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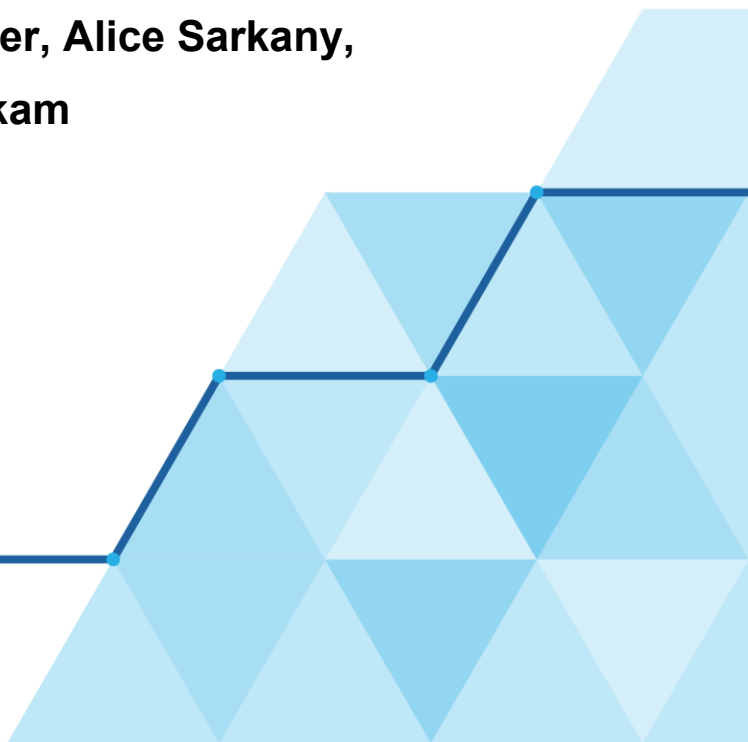
Factors influencing organisations' decisions to bring cases to the civil and family courts

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Executive Summary

Background to the research

The Ministry of Justice (MoJ) commissioned Ipsos UK to conduct qualitative research with solicitor firms and commercial organisations to explore factors influencing organisations' decisions to bring cases to the civil and family courts, including the role of costs and court fees. The research builds on a similar study published in 2014 by MoJ,² which used a similar qualitative methodology, and explored organisations' decision-making at the time in the context of changes to the court fee structure. Since the study was published in 2014 there have been fee and wider policy changes affecting the courts, as well as societal changes such as the COVID-19 pandemic, increases to the cost of living and high inflation rates. In addition, the current research sought to understand the importance of alternative methods of resolution and the factors that determine which method(s) of resolution are pursued, as well as participants' perceptions and experiences of online court services.

Whilst the aim of this new study was not to directly compare and contrast findings with the 2014 research, it sought to update MoJ's understanding of decision making in the current context. This research will help inform ongoing work on fee policy, anticipating demand for court services, understanding the experiences of court users, as well as views towards alternative dispute resolutions such as mediation.

Research objectives

The aim of the research was to understand the following:

1. What factors play a role in organisational decisions to issue claims and bring cases to court, including financial considerations such as court fees, as well as the likelihood of winning the case and the wider economic climate.
2. Organisations' perceptions and experiences of certain online court services (including reformed digital portals).

¹ Please note that in this report, the term 'organisations' covers both commercial organisations and solicitor firms.

² This report can be found here: [Trends in volume of claims \(justice.gov.uk\)](https://www.justice.gov.uk/consultations/2014/trends-in-volume-of-claims)

3. The extent to which alternatives to court are considered and used by organisations.
4. How organisations view court fees and the potential impact of fees, and other factors including the wider economic climate and use of alternative resolutions, on demand for court services.

Methodology

A qualitative approach was adopted to explore organisations' decision-making when taking cases to court. Recruitment was facilitated by MoJ using a combination of sample from internal databases and through engagement with the [Civil Court Users Association](#).³ The study included coverage across England & Wales. In-depth interviews were conducted with 31 organisations: 14 organisations issuing multiple money claims in bulk (hereafter referred to as organisations who bring money claims), 7 solicitor firms issuing damages claims and 10 solicitor firms bringing private family law cases to court on behalf of their clients. The research covered the following types of cases:

- Money claims: debt recovery claims against consumers or other businesses (e.g., defaulted credit cards, personal loans and unpaid utility bills).
- Damages claims: personal injury/damages claims (e.g., accident at work, public liability cases, clinical negligence, claims made against road traffic insurers).
- Family claims: divorce with financial remedy and private children's cases (e.g., child arrangement orders).

It is important to note that given the overall sample size for this piece of research (n=31 organisations) and its focus on particular cases, the findings presented are reflective of the views of a small group of professionals about specific claims and not generalisable to the wider population or situations. The sampling approach sought to ensure key user groups of interest for this research were included and ensured a minimum of 5 interviews per sample group of interest in order to achieve insight from different organisation types⁴ and reflect a range of views (see Chapter 1 for more information on sample). Logistical

³ The Civil Court Users Association (CCUA) is a non-commercial membership organisation. Their website can be found here: [Civil Court Users Association \(CCUA\)](#)

⁴ As only 3 interviews were conducted with debt recovery agencies/solicitors who do not purchase debt, findings from this group should be interpreted with caution.

considerations, including the length of time available for the research project and the availability of participants given their busy and demanding schedules, also informed the sample size and research design.

It should also be noted that where the report references the views of clients (i.e. end users of court services), these are based on feedback from organisations based on their experiences of representing clients and their perceptions as to what may have been important to their clients' decision-making. Another research study, published by the MoJ in 2023, has been conducted directly with end users of the civil and family courts⁵. This research explored some similar themes to those explored in this report but among individual and SME court users, some of whom were represented by solicitors.

