family case – order regarding finances on a divorce, Represented (self-funded)

In some family cases, participants were unable to proceed with mediation, either because the other party refused to engage during the first session or simply refused to attend. **Some participants who had attended mediation expressed negative views about their experience.** For example, they reported that it was incredibly challenging to be in the same room as their partner, particularly when disagreements during the sessions led to

¹⁹ A list of MIAM exemptions for certain family cases can be found here: [PART 3 - NON-COURT DISPUTE RESOLUTION \(justice.gov.uk\)](https://www.justice.gov.uk/part-3-non-court-dispute-resolution)

intense arguments. Negative experiences often led the participant, or the other party, to withdraw from the process after the first session.

“I found it very uncomfortable, he was just dismissive of the whole thing [...] despite about a month’s notice of the date and time, and him agreeing he would attend, he didn’t turn up. He didn’t respond to any of their communications following that” Female, Family case – order regarding finances on a divorce, Represented (self-funded)

“We had to go to mediation. My ex was not replying to any solicitors’ letters or anything, he didn’t want the divorce so was trying to make it as difficult as possible. He didn’t turn up to mediation [...] and it made the process so much more longwinded” Female, Family case – Order dealing with finances on divorce, Represented (Self-funded)

Despite many reflecting that mediation was challenging and unsuccessful, a small number reported that it had **served as an important turning point in their decision** to proceed with their court order. This was typically due to the other parties’ unwillingness to engage with the sessions, or a refusal to acknowledge any of the issues the participant had experienced.

“There was no cooperation or discussion or negotiation from the other party. And I just felt like there is no way out of it [except going to court].” Female, Family case – order regarding a child, Represented (self-funded)

However, others did not see the need to engage in any form of mediation and did not feel it would be an appropriate way to resolve their case. For a small number of participants, some mediation processes felt like a tick box exercise which needed to happen to begin court proceedings. For example, one participant reported that upon reaching out to different mediators they felt that several mediators were eager to sign the C100²⁰ form,

²⁰ A C100 form enables individuals to apply for a court order to make arrangements for a child (e.g., a child arrangements, prohibited steps or specific issue order), or to resolve a dispute about their upbringing [taken from: <https://www.gov.uk/government/publications/form-c100-application-under-the-children-act-1989-for-a-child-arrangements-prohibited-steps-specific-issue-section-8-order-or-to-vary-or-discharge>]

which would enable the couple to go straight to court (which can only happen after a MIAM has taken place), rather than progress with mediation.

“I didn't fully understand how it [mediation] works, but I became aware very quickly just from speaking to different companies that provide mediation, that some were very keen to take X amount of money from you just to sign the form and get you in court.” Male, Family case – order regarding a child, Litigant in person

Barriers to mediation

Overall, there was a **general misunderstanding or lack of awareness about the purpose and role of mediation among participants**. Participants suggested that they/ the other party may have benefited from more comprehensive guidance about the purpose of mediation and more information about how it can be beneficial for both parties. Some also reflected that the other party may have been more willing to engage if they too had a better understanding about what mediation would entail and how it could help avoid going to court or reduce the negative impact of individuals going to court.

Most participants reflected that in their experience mediation was, or could be, costly. For some, the cost of mediation was perceived to be too high, and therefore it was not viewed as something which would be worth the investment. However, **cost was not a key barrier to mediation for those participants who were keen to pursue it**. Participants reported being quoted varying costs for mediation, and these costs depended on how long the sessions were and how many sessions they would need to have. Costs reported by participants ranged from £150 to £4,000.

Reflections on alternatives to court

Overall, participants who had experienced mediation reflected that their failed attempts to resolve issues using alternatives to court caused them to experience substantial emotional, and in some cases financial, strain. Participants reported that the attempts had only served to further delay the process of achieving their end goal, and in doing so had wasted time and/or money. These **delays led some to believe that they would have been better off starting court proceedings earlier**, although participants acknowledged that this was easier to recognise in hindsight. As noted above, it is important to note when reflecting on these findings that this research is based on the experiences of those who

ended up taking a case to court. As such, it does not reflect the views of those who may have had positive experiences of seeking alternatives to resolve their issues outside of court.

3. Capability: How awareness of and ability to manage the court process influenced decisions

This chapter explores how prior knowledge and awareness of the court system and participants' beliefs about their capability to manage and navigate the court process impacted upon their decision-making.

As the findings were typically consistent across both civil and family cases, they are presented together in this chapter. Participants' representation status informed their levels of awareness about the court process more than the type of case they brought to court. Participants who received legal advice or legal representation, paid for privately or accessed via legal aid or NWNF solicitors, tended to have low levels of awareness of these processes. However, since they had access to and placed reliance upon legal help, they were supported to navigate the court process efficiently. This is illustrated in Table 3.1. The findings in this chapter are therefore structured according to participants' legal representation status.

Table 3.1: Awareness of court processes and capability among participants by representation status

Representation status	Awareness of court processes	Confidence in their capability to manage the court process	Actual capability to manage to court process
Paid for representation	Low levels of awareness	Typically lacked confidence in their own capability	High capability (by proxy of solicitor)
Legal aid/ NWNF	Low levels of awareness	Typically lacked confidence in their own capability	High capability (by proxy of solicitor)
Litigant in person	Mixed levels of awareness (depending on experience)	Typically reported feeling confident in their capabilities	Mixed capability depending on level of awareness

3.1 Represented parties

Around half of participants across both civil and family cases received legal help²¹ from a solicitor. Legal help consisted of a mixture of legal advice and/ or legal representation²² by a solicitor. Across both civil and family cases, participants described their decision to seek legal help as being driven by the following factors:

- Concern that they lacked necessary knowledge about the court process.
- Concern that representing themselves would be too emotionally demanding.
- Desire for specialist advice on cases they perceived to be complex.
- Desire to save time, both in terms of their own personal time and the overall time taken to conclude court proceedings.
- Desire to have someone act as an intermediary between themselves and the other party.

Participants reflected that **seeking legal help played an important role in increasing their knowledge, awareness, and confidence in bringing their case to court.**

However, some felt they would approach legal help differently in future, for example:

- By taking more time to consider which solicitor to use, reviewing testimonials and researching solicitors who specialise in their case type.
- By carrying out their own research before accessing legal help to utilise the time spent with their solicitor more effectively (particularly before the free consultation).
- By keeping complete records of all communication to and from their solicitor.

Many of those who received legal help believed that seeking legal advice and legal representation was key to accessing specialist legal knowledge and support with managing the court process.

Represented parties' knowledge and awareness of court processes

Many participants did not have prior knowledge or experience of the court system. As such, **participants' access to legal help improved their knowledge and awareness of**

²¹ In this study 'legal help' was defined as having received legal advice or having a solicitor represent the individual in a case (at any stage).

²² In this study 'legal representation' was defined as having a solicitor conduct the case on behalf of the individual making the case

the court process by virtue of the information and guidance provided. The legal representation status of participants also influenced the information they gathered or sought prior to and during the court process, with those choosing to litigate in person tending to seek more information themselves in order to represent themselves effectively.

Therefore, in both civil and family cases, participants who had sought legal help, either legal advice or legal representation, were less likely to separately seek information on the court proceedings process because they expected their solicitor would provide them with the necessary advice, guidance, and information. These expectations continued throughout the court process, and participants were typically heavily reliant on their solicitor to explain each stage of the court process and provide insight into the next steps.

“Although I had dealt with solicitors throughout my whole career, I was completely blind to the process of going to court and how we moved on [...] I had total faith in my solicitor” Male, Family case – order regarding finances on a divorce,
Represented (self-funded)

Participants who used legal representation often reported **low levels of awareness of the court process and low confidence in their knowledge and skills to represent themselves**. As such, many relied on their solicitors to support them when bringing their case to court and having this professional advice also meant there was no requirement to increase their awareness as solicitors provided this knowledge for them.

Having legal representation was perceived to have shielded participants from the more complex legal and administrative aspects of bringing the case to court. This was a key benefit as it reduced the burden on them and increased their confidence in the legal and administrative aspects of their court case being handled correctly as it was being conducted by a legal professional.

Conversely, some participants reported that the reason they opted for legal representation was **due to their comprehensive knowledge and awareness of how complex the legal process can become**. For example, they understood the implications of small administrative errors and the potential delays or issues this could bring. As such, some opted to use a solicitor to ensure the process was as smooth as possible and save themselves time which would otherwise be spent working on their case.

In both civil and family cases, many participants reported having **limited awareness about the timeframe of their journey through the court system**. Some reported that they assumed the process would be quick, particularly those bringing family cases to court which involved child arrangement orders. In these cases, participants made assumptions about timings on the basis that they believed the case was straightforward.

“I’m surprised it took so long because there was literally 2 people that had to make a decision and there were no other people being affected by it [...] why it sat someone’s in-tray for those 18 months, 19 months, I just will never know.” Male, Family case – order regarding finances on a divorce, Represented (self-funded)

Although those who sought legal help appeared to be more informed about the court process by proxy of their solicitor, unrealistic expectations about timelines were sometimes driven by a more **general lack of awareness about the complexity of taking a case to court**. Many participants reported that their case took even longer than the solicitor had advised. While some acknowledged that the Covid-19 pandemic may have created additional delays, it was difficult for them to gauge the extent to which these delays were the result of the pandemic.

“There was no need for it to go on for so long. Obviously, we hit the pandemic, naturally that created new delays, but I had already been fighting it for years. I can’t understand why we would need so long between each hearing.” Female, Civil case – Possession claim, Litigant in person

“I thought I would just make a claim and they would quickly look into it, it’s quite straightforward, I’d get what I needed because it was clear [other party] was in the wrong and I was in the right. But they wanted to get one report from the social services then another report, another report, and it just dragged on and on.” Female, Family case – order regarding a child, Represented (self-funded)

Represented parties’ ability to manage the court process and beliefs about capability

Before entering court proceedings, many participants across both civil and family cases believed that managing the process would be straightforward. Represented individuals believed their solicitor would guide and support them throughout, which they felt would

make navigating the system simple. They reported that their **confidence had been increased by being represented** as they knew their solicitor would be there to assist them.

“I felt as though I needed a solicitor, I didn’t know what would be required of me throughout the process. I didn’t want to stand up in court do the talking, I’m glad that I chose to have a solicitor to represent me.” Female, Family case – Order dealing with finances on divorce, Represented (self-funded)

Participants bringing highly emotive cases to court, particularly family cases, reflected that they initially sought representation because they had **doubts about whether they would have the courage or emotional resilience** to bring the case to court on their own. While some believed that they possessed the knowledge and skills in principle, they reported feeling anxious about the case itself, and worried that emotions could undermine their capabilities.

3.2 Litigants in person

Across both civil and family cases **just under half of participants did not have any legal help**. There were four main reasons that participants opted to litigate in person:

- They could not afford legal representation and did not qualify for legal aid. These participants felt it was preferable to self-represent, rather than drop their case altogether²³
- They did not think legal representation was justifiable in the context of their case (most notably compensation and damages cases and civil money claims)
- They were unable to find a NWNF solicitor to take their case
- They chose not to engage legal representation because they were confident in their own ability, knowledge, and skills to litigate in person (typically claimants in civil cases making straightforward small money claims)

Participants in civil cases seeking relatively lesser amounts of money (typically less than £1000) were the least likely to seek legal representation. As such, individual claimants in

²³ It is important to note that this research did not include those who may have dropped a case due to being unable to access representation

civil cases making **civil money claims were the main exceptions to the general preference for representation**. These participants typically opted not to seek legal help as the cost was deemed high relative to the amount being claimed.