Key Findings

Key factors considered when making a claim or application (Chapter 2)

1. Organisations considered several factors when deciding whether to make a claim or application to the civil and family courts. **Probability of success** in terms of the case/claim being decided in their favour was found to be the most important factor for all participants, outweighing other considerations. For participants who make money claims, the prospect of recovering the debt (including the enforcement method used to achieve this) was key to the probability of success in terms of the likelihood of being able to recover the money in practice (in addition to the positive court outcome). Although for successful claims the debtor is liable to cover the court fee, participants noted how in reality it could be difficult for this to be enforced.
2. The **role of organisations' reputations** was also considered by all participant groups when deciding whether to make a claim or application, whether this be their reputation to the public (e.g., through press coverage) or their credibility among clients. This factored into decisions as organisations interviewed were

⁵ This report can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162298/factors-influencing-users-decisions-to-bring-cases-to-civil-and-family-courts.pdf

mindful of potentially negative publicity for themselves or their clients, especially during the pandemic or increases to the cost of living.

3. The extent to which **court fees and other fees** associated with making claims or applications (e.g., legal fees) factored into the decision differed across participant groups. Overall, across all groups, court fees were not seen as primary factor in the decision-making process when compared to other factors such as the likelihood of success, although the reasons for this varied by participant group. **Court fees were more of a consideration for participants who bring money claims**, some of whom handled their litigation in-house (meaning court fees represented the main external cost), in comparison to those bringing damages or family claims/applications. This was particularly the case for the highest value claims due to the higher issuing fees they attract, and the lowest value claims as the fee – whilst lower – can make up a significant proportion of the overall value of the claim. Damages claim solicitors⁶ and family solicitors⁷ interviewed noted that court fees typically made up a small proportion of the overall cost for their clients associated with making claims/applications and that ultimately the decision to pursue a case through court lay with their client. Therefore, by comparison, these participants perceived that that **court fees⁸ played a smaller role than legal fees in their client's decision to go to court.**
4. **All participant groups raised some level of concern about delays in the court process.** This was an especially important consideration for damages and family solicitors as delays often caused frustration for their clients and could manifest in increased legal fees for those clients. In some of these cases, concern about court

⁶ Damages claim solicitors are a professional user group that makes damages claims / personal injury claims on behalf of their clients. Types of claims include accidents at work, public liability cases, clinical negligence, claims made against road traffic insurers.

⁷ Family solicitors are a professional user group that represent private law family applicants. Types of cases include divorce with financial remedy and child arrangements. Solicitors also referred to handling domestic violence and emergency children's applications (although these cases were not discussed in the interviews as they were out of scope of this research).

⁸ For direct feedback from claimants and applicants on what factors influence their decisions to bring cases to the civil and family courts, please see the MoJ report from 2023 on 'Factors influencing users' decisions to bring cases to the civil and family court':

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162298/factors-influencing-users-decisions-to-bring-cases-to-civil-and-family-courts.pdf

delays was seen as a deterrent to coming to court as participants feared that clients would 'blame' them for these delays and increased costs. This could damage their relationship as well as the reputation of the firm. For money claims, on the other hand, the impact of court delays was said to be less acute as most of the cases were undefended and concluded relatively quickly.

5. Participants across all user groups explained that **wider economic factors, such as the pandemic and increases to the cost of living, had already or were expected to influence decision-making going forward**. For example, some reported suspending claims against individuals over the course of the COVID-19 pandemic or expanding their definition of 'vulnerable customers' to account for people experiencing additional financial hardship. Participants who brought money claims were unsure as to whether there would be an increase or decrease in the volume of claims due to increases to the cost of living. There was also uncertainty among damages and family solicitors as to how the volume of claims/applications will be impacted by wider economic factors in the future due to the range of individual circumstances behind the decision to make a damages or family claim/application. Ultimately, participants across all groups noted that it was likely too early to predict what the impact of these wider financial factors would be on decision-making.

Feedback on online services and reformed online portals (Chapter 3)

6. Damages solicitors who used the Damages Claims Portal (DCP) **praised the system for its modernisation**, but also noted some aspects of the service which needed further improvement.
7. Similarly, **the reformed service for divorce and financial remedy received positive feedback**. However, a few users also expressed concerns about its reliability for urgent cases.
8. **Participants who brought money claims had mostly positive feedback on the Secure Data Transfer (SDT) portal**, citing its automation as a significant advantage for quick and easy processing.

Alternatives to court (Chapter 4)

9. **Across all groups, participants expressed a preference for alternative dispute resolutions (ADR) instead of taking cases to court.** Participants explained that they consider various forms of ADR (e.g., conciliation, mediation, direct correspondence) before deciding to make a claim or application. Where relevant, this also included following the steps set out in the Pre-Action Protocols. However, participants reported that damages and family clients tended not to have considered ADR options before meeting with solicitors as often, by this stage, they had made the decision to pursue the case/application in court.
10. **Mediation was the most mentioned type of ADR⁹ among participants from all groups,** but views on how often mediation was used and its effectiveness to resolve disputes varied. Mediation was considered most effective when both parties were willing to engage and motivated to avoid court. It tended to be used more in family cases compared with civil claims among participants interviewed.¹⁰

Views on court fees (Chapter 5)

11. The purpose of court fees was generally well understood by participants, with the **majority recognising that fees were necessary to enable the functioning of the court system and prompted careful consideration before issuing court proceedings.** Some participants perceived that court fees for commercial cases were used to subsidise other court services, such as family and criminal courts.¹¹
12. While there was an **overall understanding of the need to increase court fees to keep up with inflation, some concerns were raised** about the increasing

⁹ Other types of ADR include direct correspondence, using a tracing service to establish contact, negotiation, round-table meetings, conciliation or mediation, arbitration and ombudsmen services. Please see section 4.2 for definitions of these.

¹⁰ Mediation requirements are mandatory in some cases. For instance, in some family applications, clients are required to attend a meeting to assess whether mediation is suitable. Free mediation is also available for money claims up to £10,000 <https://www.gov.uk/guidance/small-claims-mediation-service>. In 2023 the government announced plans to make mediation compulsory for all money claims up to £10,000.

¹¹ Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 gives the Lord Chancellor, with consent of HMT, the statutory power to set certain court and tribunal fees above cost recovery levels. The income generated must be reinvested back into the courts and tribunals service. Government introduced enhanced fee charging for money claims on 9 March 2015, and further enhanced fees including divorce, civil and some tribunals in March, April and July 2016.

disparity between court fees and the quality of the service provided by the courts (e.g., long delays and perceived lack of experienced court staff).

13. Overall, when asked about the impact of potential changes to court fees in the future, **participants across all groups did not anticipate that a modest rise in court fees would have a considerable impact on the number of claims or applications they may issue in the future.** However, participants who brought money claims noted that a rise in court fees could affect the volume of claims where values were either very high (due to higher issuing fees) or very low (due to the proportion of the value of the debt fees make up) compared to mid-value claims.
14. **The wider economy and cost of living pressures** could also have an impact on the volume of cases, although participants noted it was too soon to say what this might be at the time of interview (Winter 2022/23).

1. Background and methodology

1.1 Policy and research context

1.1.1 Scope of the research

The research explored what factors influence organisations' decisions to bring certain civil and family cases to court, including the role of costs and court fees. The research also sought to understand the importance of alternative methods of resolution as well as participants' perceptions and experiences of court services. Cases within the scope of the research included money claims that are issued in bulk (i.e., more than one money claim is issued at the same time), damages claims including personal injury, and certain private family law cases (outlined below). These types of cases were included as they require a decision about whether to resolve through the courts or through alternative means, involve payment of a court fee (unless exemptions apply) and due to the volumes of these types of cases that are brought to the courts.

1.1.2 Civil claims

Civil cases, which tend to involve claims for money or property, 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.

Within civil proceedings, the focus of this research was on money claims (claims for a specified amount of money). This participant group was classified as '**organisations who bring money claims**' and covered organisations registered with the Civil National Business Centre (CNBC)¹² through whom money claims can be issued electronically in bulk.¹³ They were included in the research due to the volume of cases they bring to civil court.

¹² [Civil National Business Centre \(CNBC\) - Find a Court or Tribunal - GOV.UK \(find-court-tribunal.service.gov.uk\)](https://www.gov.uk/find-court-tribunal/service.gov.uk). Previously called the County Court Business Centre (CCBC)

¹³ The service allows organisations to make multiple claims of 10 or more a day, for example if they want to take court action against a number of customers who have defaulted on payments.

Other civil proceedings included in this research were **damages claims** (such as personal injury claims, usually for an unspecified amount of money), which can be made by individuals or organisations. The types of damages claims spoken about by participants tended to include accidents at work, public liability cases, clinical negligence, and claims made against road traffic insurers.

1.1.3 Family cases

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. They do not involve fees for individuals/businesses. **Private family cases** involve disputes between individuals and are initiated by a private individual, who is usually charged a court fee (see below).¹⁴ This research focused on private family law cases including divorce cases with financial remedy and child arrangements.

1.1.4 Overview of court fees

Court fees are in place to ensure **His Majesty's Courts and Tribunals Service (HMCTS) is funded and to reduce the cost to the taxpayer, while protecting people's access to justice**. Therefore, users who bring certain cases to the civil and family courts are usually charged a court fee which contributes towards the overall cost of running the court service. A **Help with Fees (HwF) remission scheme**¹⁵ 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 aid¹⁶ 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 solicitor and barristers' fees if they choose to have**

¹⁴ More information on public and private family law can be found at: <https://www.gov.uk/government/publications/a-guide-to-family-court-statistics/guide-to-family-court-statistics#contents>

¹⁵ More information on Help with Fees can be found at <https://www.gov.uk/get-help-with-court-fees>

¹⁶ 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. More information can be found at: <https://www.gov.uk/legal-aid/eligibility>

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.

- There are **several different activities within the civil and family court processes that might require a court fee to be paid.**¹⁷ The court fees applicable to cases will differ vastly based on several factors such as the type of claim/application, the 'track' of the claim,¹⁸ or the value of the claim. Some claims go **undefended** (i.e., the party who the claim is made against will not refute the claim) which leads to a default judgment¹⁹ in the claimants' favour, whereas others will be **defended** (i.e., the party who the claim is made against will refute the claim), causing variation in the stages that cases go through in court. For instance, civil case court fees can include fees for **issuing claims, hearings** (if the claim is defended and proceeds to hearing), and **enforcement** (if needed to enforce the court order to collect the debt), however, each fee is only required if that case reaches that particular stage. For family applications, there is an **upfront application fee** and there can be other court fees for 'general applications' to the court (discussed further in section 5.2.1.).
- Furthermore, the value of a civil claim can determine the **enforcement method** available for that case, and therefore the associated fee for enforcement. For example, High Court Enforcement Officers can be used where the value of debt is more than £600, with claims for a value £600 or less requiring County Court Bailiffs.

More information on fees, including fee amounts, can be found in Appendix C.