It should be noted that small claims courts, that are responsible for handling cases that involve claims for smaller amounts of money (which can be up to £10,000), are designed to be simple to enable people to represent themselves. This preference and ability to litigate in person may, therefore, be related to the value and type of claim being made and where it was processed. Small money claim cases were often viewed by participants as being straightforward, and the online money claim portal as providing an accessible route to submit a claim.

“I used the guidance that was on the website that you use to make the claims [...] it's a sort of step-by-step process, and it asks you questions, and you put in the answers.” Female, Civil case – Compensation/damages claim, Litigant in person

One of the SMEs interviewed also reflected that the value of their money claim was too low to justify seeking legal representation. However, the SMEs interviewed reported having a fair amount of knowledge and experience of how to deal with their issue by going to court and, as such, reported seeking some legal advice before proceeding or using solicitors to send letters to the other party. This was viewed as a more efficient and cost-effective way of accessing useful information and guidance without spending large sums of money on representation.

Knowledge and awareness of court processes among litigants in person

While litigating in person worked well for some participants, others reported that they were naïve about the court process and overestimated their capabilities. In both civil and family cases, **some litigants in person believed that managing the process would be straightforward**. Indeed, some assumed that the fact members of the public could represent themselves indicated that the process should not be too difficult to negotiate. As a result, some were initially confident in their abilities, even if they were unsure about exactly what the process would require.

Those who had prior experience of the court process, and specifically of litigating in person, often reported feeling more confident in their ability to navigate the system and

awareness of how the process worked. Despite feeling confident about their ability to litigate in person and the validity of their case, litigants in person across both civil and family cases were **more likely to report having experienced difficulties** attempting to navigate the justice system than represented parties. Some reflected that they were naive entering into court proceedings and reported that their degree of confidence was based on an underestimation of how difficult the hearing would be, or how big the risk was for them.

Across both civil and family cases, many litigants in person also reported **underestimating how emotionally demanding self-representation would be**. In civil cases, participants reflected feeling surprised about the emotional intensity of bringing a case to court and representing themselves at a hearing. In family cases, litigants in person tended to better anticipate the highly emotive nature of bringing their case to court.

“It’s a different world figuring out the information that is pertinent, relay to the judge that you’re in front of, and its hard separating emotion from that and presenting it in the right way...I can be quite articulate. But if I’m honest...when I went in and handed the application in and they got me in front of the judge that day, I felt like an alien on a different planet.” Male, Family case – order regarding a child, Litigant in person

For most participants this was due to a lack of awareness about what would be required during the process or about how complex their case was. As such, some expressed regret at their decision to represent themselves.

“I just thought if I can do it on my own then I will. Overall, I learnt a lot as I went along [...] but legal representation would’ve saved a lot of stress and anxiety” Female, Civil case – Civil money claim, Litigant in person

Participants who litigated in person were particularly likely to try and find out information about the court process than those with legal representation. Litigants in person involved in the research reported that there was a **lot of information available from a variety of sources** including free advice services such as Citizens Advice, internet sources such as the MoJ website, Martin Lewis’ Money Saving Expert, online communities and forums, and videos on YouTube. In civil cases, participants litigating in person often sought advice from friends, family members and colleagues.

“There’s a real online community out there for those who are adopting. I found it really helpful to lean on other people’s experiences to understand the process better.” Female, Family case – order regarding a child, Represented (self-funded)

“So, I did a bit of research while I was off work, you know like having a look on that Martin Lewis website to see if anyone had a similar situation, and quite a few people mentioned pursuing a civil claim for personal injury type compensation”
Male, Civil case – Compensations/ damages claim, Represented (NWNF)

Overall, participants reported that these sources were useful in helping them to decide whether to bring the case to court, informing them about how to start proceedings, providing guidance about court fees, and offering guidance about what to expect when litigating in person. However, despite a wealth of information being available, some reported that **information and guidance could be complicated and difficult to navigate**. For those with complex cases (e.g., those requiring the contribution of an expert witness) or cases which typically settled out of court, it was more difficult to determine which advice best applied to them.

4. Opportunity: How financial considerations influenced decisions

This chapter explores how opportunities around accessing legal help and wider financial considerations affected participants' decisions to bring their case to court. This includes awareness of costs and participants' ability to pay court fees and any other costs incurred as a result of going to court. Decision-making was primarily influenced by participants' ability to access and obtain legal representation, and therefore the role of financial considerations in participants' decision-making is discussed by representation type in this chapter. It is important to note that some participants, particularly those who had legal representation, found it difficult to distinguish between court fees and overall legal costs. Table 4.1 summarises the financial considerations of participants with different representation types that are discussed in this chapter.

Table 4.1: Summary of financial considerations by representation type

Representation status	Awareness of legal costs	Awareness of court fees	Extent court fees an important factor in decision-making
Paid for representation	High awareness	Low awareness	Less important as participants typically unaware of court fees
Litigant in person	High awareness	High awareness	More important – a primary expense, and more important in cases with financial motivations (e.g. some civil cases)
NWNF	Low awareness	Low awareness	Less important as participants typically unaware of court fees
Legal aid	Low awareness	Mostly low awareness	Less important as participants typically unaware of court fees, although were assumed not to be affordable

4.1 Awareness of costs and perceptions of affordability

When considering if and how they could bring their case to court, most participants across both civil and family cases had to consider how they were going to pay for the court case including legal costs, court fees and other expenses.

Overall awareness of the cost of legal help

The **affordability of legal help, both legal advice and legal representation, was a key issue** for participants in both civil and family cases. Even before researching the potential expense most participants assumed that legal help, and specifically legal representation, would be expensive. In these cases, participants' assumptions about the high cost of legal fees were typically based on the experiences of friends and family, and information they found online.

“I spoke to a friend who was a solicitor, who specialised in family law, she gave me a consultation on expectations of the process, like how long it would take. I knew that going through court is a long and expensive process” Male, Family case – order regarding a child, Litigant in person

Despite making attempts to estimate the overall legal costs (e.g. getting multiple quotes from solicitors) many participants reported being surprised by the total cost of going to court, particularly the costs associated with legal representation, and reported that the **total cost of their case was far higher than anticipated.**

Some participants reflected that had they known the total costs upfront they may have approached their court case in a different way, for example, considered litigating in person or trying to minimise the use of solicitors. However, there was no indication from the research that knowing the full cost upfront would have caused participants to fundamentally reconsider going to court. Participants who had received legal help, be that advice or representation, described it having had **been worth it, despite being more than they had budgeted for**, as the court process had enabled them to achieve their desired outcome.

Overall awareness of court fees

Across civil and family cases, awareness of court fees was mixed. Typically, participants who had **legal representation tended to have a lower awareness of court fees** as they often did not distinguish court fees from their overall legal costs. This included those who paid for representation, those who had legal aid, and those who used NWNF solicitors. Participants who had legal representation were typically unaware of the court fees because their solicitor had made the application, therefore the court fees were included within the overall solicitor fees. Litigants in person often decided to represent themselves due to the cost of representation and had therefore explored the costs of bringing a case to court. As such, litigants in person tended to have a **greater awareness of court fees** than those who were represented. For those who were aware of the court fees, most participants reported that **court fees were not a barrier to taking a case to court.**²⁴ This is discussed in more detail below.

4.2 Role of financial considerations in decision-making

As indicated in chapter 4.1, financial considerations, and the extent to which they influenced decision-making, **differed considerably depending on participants representation status.** The following section explores the key financial considerations of participants who self-funded their representation, litigated in person, engaged NWNF solicitors and accessed legal aid.

Financial considerations of represented parties (self-funded)

Participants across both civil and family cases reported that legal representation was the most expensive aspect of taking their case to court by a considerable amount. Participants self-funding their legal representation typically **used their personal savings**, with a small number **supplementing the costs with their current income or company finances** (for the SME participants). Participants' ability to access legal representation was closely related to their personal financial situation, namely personal savings, income, and their ability to borrow money (either formally or informally) or use credit to pay.

²⁴ It is important to note that this research did not include participants who may have been unable to pursue legal action because they could not afford to go to court

“It was just so harrowing that I was spending money and every time my solicitor phoned me, of course that was more money, emails, letters, all the rest of it. It was all piling up.” Female, Family case – Order dealing with finances on divorce, Represented (self-funded)

“If it weren't for my savings, for getting me started, it wouldn't have happened” Male, Family case – Order regarding a child, Represented (self-funded)

In some family cases, even those who reported struggling to pay (e.g., relying on borrowed money or credit) reported that **the expense of legal fees did not deter them** because their emotional motivations surpassed any financial barriers deterrent (as discussed in chapter 3). Many reported that they would have found an alternative means of finance because bringing the case to court was so important to them.

In some cases, again particularly family cases, participants reported that they became **financially and emotionally invested in the court process despite the legal fees costing more than they had expected and budgeted for**. Some reported that they were not prepared to withdraw as they had already spent a sizeable amount of money on the court process and were determined to reach a conclusion.

Those who had **paid for legal representation were typically unaware of the court fees. As such, court fees were not an important factor** for those who self-funded legal representation, both because they were unaware of the specific fee amount and because the court fees were relatively small in comparison to the cost of legal representation. Court fees therefore had little to no impact on represented parties' decision-making around going to court.

Financial considerations of litigants in person

For those litigating in person the main expenditure related to their court case were the court fees, legal advice and the cost of alternatives to court (e.g., mediation). As their decision not to use legal representation was often driven by cost, most participants who litigated in person tended to therefore have **explored the costs of bringing a case to court, including court fees**. This was consistent across both civil and family cases. This was primarily because court fees were their main outgoing for the court case. As such, litigants in person exhibited a **greater awareness of court fees compared to**

represented parties. For litigants in person, particularly those in civil cases involving a civil money claim, the court fees were used to inform decisions about whether to pursue legal action (i.e. to assess at what point the costs of going to court might outweigh the benefits). Court fees were therefore **typically the first and most significant financial consideration in decision-making, particularly in cases with financial motivations.** The cost of court fees was a particularly important factor for those who litigated in person because they were unable to afford representation, rather than those litigating in person because they felt they didn't need legal representation. However, they were not seen as a deterrent to pursuing legal action.²⁵

Across both civil and family cases, those litigating in person tended to pay costs using their savings, money borrowed from family members, or using a credit card. Compared to self-funded represented parties, **litigants in person tended to have a clearer idea of the overall cost of bringing a case to court,** particularly those who opted to litigate in person on the basis that it was more affordable than paying for legal representation.

Although their motivations were similar to those of represented parties, **the decision-making of litigants in person therefore tended to be more sensitive to financial considerations.** Litigants in person often reported making attempts to keep their overall costs down, for example, by utilising free legal advice (e.g., via friends or using free legal consultation).