1.1.5 Alternative methods of resolution

The research also sought to understand the extent to which participants considered and used alternatives to court to resolve disputes. Alternative dispute resolution (ADR) refers to the different steps taken by an organisation to settle a dispute without using litigation

¹⁷ Full list of civil and family court fees can be found at <https://www.gov.uk/government/publications/fees-in-the-civil-and-family-courts-main-fees-ex50>

¹⁸ Civil claims can take three routes called 'tracks' which have different associated court fees. More information can be found at <https://www.gov.uk/government/publications/small-claims-track-fast-track-and-multi-track-ex305-and-ex306>

¹⁹ Default judgment refers to a judgment without a trial where a defendant has failed to file an acknowledgement of service or has failed to file a defence. More info can be found at <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part12#12.1>

and resorting to the courts. The main type of ADR discussed was mediation, where a jointly instructed neutral party is appointed to help parties achieve settlement or resolution. Participant's views on ADR are covered in chapter 4.

1.1.6 Recent changes to the court system

In 2014, Ministry of Justice (MoJ) published a qualitative study²⁰ which gathered views from 18 organisations and solicitors about the factors which determined whether to take a case to court and the extent to which court costs influenced this decision. This study employed a similar qualitative methodology and explored similar themes to this research. The 2014 research reported that the **likelihood of achieving a successful outcome** was the most important consideration in this decision, with organisations using differing risk analysis processes to help determine this. Organisations **did not consider court fees to be the primary factor influencing decisions** to take a case to court. They also perceived the court fee structure at the time positively and reflective of the resource allocated to dealing with civil and family cases.

There have been several changes to the court system since the previous study was undertaken, including those being carried out under the HMCTS Reform Programme²¹ which was developed to improve the efficiency and accessibility of the court process for court users. This includes modernising and expanding the provision of online services.

Other changes include rises in court fees, such as the alignment of paper fees with online fee levels for money claims (introduced in May 2021). To reflect increasing inflation there was also an increase in a number of fees including damages claims and family applications (in September 2021). At the same time, there was increase in income thresholds in line with historical inflation for Help with Fees, the government fee remission scheme for those with limited financial means referred to on page 9. Additionally, from November 2023 a series of reforms were made to the Help with Fees scheme²².

²⁰ This report can be found here: [Trends in volume of claims \(justice.gov.uk\)](https://www.justice.gov.uk/consultations/2014/140101)

²¹ HM Courts & Tribunals Service (2023). *The HMCTS Reform Programme*. Available at <https://www.gov.uk/guidance/the-hmcts-reform-programme>

²² More information can be found here: [Revising the 'Help with Fees' remission scheme – protecting and enhancing access to justice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme-protecting-and-enhancing-access-to-justice)

All of these changes meant that additional research was needed to help MoJ understand what factors influence organisations' decision-making process in the current context. The research will help inform ongoing work on fee policy, anticipating demand for court services, understanding the experiences of court users, as well as views towards alternative dispute resolutions such as mediation.

1.2 Research objectives

The aim of this research was to explore the decision-making process of organisations that bring cases to the civil and family courts, for themselves or on behalf of their clients. This included exploring the importance of a range of factors including costs and court fees, the likelihood of winning the case, as well as the wider economic climate. In addition, the research also explored the extent to which alternative dispute resolutions were considered and tried, and participants' perceptions and experiences of online court services.

Specifically, the research objectives were to explore the following:

1. What factors play a role in organisational decisions to issue claims and bring cases to court including financial considerations such as court fees, as well as the likelihood of winning the case, or the wider economic climate.
2. Organisation's perceptions and experiences of certain online court services (including reformed digital portals).
3. The extent to which alternatives to court are considered and used by organisations.
4. How organisations view court fees and the potential impact of fees, and other factors including the wider economic climate and alternative resolutions, on demand for court services.

1.3 Methodology

1.3.1 Summary of fieldwork design

A qualitative approach was adopted to explore the factors considered by organisations when deciding to bring cases to the civil and family courts. A total of 31 qualitative in-depth interviews were conducted virtually via video call (Microsoft Teams) or the telephone with a range of organisations and firms who regularly take civil and family cases to court.

1.3.2 Recruitment and sampling approach

Recruitment was facilitated by MoJ using a combination of information from internal databases and through engagement with the Civil Court Users Association. MoJ contacted organisations with a request to take part in the research and then provided Ipsos UK with a list of contacts who had expressed interest and had agreed to be contacted by them. Ipsos UK approached potential interviewees and scheduled interviews with organisations.

Table 1.1 includes a full breakdown of the profile of the participant groups interviewed in this research. There were three broad types of user groups that were in the scope of this research (and three further subgroups of money claim users).

Table 1.1: Overview of participant group sample

Participant group	Participant subgroups	No. of interviews
Organisations that bring money claims	Group A: Large organisations with in-house litigants who bring money claims – A user group comprised of organisations that make debt recovery claims and handle their own litigation in-house. These organisations were sometimes referred to as the 'creditor' in proceedings.	5
	Group B: Debt recovery agencies/solicitors who purchase debt – A user group comprised of organisations that purchase debts (e.g. from group A) and then make debt recovery claims and handle their own litigation in-house.	3
	Group C: Debt recovery agencies/solicitors who do not purchase debt – A user group comprised of debt recovery agencies and solicitor firms that make debt recovery claims on behalf of their clients.	6
Damages solicitors	Group D: Damages solicitors – A professional user group that makes damages claims / personal injury claims on behalf of their clients. Types of claims include accidents at work, public liability cases, clinical negligence, claims made against road traffic insurers.	7
Family solicitors	Group E: Family solicitors – A professional user group that represent private law family applicants. Types of cases include divorce with financial remedy and child arrangements. Solicitors also referred to handling domestic violence and emergency children's applications (although these cases were not discussed in detail in the interviews as they were out of scope of this research).	10

The sample included coverage across England & Wales, including 10 organisations that covered the whole of the UK and 2 that only have clients in Wales. The sample included organisations bringing a mix of case types, payment methods (representing fee paid clients, clients receiving legal aid/remission, and clients covered by No Win No Fee (NWNF) agreements) as well as organisation size. Please see the Appendix D for a detailed sample breakdown.