Unfortunately, some were unaware that they may **need to spend more money on additional court orders or warrants** to ensure the debts or compensation were paid after the case had been concluded. For example, some participants were unaware that if the other party refused to cooperate, or did not have the assets to pay, they would need to pay for applying for additional orders or warrants to recoup the money they were owed. Some reflected that knowing this at the start of the process may have impacted on their decision-making, and a small number reported that they may not have pursued legal action at all as the overall cost, time and general stress of going to court outweighed any benefit.

²⁵ It is important to note that this research did not include participants who may have been deterred by the cost of court fees and decided not to bring a case

Financial considerations of represented parties (NWNF solicitors)

NWNF solicitors enabled access to representation for those with civil cases who were unable or unwilling to pay for it. Despite the fact participants would still have to pay the legal costs if they won their case, they **did not view this in the same way as an upfront payment**. As such, legal costs did not factor highly in the decision-making of those participants using NWNF solicitors.

For those using NWNF, decision-making was primarily influenced by their ability to find a NWNF solicitor who would represent them as many reflected that they would not have gone to court otherwise. Most participants opted to use NWNF solicitors because they felt their claim was too complex for them to litigate in person and/ or because they could not afford to pay for legal representation upfront.

However financial considerations overall were important to those who used NWNF, with their decision to pursue their case on a NWNF basis being closely related to their desire to minimise any personal financial risk of going to court. Although some reflected that they **could have paid, they did not want to risk losing any money themselves**.

“I would have been really frustrated if I'd had to pay for the costs upfront, and I might have ended up being worse off because I probably would have backed down if I didn't have the solicitor involved on a no win no fee basis.” Male, Civil case – Compensations/ damages claim, Represented (NWNF)

“Better than nothing, no risk and nothing needed upfront which was important to me at the time as I was in a bit of debt anyway” Male, Civil case – Compensations/ damages claim, Represented (NWNF)

Those using **NWNF solicitors tended to have a low awareness of court fees**. Like those who self-funded their representation, participants using NWNF did not make the application to court themselves and as such they were unaware of the court fees. As such, court fees had little to no impact on presented parties' decision-making around going to court.

Financial considerations of legal aid recipients

Financial considerations were very important overall to those who relied upon legal aid. Participants' ability to access legal aid was considered critical in providing access to legal representation which in turn enabled them to bring their case to court. Participants who received legal aid were explicit about how vital legal aid had been in helping them to access justice. Across both civil and family cases legal aid recipients emphasised that they **would not have been able to bring their case to court without legal aid** (Figure 4.1 provides a case study of a legal aid recipient).

Generally, participants receiving legal aid did not investigate the overall costs of going to court, including court fees and representation costs, as many simply assumed that they would not have been able to afford these costs. Some participants had looked into the cost of going to court when researching options for financial support, but others reported that they had assumed they would not be able to afford the fees and therefore hadn't looked into the fees themselves. As such, participants receiving legal aid reported **mixed awareness of court fees, with most being unaware**. Some reflected that they may have explored alternative ways to cover legal costs (e.g., taking out a loan) had they been unable to access legal aid, however this was primarily in cases with strong emotional motivations.

Figure 4.1: Case study 3 – Financial considerations of a legal aid recipient

Female, Family case – order regarding a child, Represented (Legal aid)

The relationship between the participant and the father of her child had broken down and the father attempted to kidnap the child. After this incident, the participant made a child arrangement order to gain full custody of their child.

During their relationship the participant had been a victim of domestic abuse and had previously been signposted to Woman's Aid for support with legal aid by the police.

The participant did not feel confident in her ability to litigate in person and reported that she would only ever have brought her case to court with legal representation. However, without legal aid she would not have been able self-fund legal representation. She reflected that she would have had to take out a loan in order to pay for legal representation despite acknowledging that this would have put her in a difficult financial position. However, the participant urgently needed to resolve custody issues.

“[Not having legal aid] would have had a massive impact, I really couldn't afford to pay it. I'd probably have had to rely on a loan but then it would depend on if I was accepted for it and then it's the worry of paying that all back. So I do think legal aid is a good thing for people in my financial situation, it does help a hell of a lot.”

“I just knew that I wanted to be given full custody, I didn't think about everything else, I just wanted to make sure that my [child] would be with me, she would be safe”

4.3 Additional costs incurred

Participants identified some costs incurred beyond legal and court fees. Some reflected that the **biggest cost incurred related to their time**. However, it was difficult for participants to put a specific value on the cost of their personal time as it tended to involve more general time spent managing the court process as opposed to specific time away from work. This was primarily reflected by litigants in person, but also by those with representation who reported spending time carrying out research and attending court hearings.

A small number of participants reflected that not pursuing legal action sooner caused them to incur additional costs. Some expressed **regret about attempting to resolve the issue using alternatives and felt that in hindsight this cost them more**. For example, the prolonged loss of earnings and damage to property caused by not being able to evict a tenant from a rental property sooner. This sentiment was compounded by the additional

disruptions caused by Covid-19, which led to many participants reporting significant delays to the court process.

Although the cost of travelling to court was reported as an additional expense by some, the move to remote court proceedings due to Covid-19 regulations meant that many did **not need to attend the session in person, saving them both time and money from not needing to travel to their hearing(s)**. Across both civil and family cases participants reflected that the move to remote hearings was largely positive as it saved time, money and enabled them to attend court in the comfort of their own home.

5. Views on potential increases to court fees

This chapter presents findings on participants' views on a potential increase to court fees, and explores how, if at all, increased fees might impact their decision-making. As outlined in chapter 4, the extent to which participants were influenced by the cost of court fees differed considerably depending on claimant type, motivation, representation status and case type. This section explores how these factors influenced views on any changes to court fees.

5.1 Attitudes to potential increased court fees

During the interviews participants were asked how a potential increase in court fees could affect their decisions to take their case to court. Family applicants were asked about their views of a rise in court fees from either £232 (the current fee for a child arrangements order) or £275 (the current fee for a contested financial remedy) to £500 (see Annex C for more information on current fee structures). Civil claimants were simply asked about a hypothetical increase (civil court fees vary depending on the value of the claim with no specific amount tested). As noted in chapter 1, whilst these findings provide an indication of how court fees may influence future behaviour, the aim was to further assess the role court fees play in decisions rather than test behavioural responses to specific fee amounts. It was therefore outside the scope of this small-scale qualitative research to robustly or quantifiably measure factors influencing behaviour change and participants may be limited in the extent that they can meaningfully predict their future behaviour in different circumstances. Additionally, a specific amount of fee increase was asked about for family participants whereas a hypothetical, unspecified increase was asked about for civil participants. The limitations of this approach should be noted when interpreting the findings.

How case type influenced perceptions of fees

As Figure 5.1 illustrates, participants in **family court cases tended to report that they were less influenced by costs and that they did not think an increase in fees would**

act as a deterrent or barrier to them going to court. As discussed in chapter 3, the emotional motivation outweighed the financial barriers of going to court for most family court participants.

In civil cases, some participants reported that increased court fees **would have caused them to reconsider** whether it was worthwhile pursuing legal action. Whether increased fees would act as a deterrent depended largely on participants' financial position, their primary motivations for starting court proceedings (which partly depended on the type of case they were bringing to court) and the size of the claim.

“It would make me stop and consider whether it was something I wanted to pursue.” Female, Civil case – Civil money claim, Litigant in person

How motivations influenced perceptions of fees

The perceptions of value and affordability, and in particular willingness to pay increased court fees, were closely tied to the overarching motivations claimants and applicants had in seeking redress through courts. As such, those participants who cited strong emotional motivations for going to court, particularly family court, reported that the hypothetical court fee increase would not have impacted on their decision to seek redress through courts. Participants reflected that **their determination to pursue justice would have superseded any financial implications** of increased court fees. As such, they reported that the hypothetical court fee increase was not a barrier to them.

Figure 5.1: Case study 4 – Participant decision-making less influenced by costs

Male, Family case – Order regarding a child, Litigant in person

The participant was in a same sex relationship and was having a child via surrogate. The law stipulates a surrogate has to be married, and that the surrogate and her partner would need to be named on the initial birth certificate. After the child was born the participant applied to the family court for parental order.

The participant opted to litigate in person as they felt it would have been an unnecessary expense to pay for legal representation when he viewed the process as straightforward. He followed advice and guidance online and queried any issues with the court who supported him to complete the forms correctly.

The participant said they were not influenced by court costs because their motivations were primarily emotional, and it was more of a necessity than a choice as he needed to apply for the parental order to be considered the child's legal father.

"It's ratification that [the child is] ours, you want the new birth certificates where you're named on it."

As such, court fees were not a barrier as going to family court as this was the only way to become the child's legal parent. The participant reported that he would have found a way to pay court fees in order to achieve outcome.

"They've almost got you over a barrel, but there is no other option because by law, you can't apply within 6 weeks, but you have to apply within 6 months. So, you have to apply for this parental order whatever, so if the court fee was £500 or £1,000, we have no choice unfortunately but to apply for it."

Those who reported **financially based motivations tended to report that a hypothetical increase in court fees would have a greater impact on their decision-making**. They reflected that higher court costs may deter them from deciding to start court proceedings, particularly if the cost outweighed the financial reward. However, it was difficult for participants who had brought civil cases to court to determine the extent to which an increase would impact their behaviour as specific detail about the size of a hypothetical court fee increase was not tested in this research.

How representation status influenced perceptions of fees

Those who had **not self-funded their legal representation** (i.e., used legal aid or NWNF) were initially influenced by costs in that costs had been a catalyst to seeking out affordable options for bringing their case to court. When the court case proceeded, however, financial concerns diminished due to the costs now being covered through legal aid or NWNF and, therefore, increased **court fees were less likely to influence their decision-making**.

For those who had litigated in person, the influence of costs was high and therefore they were more likely to report that the proposed **increased court fees would have made them consider their affordability when deciding whether to bring the case to a court**.

However, most reported that given the outcome of their case was positive, the hypothetical increase in fees would not have deterred them from seeking redress through courts (noting the outcome of participants' cases may have influenced their view on whether fees would have changed their behaviour).

In general, **those who had self-funded their legal representation were less influenced by court costs**. As such, across both civil and family cases, participants who self-funded their legal representation reported that they could (and would) pay an increased court fee as it was viewed as a marginal increase in the context of the overall cost of bringing their case to court.

“I think a couple of hundred quid here and there wouldn't have made much of a difference, I still think I'd have gone ahead with it.” Male, Family case – order regarding a child, Represented (Self-funded)

5.2 Perceptions of fairness and affordability of increased court fees

In many cases participants' perceptions of current court fees were inextricably linked with their views on the total cost of going to court. This made it difficult for some to comment on the affordability of increased court fees in isolation. When prompted²⁶ most participants reported that the **current fees were fair as they acknowledged that claimants and applications should contribute** towards the costs of hearings and ruling on civil and family cases.

However, across both civil and family cases, participants **expressed concerns about the fairness of increasing fees**, particularly those who had needed to borrow money to pay for their court case. Participants who had borrowed reported feeling fortunate to be able to borrow money and reflected that that many would not be in the same position. Participants expressed a view that increasing the financial barriers would only serve to prevent people from accessing justice and they were critical of this.

²⁶ Participants who could not recall the cost of court fees were prompted

In addition, participants reflected that given **how important some family cases were (e.g., serious child safeguarding concerns) it was imperative that court fees did not act as a barrier** to others and emphasised the importance of ensuring that eligible applicants could access legal aid or fee remission easily.

When asked to comment on the affordability of an increase in court fees many expressed that the service they had received was not good enough to justify raising the fees. Typically, this was based on participants experience of delays while using the service, some of which were caused by the Covid-19 pandemic. While they recognised that court fees were necessary, many felt that they were not getting good value for money. On this basis, participants felt that **any increase to fees would only be justified if the additional money were used to improve the court service**. This related to both improving the efficiency of cases and the quality of information and service that they were provided.

6. Perceptions and experience of the court process

This final section explores participants' perceptions and experience of the court process, the extent to which these varied by case type and how their expectations differed from reality.

6.1 Overall experience of bringing a case to court

Participants had varied experiences of the court process. In family cases, the quality of a participants' experience did not necessarily relate to the outcome of the case. For example, despite achieving their desired outcome, many participants still reported that their experience of court was challenging, and in some cases traumatic. For example, participants expressed **difficulty around having to discuss traumatic incidents during the court case**, speaking to friends and family about their circumstances, or needing to interact with abusive ex-partners or family members in court. In some family court cases, namely those involving financial orders, a small number of participants reflected that they may not have taken their case to court had they known from the outset how emotionally demanding the process would be. For some, however, the court process enabled a longstanding issue to be closed, such as in the case of divorce. In some cases, this was a liberating experience for the claimant and enabled them to find closure.

Conversely, the outcome of the case tended to influence how participants felt about the overall experience of the court process in civil cases. As such, if they achieved the desired outcome, they tended to be more positive and vice versa. Although they felt the process had been worthwhile, many participants reported that they had vastly **underestimated how emotionally draining and stressful** the process would be.

Courtroom experience

Across both civil and family cases, participants reported that their experience of going to court in person was daunting. For some, this was due to the reality of the experience differing to their expectations (particularly family court users). For example, participants

using the family court often reported that they were surprised how 'hostile' the environment of the family courtroom was.

"I'd never, ever go back ever again. I felt it was just made for prisoners, and then I felt like a prisoner...I just felt a bit intimidated, and it was a bit daunting." Male, Family case – order regarding a child, Represented (Self-funded)

Many participants expressed that there was **not enough information providing a realistic insight into what they should expect to happen during the hearing**, or the environment inside the courtroom itself. This was most notable in family cases where participants often reported having little knowledge about what the hearing would entail. Although having legal representation mitigated this, some still reported feeling unprepared about what to expect. Participants suggested that they would have benefited from more information of this nature before their hearing, including insights into the layout of the courtroom, who would be inside the courtroom, how the hearing was structured and how they should present themselves (e.g., what they should wear and how long the hearing could take).

"I would definitely find it useful if there was some sort of video or interactive website which showed the court process though, even down to what should you wear, and what to expect." Female, Family case – Order regarding a child, Litigant in person

"Would be helpful if courts produced a video that people could watch before going into court, of a typical family procedure. That might help because then they would see what it's like inside a court, because many people have never been inside a courtroom" Male, Family case – order regarding a child, Litigant in person

Those participants who had attended the hearing remotely also reported a discrepancy between expectations and reality, albeit for different reasons. Most simply reflected that they were **uncertain what to expect from an online hearing, or how it would differ from an in-person hearing**. Although it was difficult for participants to comment on which was preferable, some acknowledged specific benefits to the hearing being online. These benefits included a reduction in time spent travelling and feeling less stressed because they were in the comfort of their own home.

Most participants across both civil and family cases expressed frustration around timings, and many reflected proceedings lasted far longer than expected. Participants reported that they would have benefited from **more realistic guidance about how long the hearing would be, and the broader timescales of their case progressing**. Many reflected that their expectations around timings were poorly managed, both by the information available online, the courts themselves and by their solicitor (where relevant). Some reported that they may have made different decisions about their case had they received more accurate information about potential timescales. For example, making the decision to go to court earlier, not opting to have legal representation, or simply not pursuing legal action at all.

Experience of victims of domestic abuse

While this research did not set out specifically to explore the experience of survivors of domestic abuse, some participants who were either applying for a financial order related to divorce proceedings or applying for an order regarding a child or children in the family court reported that they had been victims of domestic abuse, and that the respondent in their case was their abusive ex-partner.

Participants who had been victims of domestic abuse reported finding the experience of taking a case to court unpleasant and upsetting, both inside the courtroom and for the duration of the court process. For example, those participants who had to attend hearings in person reflected on how challenging it was to be in the same room as their abusive ex-partner.

Some participants who reported domestic abuse had sought support from specific organisations and charities such as Women's Aid. They reported that support from these organisations was extremely helpful, particularly as many were reluctant to disclose the details of their situation to friends and family. In addition to providing support and guidance, several had been assisted with applying for legal aid by Women's Aid.

One participant reported that she was able to visit the court room before the case started, enabling her to view the layout and get a sense of the environment. She reported that being able to do this was extremely reassuring and helped to relieve some of her anxiety about having to be in the same room as her ex-partner.

Figure 6.1: Case study 5 – Sensitive court case

Female, Family case – order dealing with finances on divorce, Represented (Legal aid) – victim of domestic violence

The participant had applied for a financial order in a divorce. She had filed for divorce on the grounds that her former husband was violent towards her, and there was a separate criminal case happening at the same time as the family court case.

The participant reflected that applying for the financial order and having to go through the court process was already very challenging for her, and this was further compounded by the unpleasant courtroom experience. She reported that she had been suffering from severe PTSD at the time and therefore found it extremely difficult being in such close proximity to her ex-husband.

“I was suffering from PTSD, I didn't even want to see him, I didn't want to look at him, I didn't want to be near him, so they put me in a separate room beforehand [...] when it came to actually going into the family court I had to actually walk past him to get into the room, and I was so close to him [...] in such a confined space. I felt really intimidated.”

The participant expected there to be a far larger gap between them, or for her to be able to conduct the hearing from a separate room. This was in part based on her experience with the magistrate's court, where her domestic violence case was being handled.

“It could have been made easier, I mean, I didn't even want to come out from the room and go for a break to go to the toilet or anything because I would have had to pass him because he was sitting in the corridor, it just was so overwhelming that I don't know how I coped.”

For some participants, these **difficulties were compounded by events occurring outside of the hearings**. For example, dealing with episodes of poor mental health which had been triggered or exacerbated by the court proceedings or receiving threatening communications from their ex-partner. In addition, some participants reported separate (albeit related) criminal cases happening at the same time as their family court case. For example, domestic abuse or assault cases happening in the crown court or magistrates'

courts, or ongoing court hearings for restraining orders (relating to their ex-partner). These participants reflected that having multiple, highly stressful court cases made it difficult to think about the case in the family court in isolation. However, they reported that their experience of bringing the criminal case to court often had a negative impact on their experience of the family courts.

7. Conclusions

The aim of this research was to provide an up-to-date understanding of the factors that affect an individual's decision to take a family or civil case to court. Participants were asked to reflect on their motivations for bringing a case to court. This included the extent to which costs (particularly the court fees) influenced the decision to progress a case through the courts and awareness and capacity to manage the court process. The research also explored the extent to which alternative resolution options were considered and/or tried before going to court and the overall experience and perceptions of the court process.

This chapter summarises the main conclusions from this research.

Motivation

This research has highlighted important differences in why and how different participants approached the civil and family court process. While the context of the individual cases differed, participants shared similar motivations for bringing their cases to court.

- **Emotional factors had a significant impact on participant decision-making during the court process.** Emotional motivations were typically characterised by the desire for justice, the desire for recognition about the validity of the case, desire to share their personal experience, and the desire for emotional closure on a complex issue or traumatic experience.
- Across a range of civil and family cases, participants also reported that financial motivations were an important part of the wider desire for redress. **Civil cases were typically more financially motivated, particularly amongst the small number of SMEs and those making civil money or possessions claims,** and the costs and benefits of going to court were considered as part of decision-making.
- **However, emotions played a larger role in participants decision-making than many had anticipated.** Even those who reported primarily financial motivations were influenced by emotional factors to some degree as their case progressed, and many participants reflected that they were not prepared for how emotionally demanding bringing a case to court was, particularly in family court cases. As

such, some who had not done so had underestimated the extent to which seeking legal advice or representation may have benefitted them during their case.

Capability

Participants' awareness of and ability to manage the court process influenced decision-making when bringing a case to court. Overall, those participants who received legal advice or legal representation tended to have low awareness of the court process. However, the impacts of this were often offset by having legal representation. Therefore, participants who had received legal representation and advice had a greater perceived capacity to manage the court process compared to those interviewed who had litigated in person.

- **Awareness of and beliefs about capability impacted upon decision-making in different ways.** For example, some participants who considered themselves to have a high awareness of the court process said it had led them to seek legal help as they felt they did not possess the necessary capabilities to represent themselves. For others, the lack of awareness had led them to over-estimate their ability to manage the court process without legal help, while others still were compelled to seek legal help as a result of low awareness.
- Most participants reflected that resources and guidance accessed had provided a useful insight into the process. However, their ability to be informed about the court process depended upon **how much time the participants had available and how easily they were able to understand and navigate the information.**
- Across both civil and family cases, those participants **litigating in person tended to reflect that doing so was challenging**, both in terms of managing the process and managing the additional stress and emotions. Some reflected that their decision-making around going to court or seeking legal help may have been different had their expectations around their own capabilities been more realistic at the start.

Opportunity

Environmental and external factors affected participants' decision to bring their case to court, including access to legal help and ability to pay court fees and any other costs incurred because of going to court. **For most participants involved in the research, the**

cost of court fees had minimal impact on their decision-making. Decision-making in relation to external factors was primarily influenced, in these cases, by their ability to access legal representation. However, findings differed to some extent across civil and family cases and by representation type.

- The biggest external factor observed in this study influencing participant decision-making was access to legal help. Those who had **legal representation tended to report feeling more assured in their decision-making** and confidence about the overall process. However, legal help was expensive and therefore not accessible to all participants.
- While participants reflected that there would be a financial threshold at which the court fees and overall costs would have been too high, the **majority of those included in this research felt that the court fees would not have prevented them from going to court**, although cost was more important for some participant groups than others. It was difficult for participants to identify what this threshold would be, as this would be dependent on their personal financial situation, their ability to borrow money and the tipping point at which going to court was not rational from cost-benefit perspective.
- The overall cost of going to court (including legal costs, court fees and other costs), or perceptions of the potential cost of going to court, was a far greater factor than court fees specifically in participants decision-making surrounding the court process. However **although cost was important, many reflected that the issue they were seeking to resolve was so important that they would have found a means by which to pay regardless**, particularly for family cases.
- Those participants who were **represented or received legal aid for their case tended to have lower awareness of court fees**. However across both civil and family cases those participants who litigated in person reported that court fees were typically the first and most significant financial consideration in decision-making. **The cost of court fees was a particularly important factor for those who had chosen to litigate in person** because they were unable to afford representation (although not all in this sample litigated in person due to cost). Court fees were also more likely to be a factor in decision-making where there was a financial motivation to go to court, for example in some civil money claims.

Considerations for future research

This research explored the key factors influencing a sample of individual and SME civil and family court users' decisions to take their cases to court, taking into account the motivations, capabilities and opportunities available to different groups of court users.