1.3.3 Research materials

To ensure consistency in the approach and data collection, Ipsos UK developed a set of discussion guides to structure the qualitative interviews. The guides were structured to allow for chronological discussions, but at the same time allowed for participants to raise their own issues and experiences. As such, separate topic guides were created for each of the participant groups: one for organisations who bring money claims (group A–C), one for damages solicitor participants (group D), and one for family solicitor participants (group E).

Please see Appendix B for full topic guides.

1.3.4 Fieldwork and analysis

The interviews took place between 22 December 2022 and 17 February 2023, with each discussion lasting around an hour. Participants were able to take part via telephone or video interview (Microsoft Teams). Most participants opted for a telephone interview. All interviews were audio-recorded with users' permission to ensure accurate reporting of the findings.

Audio recordings were transcribed, and the raw data was input into an Excel analysis grid. The grid was developed in line with the key research questions. Internal thematic analysis sessions were held throughout the analysis phase to discuss and consolidate themes and to identify and analyse findings.

1.3.5 Ethical considerations

Given the potentially sensitive nature of discussions around participant organisations' ways of working and decisions to take cases to court – especially in family cases where solicitors often dealt with delicate matters on behalf of their clients – ethical considerations were factored into the study design.

These included, but were not limited to, providing participants with comprehensive information leaflets to establish their understanding of the project, how the information they provided would be used and to ensure participants were providing informed consent. It was made clear to participants that taking part was voluntary, and they had the right to withdraw from the research at any time should they wish to. It was explained to participants that interviews would be treated confidentially, and findings presented anonymously in the final report.

Ahead of fieldwork starting, the project was submitted to a full internal ethics review by Ipsos UK's internal research ethics committee (REC).

1.3.6 Interpretation and representation of qualitative data

The research used a qualitative approach to explore the nuances and diversity of views of the organisations of interest. By its nature, qualitative research is not designed to be statistically representative. This report includes some indications of how typical views or experiences were across the sample or within subgroups interviewed for the research, but this should be considered within the context of those interviewed. As such, the findings generated by this research are not generalisable to all organisations and firms who use the civil and family courts and it does not give a measure of the prevalence of different views among the population of users of the civil or family courts. Findings are also based on participants' self-reported behaviour.

Participants were asked both about their own views and their perceptions of their clients' views where relevant. While this means that this research relies on what organisations have told us about their clients, another similar piece of research was conducted last year directly with end users of the court system.²³ Individuals who had used the civil or family court system were asked about their own views on the decision-making process for making claims and applications at family and civil courts. Broadly, findings about what was important to client decision-making from this research with organisations were consistent with what individuals reported about their own decision making in the previous piece of

²³ Ipsos UK (2023) Factors influencing users' decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162298/factors-influencing-users-decisions-to-bring-cases-to-civil-and-family-courts.pdf

research, with some exceptions around their understanding of costs, as discussed later in this report.

The sampling approach sought to ensure key user groups of interest for this research were included as well as a minimum of 5 interviews per sample group in order to achieve a sufficient insight from different organisation types. Logistical considerations, including the length of time available for the research project and the availability of participants given their busy and demanding schedules, also informed the sample size and research design.

1.3.7 Reporting conventions

Throughout, this report refers to 'participants', indicating 'participant group' where relevant (i.e., organisation that brings money claims, damages solicitors, or family solicitors). Quotes have been used to illustrate findings. To protect participant anonymity, verbatim quotes have not been attributed to individual organisations but instead to the participant group they are from.

Where different, the findings of each of the participant groups have been reported separately, signposting findings for each participant group using subheadings where appropriate to do so. Organisations that bring money claims were a distinct group in comparison to damages and family solicitors among whom findings were more comparable, given they often represent individuals bringing one-off cases to court rather than organisations issuing several money claims at one time. As such, where relevant, findings for the damages and family solicitor subgroups have been reported together.

1.4 Operational context

Details about the **operational context and characteristics of the organisations** were provided by the participants. Whilst all participants who took part in the research were involved in the decision-making process of taking cases to court, their role and team structure varied depending on the type of organisation they worked for. Most organisations had **multiple teams** dealing with different types of cases or stages of the court process. The research focused mainly on participants who were in a **litigation facing role** or a team that dealt with the decision of whether to issue a claim or make an application at court.

The volume and value of civil claims varied significantly by participant group.

Organisations that brought money claims reported the largest volume of claims (ranging from hundreds to hundreds of thousands per year). The volume of claims reported to have been brought by damages solicitors was lower, ranging from hundreds to upwards of 1,500 claims per year. In terms of the value of claims, organisations who brought money claims said they mainly issued low value claims ranging between £200 and £10k. The value of claims for damages solicitors tended to be of higher value due to the nature of the claims (e.g. clinical negligence). However, other than two damages solicitor participants, participants in this group were unable to provide an estimate of the typical value of claims. The number of applications from family solicitors reported ranged from 150–400 applications per year.

The table below provides a summary of the type of claims, client base and who they were issued against for each of the three participant groups.

Table 1.2: Summary of operational context of the three participant groups

Participant group and type of claim/ application	Client base	Issued against
Organisations that bring money claims	Businesses that may be owed money (e.g., utility suppliers and banks).	Often issued claims against consumers (e.g., individuals with defaulted credit cards and unpaid utility bills), or other businesses who have failed to deliver goods and services agreed upon.
Damages solicitors including personal injury	Individuals, trade unions (and their members), corporate and commercial clients. Mostly individuals who had experienced relatively minor injuries (e.g. from low level car accidents, slips and trips etc.). A smaller proportion of high value personal injury claims tended to be made by individuals who have been through a life changing event e.g. severe accidents or clinical negligence. Furthermore, a small number were defended claims .	Generally, issued against insurance providers of at fault parties.