As noted earlier in this report, the focus on court users means that this research does not provide insight into the decision-making of those who resolved their case without court action, including how court fees influenced their decisions or their experiences of alternative resolutions such as mediation. Previous research can provide additional insight into the experiences of potential court users, including the Legal Problem Resolution Survey (2014–15), mentioned earlier in this report, another wave of which is being conducted in 2023.

Further qualitative research, building on the findings from the 2015 'Varying paths to justice'²⁷ study, could explore potential court users' decision-making in greater depth in the current context and include a specific focus on court fees. Such a study could, for example, further explore awareness, knowledge, experiences of, and barriers to, alternatives available, awareness and perceptions of court fees, exploring broader reasons for not taking cases to court, including the extent to which financial considerations relate to legal costs and /or court fees.

Also noted earlier in this report, this study also excluded large businesses and regular users of the court (e.g. solicitors) whose decisions are likely to be influenced by different factors. In 2013 a separate piece of research was conducted by MoJ with these user groups²⁸ and further research could provide additional insight into these users' decision-making.

Additional areas of interest could include further exploring experiences of mediation in family cases specifically to provide greater insight into the awareness, understanding and experience of (and barriers to) mediation. These insights could inform the development of future information and guidance about mediation. If MoJ were to produce new information

²⁷ The findings from this qualitative project can be found here: [The Varying Paths to Justice \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

²⁸ The findings from this survey can be found here: [Trends in volume of claims \(justice.gov.uk\)](https://justice.gov.uk)

and guidance on mediation or the court process more generally, it may also be useful to conduct user testing with different groups in order to gain insight into how users interact with the information, accessibility of language and what, if any, information is missing.

Annex A

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Annex B

Glossary

Alternatives to court and alternative dispute resolution processes (see also 'Mediation' and 'MIAM')	In general, prospective parties to civil and family cases are expected to attempt to resolve matters without the need for court proceedings. Rules of procedure governing both types of proceedings set out the steps which ought to be taken in particular types of cases. However, in all civil cases a prospective claimant is expected to at least write to the prospective defendant setting out the basis for the intended claim, and to consider whether the matter might be resolved via an alternative dispute resolution process, such as mediation. In some private family law cases, the prospective application is required to attend a Mediation Information and Assessment Meeting ("MIAM"), unless they have a suitable exemption.
Applicant	A party who initiates court proceedings in a family case.
Child arrangements order	Orders including 'live with' and 'spend time with' relating to child arrangements. A 'live with' order is an order deciding who a child will live with. A 'spend time with' order is an order requiring the person a child lives with to allow that child to visit, stay with or otherwise have contact with another named person.
Civil courts	Courts with jurisdiction in civil cases include County Courts, the High Court, and appellate courts. There are many different types of civil cases, but they most commonly involve claims for money or in respect of property, arising from breach of contract or from other civil wrongs. Most civil cases are dealt with at County Court level.
Claimant	A party who initiates court proceedings in a civil case.
Costs	In the context of court proceedings normally refers to the costs of legal advice and/or representation, and other expenses incurred in conducting the proceedings including court fees. The usual rule in civil cases is that 'costs follow the event', i.e., the losing party is liable to pay the winning party's costs, in addition to their own. An exception to this, as of April 2013, is that a defendant who successfully defends a personal injury claim cannot usually recover their costs from the claimant. More generally, there are also certain restrictions on the costs which can be recovered from a losing party, particularly in low-value cases. In family cases involving children and financial orders, it is much less common for one party to be ordered to pay the other's costs; the usual position is that each party bears their own costs, regardless of outcome.
Court fees	The fees charged by HM Courts and Tribunals Service to court users. Fees are payable to start most civil or family cases and may also be

	payable at other stages depending on the type of case and the stage reached (see also Annex C).
Damages claim (previous unspecified money)	A civil claim for an amount yet to be decided; these claims commonly involve compensation for personal injury, or damages for other civil wrongs.
Defendant	A party against whom a claim is made in a civil case.
Divorce applications	This comprises of two orders. A conditional order is the first order made in divorce proceedings and is given when the court is satisfied that there are reasonable grounds for granting the divorce. It is used to apply for a final order. A final order can be applied for six weeks and one day after a conditional order has been given. Once this is received, the couple are no longer legally married and are free to remarry.
Family Courts	The Single Family Court was established in 2014 which replaced the previous three tiers of court structure (family proceedings court, county court, High Court); however, the High Court retains exclusive jurisdiction over a limited number of cases. The main family case types are either public law cases (involving child protection) or private law cases (involving divorce or civil partnership dissolution, private family disputes regarding children, financial proceedings).
Fee remissions	The fee remissions system (called 'Help with Fees') exists to support access to justice for court users who would otherwise have difficulty paying a court fee. These users can be awarded a full or partial waiver of their court fee, depending on their financial circumstances (see also Annex E).
Financial Order (also known as Financial Remedy Order)	An order made in proceedings for divorce, dissolution of a civil partnership, or judicial separation, dealing with division of assets and/or income. Previously known as 'ancillary relief', a financial order may provide for one or more of: a lump sum payment; periodical payments ('maintenance'); adjustment of rights to property (including sale or transfer of the former matrimonial home); an order in respect of pension rights. Financial orders may also make provision for children.
Legal Aid	Public funding which may pay for some or all of the costs of legal advice and/or representation. In family cases legal aid may also be available to pay for mediation. Eligibility for legal aid in any individual case depends on whether the subject matter falls within the scope of the legal aid scheme and also on a merits test and a means test. If legal aid is granted for representation in court proceedings (rather than just advice) then it will also cover any court fees payable by the party receiving it.
Litigant in Person	A party who conducts court proceedings on their own behalf without having a solicitor to formally represent them. Litigants in person may or may not have received legal advice. Also, they may have been

	represented at some point in their case. 'Litigant in person' may therefore refer to a party's status at a point in time, rather than throughout the duration of their case.
Mediation (see also 'Alternatives to court and alternative dispute resolution processes' and 'MIAM')	In mediation, an independent third party (the mediator) helps parties with a dispute to try to reach an agreement. The people with the dispute, not the mediator, decide whether they can resolve things, and what the outcome should be. This is what might be referred to as 'formal' mediation as opposed to 'informal' mediation, in which, for example, a family member or similar who isn't necessarily independent of both parties, and who isn't acting as a professional mediator, might try to help people resolve their differences. Once people start civil court proceedings, there is also a small claims mediation service provided by HMCTS where a claim is defended and the value is up to £10,000. This service is not available before a claim is issued, so is not to be confused with pre-court mediation. See also 'Mediation' and 'MIAM'.
Mediation Information and Assessment Meeting (MIAM)	In some family cases, there is a requirement that a prospective applicant should normally attend a Mediation Information and Assessment Meeting (MIAM) with a mediator to explore the potential for resolving matters via mediation. This applies to the types of applications covered in this study, e.g., for a child arrangements order or financial orders, unless certain exceptions apply. A MIAM is a meeting with a specially qualified family mediator to consider whether the issue can be resolved without going to court and takes place before formal mediation starts. Once a MIAM has taken place either mediation is recommended, or a C100 form enables individuals to apply for a court order to make arrangements for a child (e.g., a child arrangements, prohibited steps or specific issue order), or to resolve a dispute about their upbringing.
Money claim (previously specified money)	A civil claim for a specific sum of money; these claims commonly involve debts or claims in respect of problems with goods or services.
Money Claims Online (MCOL)	A facility provided by HMCTS via which certain civil claims can be issued and progressed online. The main criteria for using MCOL are that: the only remedy claimed is a specified sum of money; the amount claimed is less than £100,000; the claim is made against no more than two defendants. A claimant cannot apply for fee remission if they make the claim via MCOL. Defendants to claims issued via MCOL may also respond online.
No win, no fee (NWNF)	An arrangement for funding civil proceedings under which a lawyer agrees that they will only charge a client for their services if they win the case.
Online Civil Money Claims (OCMC)	A facility provided by HMCTS via which certain civil claims can be issued and progressed online. Online Civil Money Claims (OCMC) is a new digital service first introduced in 2019, which allows members of

	the public to issue and respond to civil money claims online of up to £10,000. It is a service for non-legally represented users and part of the service is to make available to users' free mediation to settle a claim at an early stage of the process.
Possession claim	A civil claim for court action to repossess a property if a party is owed money for rent or a mortgage, and the tenant or mortgage holder will not pay. Possession claims also include applications to have a tenant evicted relating to issues when tenants have broken the terms of their lease.
Possession claim online (PCOL)	A facility provided by HMCTS via which certain possession claims can be issued and progressed online. PCOL can be used to repossess a property if a party is owed money for rent or a mortgage, and the tenant or mortgage holder will not pay. It cannot be used for some other types of standard possession claim, for example where there's been trespass on a property, or tenants have broken the terms of the lease.
Private Family Law	Refers to Children Act 1989 cases where two or more parties are trying to resolve a private dispute. This is commonly where parents have split-up and there is a disagreement about who their children should live with and who their children should have contact with, or otherwise spend time with and when.
Public Family Law	Refers to Children Act 1989 cases where there are child welfare issues and a local authority, or an authorised person, is stepping in to protect the child and ensure they get the care they need.
Respondent	A party against whom proceedings are brought in a family case.
SME	Small and medium enterprises (SMEs) or small and medium-sized businesses (SMBs) are companies whose personnel numbers fall below certain limits. Typically, these are enterprises which employ fewer than 250 people.
Warrant of Control	Claimants can apply for a county court warrant of control if a county court judgment for a debt has been made and the defendant has not paid as the court has ordered. This warrant authorises a county court bailiff to try to take control of someone's possessions to encourage them to pay what they owe.

Annex C

Fees currently charged in civil and family courts

This Annex summarises a selection of civil and family court fees. It is not the full list, neither is it the authority on fees. For a full list of fees charged in the civil and family courts please see the EX50AHMCTS on hmctsformfinder.justice.gov.uk. The full lists of all court fees are contained in Statutory Instruments (SIs) known as fees orders and can be found online at <https://www.legislation.gov.uk/>. Court fees are usually payable at the start of any process needing a fee or at the time any document is filed (with a few exceptions). All fees shown below are as of July 2022.

Civil courts

To issue a claim for money, the fees are linked to the value of the claim, including interest. The table below sets out the fees applicable for money claims.

Value of claim				Fee payable
Up to	£300			£35
Greater than	£300	but no more than	£500	£50
Greater than	£500	but no more than	£1,000	£70
Greater than	£1,000	but no more than	£1,500	£80
Greater than	£1,500	but no more than	£3,000	£115
Greater than	£3,000	but no more than	£5,000	£205
Greater than	£5,000	but no more than	£10,000	£455
Greater than	£10,000	but no more than	£200,000	5% of the claim value
Greater than	£200,000			£10,000

A fixed fee applies for possession claims. For high court possessions this is £480. For County Court possessions this is £355. Additional fees apply for civil cases, including permission to issue proceedings and hearing fees. In civil cases, some fees may be payable by the defendant (e.g. in the case of counterclaim).

Family courts

The table below shows the fees applicable for some family cases, payable by the applicant.