Participant group and type of claim/application	Client base	Issued against
Family solicitors – divorce with financial remedy and child arrangement cases	Individuals who had disagreements relating to children and their upbringing and/or money. Some of their clients funded this privately, whereas others (often on low income and benefits) applied for legal aid.	Generally made an application against an (ex) partner/spouse or mother/father of a child.

1.5 Report structure

The main body of the report comprises the following chapters:

- **Chapter 2:** Key factors considered when making a claim or application
- **Chapter 3:** Feedback on online services and reformed online portals
- **Chapter 4:** Alternatives to court
- **Chapter 5:** Views on court fees and legal costs
- **Chapter 6:** Conclusions

2. Key factors considered when deciding to make a claim or application

This chapter explores **what factors play a role in organisational decisions to issue claims and bring cases to court**, including financial considerations such as court fees, as well as the likelihood of winning the case, or the wider economic climate.

Summary of key findings:

- Organisations considered **a range of factors** when deciding whether to make a claim or application to the civil and family courts. Across all participant groups, the **probability of a claim or application being successful** in terms of the case/claim being found in their favour and, if relevant, recovering the money, was deemed the **single most important factor in this decision**. This outweighed other considerations. For participants who make money claims, the prospect of recovering the debt (including the enforcement method used to achieve this) was key to the probability of success in terms of the **likelihood of being able to recover the money in practice** (in addition to the positive court outcome). Although for successful claims the debtor is liable to cover the court fee, participants noted how in reality it could be difficult for this to be enforced.
- **Reputation was also an important factor**, with participants taking into account the potential impact of pursuing cases/claims on their own and their clients' reputation. Participants considered both the public perception of their organisation and that of their clients, including their credibility among their client base.
- The extent to which the **court and legal fees associated with making a claim/application influenced decisions differed** both within and across the three participant groups. However, fees had a greater impact on decision-making for money claims, in particular, where the value of the claim was very high (due to higher issuing fees) or low (due to the proportion of the value of the debt fees make up) compared to mid-value claims.

- All participant groups raised **some level of concern about delays in the court process**. Damages and family solicitors noted that this could be frustrating for their clients who sometimes perceived them to be responsible for these delays, affecting their reputation. They also noted the impact delays could have on legal fees, in some cases causing them to increase. These issues factored into their decision about whether to bring a claim/case. For money claims, however, most cases went undefended meaning the impact of court delays was minimal.
- Participants across all user groups explained that **wider economic factors**, such as the pandemic and increases to the cost of living had already or were predicted to impact decisions (at the time of interview, December 2022 to February 2023). While participants who brought money claims anticipated a decrease in the volume of claims, there was less of a consensus among damages and family solicitors as to how the volume of claims/applications will be impacted.

2.1 Role in decision-making process

All participants interviewed were **involved in the decision-making process about whether to make a claim/application**, whether this be for their own organisation or on behalf of their clients, **while also handling litigation for cases** through the civil and family courts.

Participants spoke of **providing advice to clients** on whether to issue a claim or application. For money claims, this tended to occur more for organisations who had capacity to issue claims in-house or in high value cases. Participants who brought money claims typically had their **own frameworks, such as policies or guidelines, in place to guide decisions**, viewing this as the core aspect of their business model.

For damages and family solicitors interviewed, participants noted that **the decision to pursue a case or application lay with the client** and that their clients had often already made up their mind about wanting to take their case to court when they approached the solicitor. Solicitors' advice therefore tended to focus on helping their clients decide on whether this was worthwhile or not.

Family solicitors noted that they would sometimes provide advice to clients who would then decide to self-represent. Decisions to self-represent tended to be because they could not afford the legal fees required from solicitors or barristers yet were not eligible for legal aid.

2.2 Likelihood of successful outcome

2.2.1 Defining a successful outcome (money claims)

Participants who issued money claims noted that there were two elements to a successful outcome for debt recovery cases; **winning the case** (i.e. a judgment made in favour of the creditor), and **recovering the sums owed from the debtor**. Most participants from this group referred to the latter as the 'recoverability' of a case.

“One thing I pride my practice on is not throwing good money after bad...We could issue far more claims for our clients than we ordinarily do, but the reason we don't is because we know that the prospects of recovery for the client are not going to be great, and the last thing the client wants to do is to incur a load of costs knowing that the prospects of recovery are quite poor.”

– Debt recovery agencies/solicitors who do not purchase debt

2.2.2 Calculating the probability of a successful outcome

For all participant groups, **the probability of achieving the desired outcome was central to deciding whether to make claims or applications**. The process of calculating the likelihood of a case being successful was a **core aspect of their decision-making process for all participant groups interviewed**, helping them build a trusted reputation among their clients.

Generally, participants across all groups relied on their own and their colleagues' **previous experience and knowledge of the court system** to predict the probability of the outcome being in theirs or their clients' favour.

“Getting the best outcome for the client. That tends to be the bottom line, really.”

– Damages solicitor

Damages and family solicitors interviewed explained how rather than having a set business model or policy, **they would consider each case on an individual basis**, focusing on the merits of the case and drawing on previous experience of similar cases going to court. Especially for family solicitors interviewed, the ability to provide this advice, based on knowledge and experience of the court system, was seen as a key part of their business model.