Case type	Fee payable
Application for a divorce, nullity or civil partnership dissolution	£593
Application for a financial order, other than by consent	£275
Application by consent for a financial order	£53
Applications under the Children Act 1989 (including Child Arrangements Order)	£232

Remission

Individuals, but not companies or organisations, can apply to have court fees waived or partially waived in certain circumstances. This is called remission.

Whether a person is eligible depends on what savings they have, what benefits they receive and their income.

- They usually need to have less than £3,000 in savings and investments if they are under 61. For cases where higher fees apply, there are higher thresholds for applicants' savings and investments (up to a maximum of £16,000 for fees above £7,001). If the individual or their partner is 61 and over, then the £16,000 limit applies, regardless of the size of the fee.
- They need to be on a low income, or on one of the following benefits: income-based Jobseeker's Allowance (JSA); income-related Employment and Support Allowance (ESA); Income Support; Universal Credit (and earn less than £6,000 a year); Pension Credit (Guarantee Credit).
- If they are not on any of those benefits, they usually need to earn £1,170 or less a month before tax if they are single, or £1,345 or less a month if they have a partner. They can earn an extra £265 on top of that for each child they have. For example, if they have a partner and 2 children, they have to earn £1,875 or less to be eligible for full help with court fees. A person may still be able to get partial help if their income is higher. This depends on the size of the fee.

More information can be found online here: [Get help paying court and tribunal fees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/get-help-paying-court-and-tribunal-fees)

Annex D

Online Recruitment Questionnaire

INTRO

The next set of questions will ask about your experience of bringing a case to a civil or family court. If this does not apply to you, or you'd prefer not to say, you will be able to select the appropriate response options.

ASK ALL ELIGIBLE RESPONDENTS

MULTICODE

Q1. Since the beginning of 2019, have you been involved in any of the following types of court case(s) in England or Wales which have concluded?

Please note:

- This might be in a personal capacity (that is for yourself) or on behalf of a business or organisation.
- Please include any cases in which you were a joint claimant or applicant with somebody else. Also please include any cases in which the business or organisation was a joint claimant with somebody else.
- By concluded we mean that the final order has been made and no further hearings are scheduled, the case has been settled out of court, and/or the parties have withdrawn

Please select all that apply.

- A. Claiming a specific amount of money in a personal capacity, that is, for yourself**
- B. Claiming a specific amount of money on behalf of a business or organisation (including as a sole trader or on behalf of a partnership)**
- C. Claiming compensation or damages in a personal capacity, that is, for yourself**
- D. Claiming compensation or damages on behalf of a business or organisation (including as a sole trader or on behalf of a partnership)**
- E. Applying to have a rental tenant, or a trespasser evicted**
- F. Applying for an order regarding a child or children (e.g. regarding contact with them, to decide who they should live with, or to decide another issue about their**

upbringing, including financial support for them), such as a child arrangement order

- G. Applying for an order dealing with finances on divorce or dissolution of civil partnership (Please only include financial related orders e.g. to decide what should happen to the family home or any other assets, or for maintenance for yourself or any children)**
- H. None of these options apply to me [EXCLUSIVE]**
- I. Prefer not to say [EXCLUSIVE]**

IF Q1= CODES H OR I DO NOT REDIRECT TO MAIN SURVEY.

ASK ALL WHO SELECT ANY CODES A–G AT Q1
SINGLE CODE

Q3. Did you receive legal help from either a solicitor or another type of lawyer with your case(s)?

By legal help we mean receiving advice or having a solicitor/ lawyer represent you in a case at any stage.

- A. Yes**
- B. No**

ASK ALL WHO SELECT CODE A AT Q3
MULTI CODE

Q4. Did the legal help consist of any of the following?

In this context, legal advice refers to written or oral advice given by a lawyer on legal matters, procedures or options. If you received different types of help in your case, or if you have been involved in multiple cases since 2019 please select all that apply

- A. Legal advice (from a solicitor or lawyer)**
- B. Legal Representation (solicitor or lawyer conducted the case for you)**
- C. Received legal help from a solicitor or lawyer but unsure what type**
- D. None of the above [EXCLUSIVE]**
- E. Don't know [EXCLUSIVE]**

F. Prefer not to say [EXCLUSIVE]

ASK ALL WHO SELECT ANY OF CODES A–C AT Q4

MULTICODE

OPEN TEXT

Q5. How was the legal help you received paid for?

NOTE: If legal advice or representation was paid for in multiple ways, or you have been involved in multiple cases since 2019 please select all that apply

- A. Paid privately**
- B. Paid in full through legal aid**
- C. Paid partly through legal aid, partly through other means**
- D. On a “no win no fee” basis**
- E. Not paid – pro bono (free of charge) or other free advice**
- F. Other (please specify)**
- G. Don't know [EXCLUSIVE]**
- H. Prefer not to say [EXCLUSIVE]**

MAIN STUDY: RE-DIRECT SURVEY

ASK ALL WHO SELECT ANY OF CODES A–E AT Q1

GRID [PULL THROUGH ANY SELECTED RESPONSES FROM A–E AT Q1]

SINGLE CODE

Q6. Were you a claimant in any of these cases?

- A. Yes – a claimant**
- B. Yes – acting on behalf of a claimant small to medium-sized business/organisation**
- C. Yes – acting on behalf of a large corporation/ organisation**
- D. No**

ASK ALL WHO SELECT CODE F at Q1 (FAMILY CASES)

SINGLE CODE

Q7. You told us that you applied for an order regarding a child or children. Were you a claimant in this case(s)?

- A. Yes – I made an application to court**
- B. Yes – I made a cross application**
- C. No**

ASK ALL WHO SELECT CODE **G** at **Q1 (FAMILY CASES)**

SINGLE CODE

Q8. You told us that you applied for an order dealing with finances on divorce or dissolution of civil partnership. Were you the applicant in this case(s)?

- A. Yes – I made an application to court**
- B. Yes – I made a cross application**
- C. No**

ASK ALL WHO SELECT **A–G** AT **Q1 (CIVIL CASES & FAMILY CASES)**

GRID [PULL THROUGH RESPONSES SELECTED AT Q1]

SINGLE CODE

Q9. Which of the following best describes how you paid for the court fees in your case(s)?

- A. Paid full court fee amount**
- B. Received full remission via the Help with Fee scheme (eligible and exempt from paying the fee)**
- C. Received partial remission via the Help with Fee scheme (eligible and exempt from paying some of the fee)**
- D. Not required to pay a fee**
- E. Don't know [EXCLUSIVE]**
- F. Prefer not to say [EXCLUSIVE]**

ALL CODED **F** at **Q1 (FAMILY CASES)**

MULTI CODE

OPEN TEXT

Q10. You previously told us that you were applying for an order regarding a child or children. What type of order(s) did you apply for?

If your case involved making applications for multiple orders, have been involved in multiple cases since 2019 please select all that apply

- A. Child arrangements – live with (sometimes referred to as residence orders)**
- B. Child arrangements – spend time with (sometimes referred to as contact orders)**
- C. Prohibited steps order**
- D. Specific issue order**
- E. Vary or Discharge a Child Arrangements Order, Specific Issue Order or Prohibited Steps Order**
- F. Enforcement Order**
- G. Special Guardianship Orders**
- H. Parental responsibility order**
- I. Parental order**
- J. Other (please state)**
- K. Don't know [EXCLUSIVE]**
- L. Prefer not to say [EXCLUSIVE]**

ASK ALL CODED **F** at **Q1 (FAMILY CASES)**

SINGLE CODE

OPEN TEXT

Q11. What is your legal status in relation to the child(ren)?

- A. Mother**
- B. Father**
- C. Other relative of the child(ren) (please specify)**
- D. Other person with parental responsibility (please specify)**
- E. Don't know [EXCLUSIVE]**
- F. Prefer not to say [EXCLUSIVE]**

ALL CODED **G** at **Q1 (FAMILY CASES)**

MULTI CODE

Q12. You previously told us that you were applying for an order dealing with finances on divorce or dissolution of civil partnership (also known as a divorce/dissolution of a civil partnership financial order). What type of order(s) did you apply for?

If your case involved making applications for multiple orders, have been involved in multiple cases since 2019 please select all that apply

- A. Maintenance pending suit/outcome of proceedings**
- B. Legal services order**
- C. Maintenance payments between spouses or civil partners**
- D. Payment of lump sums of money**
- E. Property adjustment orders**
- F. Compensation for the loss of pension rights and other pension orders**
- G. Child support maintenance**
- H. Other (please specify)**
- I. Don't know [EXCLUSIVE]**
- J. Prefer not to say [EXCLUSIVE]**

ASK IF CODE A–E at Q1 (CIVIL CASES)

GRID [PULL THROUGH RESPONSES A–E SELECTED AT Q1]

MULTI CODE

Q13. How did you start the claim(s) for your case(s)?

- A. Online – Via Money Claims Online (MCOL), Online Civil Money Claims Service (OCMC), or Possession Claims Online (PCOL)**
- B. In person or postal form – Via a county court or the County Court Money Claims Centre (CCMCC)**
- C. Don't know [EXCLUSIVE]**
- D. Prefer not to say [EXCLUSIVE]**

ASK ALL WHO SELECT A–E at Q1 (CIVIL CASES)

MULTICODE

OPENTEXT

Q14. Which of the following describes the defendant(s) for the following case(s)??

If you have been involved in multiple cases please select all that apply

- A. An individual**
- B. A business or organisation**
- C. Other [Please specify]**
- D. Don't know [EXCLUSIVE]**
- E. Prefer not to say [EXCLUSIVE]**

DRAFT TEXT: FURTHER INFO AND CAPTURING CONTACT DETAILS

Ipsos UK are conducting research on behalf of the Ministry of Justice on factors that influence decisions to bring cases to civil and family courts. Following completion of this survey, we may contact you to conduct a more in-depth interview to discuss your experiences. Taking part in the interview is completely voluntary. It is up to you if and how you would like to participate. Participants will receive **£50 in vouchers** as a thank you for participating in this research.

This interview can be a telephone or video interview (via zoom) with one of our research team in at a time convenient to you, during March or April. If you are selected, the interview would last around 45–60 minutes. All information would be treated in the strictest confidence and analysed anonymously. Nobody at the Ministry of Justice or any other organisation would know that you have participated in this research. Ipsos UK abide by strict professional codes of conduct in this regard and are bound in particular by the Data Protection Act and the Market Research Society code of conduct.

If you agree to participate, we will ask for your name, phone number and email address, to be used for the interview purpose only. Your contact data will be retained only for the duration of the study and then deleted.

You may withdraw your consent at any time by writing to support.

Are you willing to be contacted by an Ipsos researcher with a view to taking part in an interview about your experiences?

- A. Yes
- B. No

C. I would like to know more about this

If YES/ I would like to know more – please provide your contact details below to pass on to the research team who may be in touch in due course. We aim to conduct interviews in March and April

NAME.....

TELEPHONE NUMBER....

EMAIL ADDRESS.....

Annex E

Qualitative discussion guides

Topic Guide for Civil Justice cases

Discussion guide:

1. Introduction (5 mins)

- Thank for participating in research
- Introductions
- Check received information sheet and support leaflet
- Aims and scope of research project
- Consent and data protection

2. Warm up (5 mins)

IF INDIVIDUAL: I'd like to start by learning a little about you.

IF INDIVIDUAL: Can you just tell me a bit about you and your current household?

- Who do you live with?
- How long have you lived there?
- Number of adults in household?
- Do you have children?
- How old are they?

IF INDIVIDUAL: Are you working at the moment?

- What kind of work do you do?
- Do you work full time/ part time?
- Are you employed/self-employed?
- If not working, how do you spend your time?

IF ORGANISATION or individual acting in a business capacity: Could you start by telling me what your company/business does?

- What does your business sell/offer?
- Who are your customers?
- Who are your suppliers?

IF ORGANISATION or individual acting in business capacity: Could you briefly talk me through your role in the business?

- How long have you been doing this?

IF ORGANISATION or individual acting in business capacity: What is the size of your business, both in terms of people and turnover?

IF ORGANISATION or individual acting in business capacity: How does your company usually deal with legal issues?

3. Discussion of their problem/issue and experience (20 mins)

First of all I want to get an overview of what has happened regarding [insert subject matter of proceedings], starting from the point at which you/the business decided it was a problem/issue which needed resolving to where you are today...

IF INDIVIDUAL: Is this the first time that you have taken a case to court?

IF ORGANISATION or *individual acting in business capacity*: Is this the first time that the business has taken a case to court?

Can you tell me about the background to [insert subject matter of proceedings] which you took to court?

- When did it arise?
- How did it arise?
- What did it involve/what were the key issues?

IF APPLICABLE: What was the amount in dispute/how much was the claim for?

How did you address / deal with [insert subject matter of proceedings] before deciding to take it to court?

- Did you have any existing knowledge about how to deal with it?

ORGANISATION or individual in business capacity: Did you or someone else in the company have existing knowledge or experience of [insert subject matter of proceedings]?

Did you receive any advice on how to deal with the matter before taking it to court? From whom?

- Where did you seek advice?
- Who did you speak to?
 - Solicitor?
 - Business advisor?
 - Citizen Advice Bureau?
 - Friends or family?
 - Another source of advice?
- How helpful was this, and why

IF APPLICABLE: What role did your business' advisor/solicitor play in the process?

- When did they first get involved?
- What input did they have prior to the case beginning?
- How helpful did you find their input?
- How important was their advice in your decision to take your case to court?
- Why did you choose to use an advisor/solicitor?
- What has their involvement been since the case started?
- Has it been to advise/help you conduct the case yourself, to conduct the case on your behalf, to represent you at any hearings, or in different ways at different stages?

IF APPLICABLE: Did you/the business have to pay for the adviser or solicitor?

- If so, how was this funded? (including any 'no win no fee' arrangement)

IF APPLICABLE: Why did you decide not to have a solicitor conduct the case for you and represent you throughout the court proceedings?

- IF APPLICABLE: Why did you represent yourself?
- Did you seek any advice on how to represent yourself? IF YES: Where?

IF APPLICABLE: Why did you decide to move from having a solicitor conduct the case for you and represent you to not conducting the case and representing yourself? (reverse order of options if relevant)

- What stage in the process did this occur?
- Did cost have an impact on this decision?

Did you/the business seek any general information or advice on the process of court proceedings?

- Where did you seek information/advice?
- Who did you speak to?
 - Friends or family?
 - The court
 - Another source of advice?
- How helpful was this, and why?

Before deciding to start court proceedings did you consider any alternatives to resolving your problem/issue?

- What were they?
 - Negotiation? Was this done directly? Or through a solicitor?
 - Mediation?
 - Complaints scheme/an ombudsman
 - Exchange of letters?
 - Letting the issue drop?
 - Other?
- What did you/ do you think of these options?

Did you pursue any of these options before going to court?

- What happened?
- What did you think of it/ them? Were you happy with what happened?
- How much did it cost you?
- If not, why did you decide not to?

Why did you decide to pursue this/these options?

- Did you see them as likely to lead to avoiding going to court?
 - If so, was that important to you? Why?
- Or did you expect these alternatives as a step on the way to going to court anyway?
 - If so, was that important to you? Why?

Did you have a sense of what the (alternative to court) would cost you before you decided to pursue it?

To what extent was your decision to pursue the alternative to court influenced by expected cost of the court process?

What other costs had you incurred due to this legal issue prior to applying to court, and for what services?

- What was the cost for? (e.g. Legal advice)
- How much did it cost you?

How willing were you to negotiate with the other side to come to an agreement without the help of the court, and did that change at all during the process?

Why did you eventually decide to start court proceedings?

What would you say were the most important moments or turning points in terms of your decision to start court proceedings?

- What were the greatest influences on your /the company's decision to start court proceedings?
- Who were the key people involved in this process other than you?

When did you decide to start court proceedings?

- Around what date, and at what stage of the situation?

IF APPLICABLE (if a money claim) – How much money were you claiming for in this court proceedings?

Could you talk me through the main stages in the proceedings to date?

How did you find the court process overall?

- Can you think of any positive aspects?
- Can you think of any negative aspects?

Did your experiences differ from what you expected?

- In what way did it differ?

4. The decision-making process (20 mins)

Now we'll talk a bit more in depth about how you actually came to the decision to start court proceedings...

KNOWLEDGE

How much did you know about the court process and the possible outcomes, at the time you decided to start court proceedings?

- How familiar were you with the process of starting court proceedings?
- How familiar were you with what the court process actually entailed?

- IF FAMILIAR: Was this due to previous personal experience? OR perceptions from elsewhere?

How much did you know about the legal position of your case when you decided to start court proceedings?

At the time did you feel sufficiently well informed to make the decision?

Was your decision to enter into the court process based on any information or advice?

- What was the information and advice?
- Who provided the information / advice?
- How did you come across the information / advice?
- Did you have to pay for it?

SKILLS

IF INDIVIDUAL (or individual acting in a business capacity):

- When you made your decision were you aware of what the court process would require of you personally?
- Did you feel that you had the necessary abilities / understanding to enter into the court process at the time?
- And did you feel that you had the necessary abilities / understanding to deal with the court process itself and the possible outcomes of the process?

IF ORGANISATION:

- When you made your decision were you aware of what the court process would require of the business?
- And did you feel that your business had the necessary abilities to deal with the court process itself and the possible outcomes of the process?

BELIEFS ABOUT CAPABILITIES

IF INDIVIDUAL (or individual acting in a business capacity):

- Were you confident in being able to navigate the court process when you made the decision?

IF ORGANISATION:

- Were you confident in being able to navigate the court process on the behalf of your business, when you made the decision?

ALL:

Did you foresee any problems / difficulties at the time you made the decision?

- If so, what were they?
- How confident were you of dealing with these problems / difficulties?

SOCIAL INFLUENCES

IF INDIVIDUAL (or individual acting in a business capacity):

- How far did other people influence your decision to enter the court process?

IF ORGANISATION:

- How far did the conduct of other businesses influence your decision to enter the court process?

ALL:

Was there any expectation / pressure / encouragement from anyone else to enter into the court process?

Probe on:

- Friends
- Family
- Information
- Advice
- Professionals
- Other?

SOCIAL / PROFESSIONAL ROLE & IDENTITY

IF INDIVIDUAL (or individual acting in a business capacity):

- Do you know anyone else in a similar situation who also made the decision to enter into court proceedings?
- Do you feel that your decision was fairly usual / typical for someone in your position?

IF ORGANISATION:

- Do you feel that your company's decision was fairly usual / typical for a business in your position?

GOALS

Did you have a goal or goals for the end of the court process?

- Did this change at any point during the process?

When you made your decision did you actually want to enter into the court process?

How committed were you to this route?

- IF APPLICABLE: Did you feel you had no other choice?

Would you have preferred to have followed a different course of action?

Did you feel your court proceedings had a successful outcome for you?

OPTIMISM

IF INDIVIDUAL (or individual acting in a business capacity):

- Did you feel that you'd be able to achieve your desired goal / resolve your problem/issue when you made the decision?
 - How confident were you that you would achieve your goal?
- How confident were you in your decision to enter into the court process when you made it?

IF ORGANISATION:

- Did you feel that you'd be able to achieve the business' desired goal or resolve the problem/issue when you decided to enter court proceedings?
 - How confident were you that you would achieve your goal?
- How confident were you in the business' decision to enter into the court process when it was made?

ALL:

And how confident were you in the legal validity of the case?

BELIEFS ABOUT CONSEQUENCES

What were your expectations of the court process?

- What did you hope to achieve?
- How much did you expect it to cost?
- Did you expect a judge to make the final decision?

What were your expectations of the possible outcome at the time you made the decision?

- Did you expect the case to be settled before this point? IF Yes: what point?
- Did you expect that you would have to compromise on the final outcome? i.e accept less money than their original claim?
- What did you expect to happen if your case wasn't successful? Would you have been worse off than before?

ENVIRONMENTAL CONTEXT / RESOURCES

How far did money and the cost of the court process affect the decision to enter into court proceedings?

At what point would you consider a claim to not be financially viable?

- IF ORGANISATION: Do you have a set point at which a claim is worth pursuing? How is this set? Is this set by the amount the claim is worth?

How and when were you made aware of the costs of entering into court proceedings?

Were you aware of any additional court fees that you might have needed to pay after starting the case?"

- Did the additional court fees affect your decision to proceed further with your case? How?

Were you aware of the likely/potential costs of:

- Legal advice and/or representation
- Court fees
- Travel
- INDIVIDUALS or INDIVIDUALS ACTING IN A BUSINESS CAPACITY ONLY: Time off work
- ORGANISATION: cost to the business of time taken to deal with the case

Do you know how much each element cost you?

Were there any other costs you incurred as a result of entering into the court process (not already mentioned above)?

Do you know how much the court proceedings cost you in total?

- Did you have to pay several court fees at different stages of the court proceedings?
Did this affect your decision to proceed with the case?

When were you made aware of the need to pay these costs?

How much did you expect the process to cost when you made the decision to proceed to court?

- What did you base this on?
- Did you feel this cost was reasonable?

What financial resources were available to you/the business when you made the decision?

IF INDIVIDUAL:

Did you receive assistance with costs?

- From who?
- How did you find out about this resource?
- How much?
- For what?

Did you apply for fee remission (Help with Fees)?

- How much of the court fee did the remission cover? Full court fee? Part of the court fee?

Overall, did you find it difficult to pay the costs of the court process?

- IF YES: Can you explain why?
- Which parts of the costs were hardest to pay, and why?

Did you have any savings at the time of applying to court?

- IF YES: Did you use any of your savings to cover the cost of the court proceeding?

IF ORGANISATION:

Overall, how difficult did the business find it to pay the costs of the court process?

- Which parts of the costs were hardest to pay, and why?

ALL:

Did you expect to recover any of the costs from the defendant if you won the case?

- Have you in fact recovered any costs/do you still expect to recover any costs?
- How much of the cost did you recover/are you hoping to recover?
- What costs did this cover/what costs will this cover?

MEMORY, ATTENTION, DECISION-MAKING

Was the decision to enter into court proceedings an easy or difficult one?

How much did you/the business have to think about it?

EMOTION

How did you feel at the point at which you made your decision to enter into court proceedings? (ask question openly first then use prompts)

- Positive
- Happy
- Hopeful
- Angry
- Afraid
- Anxious

Did your emotions / mood at the time affect your decision? How so?