“You need to be realistic, but that comes with experience...you need to sometimes say, ‘Look, this is the reality, he is the dad, he has got parental responsibility. He has had contact up until this point, there’s no reason to not continue contact. This is my advice.’”

– Family solicitor

In some cases, damages and family solicitors spoke of involving others in this process. For example, one of the damages solicitors interviewed explained how for some personal injury cases, they would involve **independent medical experts** who would be able to assess whether the defendant would be likely to have a strong defence if they were to pursue a case.

Participants who brought money claims on the other hand described **several checks conducted** to decide whether it was worthwhile to pursue a case, aiming to predict the likelihood of winning the case and subsequently recovering the debt. These **checks tended to be conducted by legal teams** within organisations. Several participants referred to ‘scorecards’ or ‘traffic light systems’ implemented by their organisation, where each case was assigned a probability of having a successful outcome based on a series of checks which then determined whether they would make a claim.

“We analyse the ones which have been through a process, we classify them as red, amber, green, according to some flags, we do a credit search on those, and then we flag up ones which haven’t got a red flag against them, and then we go to the customers, and we ask them what they want to do.”

– Debt recovery agencies/solicitors who do not purchase debt

Most of the due diligence processes cited by participants who brought money claims were **designed to assess debtors’ financial history** to get a sense of how worthwhile it was to

pursue a case. For example, participants often mentioned conducting **creditworthiness checks** on debtors which determined the extent to which they were considered suitable to receive financial credit based on their reliability to pay money back in the past.

Similarly, a few participants mentioned checking for **previous insolvencies** as an indicator that the debtor may be unable to repay their debt. One participant referred to the **acorn score**²⁴ as a judgement of how likely debtors might be to pay back their debt. Some participants also mentioned **checking whether the debtor's last known address** was accurate, noting that if this was likely to be incorrect, the chances of successfully recovering the debt lowered as enforcement methods tended to rely on knowing the address of the debtor.

“If you've got somebody that's in a poor area, struggling students, single-person households, the likelihood of them paying is very minimal so we'll take that into consideration.”

– Large organisation with in-house litigants who bring money claims

Similarly, damages solicitors interviewed noted how in addition to winning a case, they **also considered prospects of recovery** (i.e. chances of claimant receiving compensation from defendant). For example, participants mentioned that they were less likely to pursue a case where the defendant is uninsured as this notably decreases the claimant's likelihood of receiving damages compensation should they win the case.

“If we're running a claim, we'll run it, and just go on prospects of success, and prospects of recovery.”

– Damages solicitor

Unique to participants who brought money claims, the **enforcement method available also often factored into their calculation of the probability of a successful outcome**, as this could impact on the likelihood of debt being successfully recovered. For instance, participants expressed a **clear preference for the use of High Court Enforcement**

²⁴ The acorn score refers to a geo-demographic segmentation of residential neighbourhoods in the UK. More info about the score and how it is calculated can be found at: <https://www.gov.uk/government/statistics/quality-assurance-of-administrative-data-in-the-uk-house-price-index/acorn-consumer-classification>

Officers over County Court Bailiffs as they were seen as more effective at recovering debt. This was perceived as being due to the methods used by High Court Enforcement Officers and County Court Bailiffs and how they are paid. Participants noted that County Court Bailiffs generally worked on a salaried basis for relatively low pay, whereas High Court Enforcement Officers would add their own fees to debt recovery, giving them more of an incentive to effectively recover debt.

“The preference is towards using High Court Enforcement Officer. We will rarely use the County Court Bailiff. It's [County Court Bailiffs] not a fast process and typically the County Court Bailiff will send a notice to the defendant saying, 'I'm going to be coming on this date'. Generally, that doesn't lead to an effective outcome.”

– Debt recovery agencies/solicitors who do not purchase debt

However, as mentioned in section 1.1.4, participants who brought money claims flagged that **High Court Enforcement Officers can only be used for cases where the value of the debt is more than £600**, meaning cases where the value of debt was lower could only use County Court Bailiffs. This was a source of frustration for participants who tended to bring money claims where the sums owed were £600 or less, as this lack of choice sometimes discouraged them from making a claim at all given the low probability of being able to successfully recover the debt.

“We have clients now who will obtain a judgment of less than £600 and then simply not take enforcement action.”

– Debt recovery agencies/solicitors who do not purchase debt

2.3 Role of reputation

Participants across all user groups generally considered both their own, and their clients' reputation when deciding whether to make claims or applications.

2.3.1. Money claims

Participants who brought money claims explained that the **impact of issuing a claim on the creditor's reputation was often considered** when deciding on whether to make a claim. When discussing the risk to the creditor's reputation, several participants referred to

regulatory bodies such as the Financial Conduct Authority (FCA) who legally require organisations to run certain checks before issuing a claim.

For instance, FCA guidelines²⁵ require creditors to assess debtors' levels of vulnerability, **minimising the ethical risks of issuing money claims**. In addition, some organisations had developed their own **additional guidelines to help avoid issuing claims against vulnerable debtors**. In some cases, these policies had been implemented in response to wider societal changes, such as the pandemic or increases to the cost of living. For example, a few participants who brought money claims explained that they stopped issuing claims during the pandemic as they were aware their debtors were already under financial stress.

“Customers that might have affordability or vulnerability issues – we’ve always looked at them through a different lens, but now that’s definitely even more weighted that we’re very, very cautious about sending anybody down that route.”
– Large organisations with in-house litigants who bring money claims

Furthermore, participants who brought money claims also spoke of concerns about **unfavourable press coverage and wanting to avoid negative public reactions** if they were to issue claims in certain cases where the debtor was viewed as vulnerable. The importance of following guidelines to ensure money claims were only issued where appropriate was **particularly salient in cases where the creditor was a large, well-known company recovering debt from a much smaller company/sole trader or individual consumer**. In these cases, participants considered how this would reflect on the **creditor’s morality**, emphasising the importance of being seen to ‘do right by the customer’ and avoiding any perception of an abuse of power.