5. Key factors that influenced decision making and reflection on their experience (10 mins)

Considering the discussion that we have had about how you came to the decision to start court proceedings, what do you think are the key factors that influenced your/the business' decision?

Considering the experience that you have been through in taking this case to court, what would you do differently, if anything, if you had to do it again?

- Not take the case to court? Go to mediation?
- Access legal representation?
- Seek further advice before starting court proceedings?
- Settle at earlier opportunity?
- Proceed further through process?
- Consider the cost of taking legal action in more detail?

IF INDIVIDUAL (or individual acting in a business capacity):

- What advice would you give to someone, who was in a similar situation to yours, about starting court proceedings?
 - Advise against it? Why?
 - Advise them to start court proceedings? Why?
 - Advise them to access professional advice?
 - Research costs?

IF ORGANISATION:

What advice would you give to another business that was in a similar situation to your company and were about starting court proceedings?

- Advise against it? Why?
- Advise them to start court proceedings? Why?
- Advise them to access professional advice?
- Research costs?

6. Conclusions (5 mins)

Thinking about everything we've discussed today, what was the most important factor in your decision to take your case to court?

You may have noticed that we have mentioned the cost of court proceedings several times; the reason behind this is that the Ministry of Justice is currently reviewing the fees it charges.

In light of this, what part would you say court fees in particular played in your decision to take your case to court?

- And would that change if court fees changed?

How much was your initial court fee? How much more would you have been willing and able to pay, if the court fees had increased?

Is there anything else about your experience of court proceedings, which we haven't already discussed, that you would like to raise?

Wrap up

Signal to participant that coming to the end of the interview

- Anything not covered that they want to share
- Any reflections on this conversation/how they found talking about this issue
- Anything they thought they would be asked
- Reiterate that appreciate talking to us about their experiences
- Check in on data usage/anonymity and make sure they're still happy
- Any final questions

CHECK IN ON PARTICIPANT WELL-BEING BEFORE THANK AND CLOSE

REMIND PARTICIPANT OF SUPPORT ORGANISATIONS AND OFFER TO RE-SEND SUPPORT LEAFLET

Topic Guide for Family Justice cases

Discussion guide:

1. Introduction (5 mins)
<ul style="list-style-type: none">• Thank for participating in research• Introductions• Check received information sheet and support leaflet• Aims and scope of research project• Consent and data protection
2. Warm up (5 mins)
Introductory conversation about any of the following: <ul style="list-style-type: none">• Introduce themselves• What they do in a typical day• About your local area
3. Discussion of their problem/issue and experience (20 mins)
First of all, I would like to get an overview of what happened regarding [insert subject matter of proceedings], starting from the point at which you decided it was a problem/issue which needed resolving to where you are today...
Can you tell me about the background to [insert subject matter of proceedings] which you took to court? <ul style="list-style-type: none">• When did it arise?• How did it arise?
How did you address / deal with [insert subject matter of proceedings] before deciding to take it to court? <ul style="list-style-type: none">• Did you have any existing knowledge about how to deal with it?• Did you receive any advice on how to deal with it? From whom?
IF APPLICABLE: What role did your advisor/solicitor play in the process? <ul style="list-style-type: none">• When did they first get involved?• What input did they have prior to the case beginning?• How helpful did you find their input?• Why did you choose to use an advisor/solicitor?• What has their involvement been since the case started?
IF APPLICABLE: Why did you decide not to use legal representation throughout the court proceedings? <ul style="list-style-type: none">• IF APPLICABLE: Why did you represent yourself?• Did you seek any advice on how to represent yourself? IF YES: Where?
IF APPLICABLE: Why did you decide to move from using an advisor/solicitor to not using legal representation? (reverse order of options if relevant) <ul style="list-style-type: none">• What stage in the process did this occur?

- Did cost have an impact on this decision?

Did you seek any general advice – for example, not from a legal advisor – on the process of court proceedings?

- Where did you seek advice?
- Who did you speak to?
 - Friends or family?
 - Another source of advice?
- How helpful was this, and why?

Before deciding to start court proceedings did you consider any alternatives to resolving your problem/issue?

- What were they?
 - Negotiation? Was this done directly? Or through a solicitor?
 - Mediation?
 - Exchange of letters?
 - Letting the issue drop?
 - Other?
- What did you/ do you think of these options?

Did you pursue any of these options before going to court?

- What happened?
- What did you think of it/ them? Were you happy with what happened?

Did you know how much these alternatives to court would cost you before deciding to pursue any of these options?

To what extent did these costs compared to expected cost of the court process influence your decision to pursue this/these options?

Why did you decide to pursue this/these options?

- Did you see them as likely to lead to avoiding going to court?
 - If so, was that important to you? Why?
- Or did you expect these alternatives to end in going to court anyway?
 - If so, was that important to you? Why?

IF APPLICABLE: How much did [alternative to court] cost you, prior to starting court proceedings?

What other costs had you incurred due to this legal issue prior to applying to court, and for what services?

- What was the cost for? (e.g. Legal advice)
- How much did it cost you?

To what extent were you willing to negotiate with the other side to come to an agreement without the help of the court?

- Did that change at all during the process?

Why did you eventually decide to start court proceedings?

What would you say were the most important moments or turning points in terms of your decision to start court proceedings?

- What were the greatest influences on your decision to start court proceedings?
- Who were the key people involved in this process other than you?

When did you decide to start court proceedings?

- Around what date, and at what stage of the situation?

How would you describe your experience of the court process?

How did you find the court process overall?

- Can you think of any positive aspects?
- Can you think of any negative aspects?

Did your experiences differ from what you expected?

- In what way did it differ?

4. The decision-making process (20 mins)

Now we'll talk a bit more in depth about how you actually came to the decision to start court proceedings...

KNOWLEDGE

How much did you know about the court process and the possible outcomes of going to court, at the time you decided to start court proceedings?

- How familiar were you with the process of starting court proceedings?
- How familiar were you with what the court process actually entailed?
- IF FAMILIAR: Was this due to previous personal experience? OR perceptions from elsewhere?

At the time did you feel sufficiently well informed to make the decision?

Was your decision to enter into the court process based on any information or advice?

- What was the information and advice?
- Who provided the information / advice?
- How did you come across the information / advice?

SKILLS

When you made your decision were you aware of what the court process would require of you personally?

Did you feel that you had the necessary abilities / understanding to enter into the court process at the time?

And did you feel that you had the necessary abilities / understanding to deal with the court process itself and the possible outcomes of the process?

BELIEFS ABOUT CAPABILITIES

Were you confident in being able to negotiate the court process when you made the decision?

Did you foresee any problems / difficulties at the time you made the decision?

- If so, what were they?
- How confident were you of dealing with these problems / difficulties?

SOCIAL INFLUENCES

How far did other people influence your decision to enter the court process?

Was there any expectation / pressure / encouragement from anyone else to enter into the court process? Probe on:

- Friends / Family
- Information/ Advice
- Professionals
- Other?

SOCIAL / PROFESSIONAL ROLE & IDENTITY

Do you know anyone else in a similar situation who also made the decision to enter into court proceedings?

Do you feel that your decision was fairly usual / typical for someone in your position?

GOALS

Did you have a goal or goals for the end of the court process?

- Did this change at any point during the process?

When you made your decision did you actually want to enter into the court process?

Did you feel you had no other choice?

Would you have preferred to have followed a different course of action?

- If so, what were they?

Did you feel that the court proceedings had a successful outcome for you?

OPTIMISM

Did you feel that you'd be able to achieve your desired goal or resolve your problem/issue when you made the decision?

- How confident were you that you would achieve your goal?

How confident were you in your decision to enter into the court process when you made it?

And how confident were you in the legal rightness of your case?

BELIEFS ABOUT CONSEQUENCES

What were your expectations of the court process and the possible outcome at the time you made your decision?

- What did you hope to achieve?
- How much did you expect it to cost?
- What did you expect to happen if your case wasn't successful? Would you have been worse off than before?

ENVIRONMENTAL CONTEXT / RESOURCES

How far did money and the cost of the court process affect your decision to enter into court proceedings?

How and when were you made aware of the costs of entering into court proceedings?

Were you aware of the likely/potential costs of:

- Legal representation
- Court fees
- Travel
- Time off work

Do you know how much each element cost you?

Do you know how much the court proceedings cost you in total?

When were you made aware of the need to pay these costs?

Did you incur any other costs as a result of entering into the court process?

How much did you expect the process to cost when you made the decision?

- What did you base this on?

What financial resources were available to you when you made the decision? Have you received assistance with costs?

- From who?
- How did you find out about this resource?
- How much?
- For what?

Did you access Legal Aid to assist you in covering the cost of court proceedings?

- How much of the cost did the Legal Aid cover?
- Did it cover a specific element?

- Did you need to make a contribution towards the payment? How much was it?

Did you use any of your savings to cover the cost of the court proceedings?

- IF YES: To what extent did that impact your decision to go to court?

Overall, did you find it difficult to pay the costs for your court hearing?

- IF YES: Can you explain why?
- Which parts of the costs were hardest to pay, and why?

MEMORY, ATTENTION, DECISION-MAKING

Was the decision to enter into court proceedings an easy or difficult one?

How much did you have to think about it?

EMOTION

How did you feel at the point at which you made your decision?

(ask question openly first then use prompts)

- Positive
- Happy
- Hopeful
- Angry
- Afraid
- Anxious

Did your emotions / mood at the time affect your decision? How so?

5. Key factors that influenced decision making and reflection on their experience (10 mins)

Considering the discussion that we have had about how you came to the decision to start court proceedings, what do you think are the key factors that influenced your decision?

Considering the experience that you have been through in taking this case to court, what would you do differently, if anything, if you had to do it again?

- Not take the case to court? Go to mediation? Continue with mediation?
- Access legal representation?
- Seek further advice before starting court proceedings?
- Consider the cost of taking legal action in more detail?

What advice would you give to someone, who was in a similar situation to yours, about starting court proceedings?

- Advise against it? Why?
- Advise them to start court proceedings? Why?
- Advise them to access professional advice?
- Research costs?

6. Conclusions (5 mins)

Thinking about everything we've discussed today, what was the most important factor in your decision to take your case to court?

You may have noticed that we have mentioned the cost of court proceedings several times; the reason behind this is that the Ministry of Justice is currently reviewing the fees it charges.

In light of this, what part would you say costs and court fees played in your decision to take your case to court?

- And would that change if court fees changed?

If the court fee had been £500 instead of £232 (for private law case) or £275 (for a contested financial remedy fee), would you have been able and willing to pay?

- [If not willing to pay £500] What about if the fee had been £350?
- How would you have funded the additional cost?
- At what point would the court fees become unaffordable?

Is there anything else about your experience in court proceedings, which we haven't already discussed, that you would like to raise?

Wrap up

Signal to participant that coming to the end of the interview

- Anything not covered that they want to share
- Any reflections on this conversation/how they found talking about this issue
- Anything they thought they would be asked
- Reiterate that appreciate talking to us about their experiences
- Check in on data usage/anonymity and make sure they're still happy
- Any final questions

CHECK IN ON PARTICIPANT WELL-BEING BEFORE THANK AND CLOSE

REMIND PARTICIPANT OF SUPPORT ORGANISATIONS AND OFFER TO RE-SEND SUPPORT LEAFLET