“The perception of County Court action against people... There’s a social, an external view of people taking bulk litigating action and claiming against people that comes into our thinking at times. How does it look in [a newspaper]?”
– Large organisations with in-house litigants who bring money claims

²⁵ FCA provides official guidance on the fair treatment of vulnerable customers. Full guidelines can be accessed at <https://www.fca.org.uk/publication/documents/guidance-fair-treatment-vulnerable-customers-faqs.pdf>

2.3.2 Damages claims and family applications

Damages solicitors interviewed also suggested that **when defending claims specifically, on behalf of a well-known client, consideration may be given to potential negative press coverage** that could come from defending a claim or making a counter-claim and how best to avoid this.

“If you’re dealing with a fairly prominent client, what’s the PR look like on this? Is there going to be repercussions in terms of PR, press coverage for our client, would they want to avoid that? If you take, say, a significant injury, do they really want to put the claimant through the prolonged process of trial and all the rest of it?”

– Damages solicitor

Damages solicitors also made **links between taking on cases that were likely to have a successful outcome and their reputation among clients**. This was echoed by family solicitors taking part in the research. For example, a family solicitor highlighted the importance of managing client expectations of what a realistic outcome would be should they decide to proceed with making an application, noting that **their firms’ credibility might be at risk if they advised clients to pursue cases with poor chances of succeeding**.

2.4 Cost of making a claim or application

The extent to which the cost of making a claim influenced decisions **differed both within and across the three participant groups**. For instance, some noted that **the presence of court fees encouraged organisations to consider how worthwhile pursuing a case would be** (i.e. how likely they would be to achieve a successful outcome) as they risked having to pay court fees should their case be unsuccessful. In line with this was the view that court fees have an important role in preventing organisations issuing unfounded claims or applications that could be considered to be wasting court time and resources.

The rest of this section discusses the role of court fees in the decision to bring different types of cases to court. More detail on participants’ views on court fees, including the purpose of fees, fee amounts/structures, and their potential role in future decision making is discussed further in Chapter 5.

2.4.1 Money claims

Participants who brought money claims remarked that the extent to which the court fee for issuing a claim influenced their decision-making **depended on the value of the claim**, with issuing fees being important for particularly high and low value claims for different reasons.

For instance, the issuing fee was seen as particularly important when the **value of the claim was especially high** as this often resulted in **expensive issuing fees**²⁶.

“If you want to [claim] a certain figure you have to pay a court fee of £10,000. And that’s a big court fee to pay. Bear in mind it might not be recoverable depending on the defendant’s situation. So that can be a real barrier potentially in some of those larger fees at that top end.”

– Debt recovery agencies/solicitors who do not purchase debt

On the other hand, the court fee for issuing a claim **when the value of the claim was particularly low also influenced the decision to make a claim for some in different ways**. Some participants who brought money claims explained that as the **issuing fee tended to be minimal for low value claims, the cost of making the claim was seen as not particularly important**. For example, a few participants explained that their organisation had policies in place to ensure that any money claim up to and including a value of £1,500 would be automatically issued as the associated issuing fee would be below £100, making this less of a financial commitment.

However, others referenced that as the issuing fee could make up a **significant proportion of the value of the debt, it was not always deemed financially worthwhile** to issue claims where outstanding sums were below a certain value (i.e. where a notable proportion of the debt recovered would be spent on court fees²⁷). While for successful claims the debtor is liable to cover the court fee, participants noted how in reality it could be difficult for this to be enforced. Similarly, **where organisations are making claims in**

²⁶ Issuing fees associated with claims are banded, with fixed amounts associated with claims with a value of £10,000 or below. Once the value of a claim exceeds £10,000, the issuing fee is no longer fixed, instead becoming 5% of the claim value up to a maximum of £10,000 for claims over £200,000. Full breakdown of issuing fees by claim value in Appendix C.

²⁷ While the debtor is liable to pay the court fees should they lose a case, full recovery of court fees is not always successfully enforced (as discussed in section 2.2).

bulk, the total sum of issuing fees can be expensive. Therefore, issuing high volumes of claims, albeit low value claims, can cause financial strain on organisations even when cases are successful due to the delay between paying the court fees and recovering these from the client.

2.4.2 Damages and family applications

According to damages solicitors interviewed, **court fees were rarely considered** in the decision to make a claim, either by themselves or their clients since **court fees tended to be covered by insurance providers.** For instance, damages solicitors interviewed explained that even when operating on a No-Win-No-Fee basis (which stipulates that should a client lose their case they will not be charged fees), this policy only covers legal fees meaning clients are, in theory, responsible for paying court fees should they lose their case. However, damages solicitors interviewed noted that most of **their clients have after-the-event insurance²⁸ which would cover their court fees, should their case not be successful,** or that their clients' court fees may be covered **by fee remission schemes²⁹** if eligible, meaning that clients rarely pay court fees themselves.

Damages and family solicitors reported that **legal fees tended to have more of an impact on their clients' decision to make an application than court fees.³⁰** Some legal fees are charged with reference to a solicitor's time spent on a case, with participants referring both to hourly and daily rates. Therefore, uncertainty about the length of the court process (discussed further in section 2.5) **made it difficult for solicitors to provide an accurate prediction from the outset of overall legal costs for clients,** in turn causing some frustration for their clients.

²⁸ Insurance which covers the costs involved in litigation including the court fees should a case not be successful.

²⁹ 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.

³⁰ This reflects findings from the research into court users' decisions (2023) where claimants and applicants noted that legal fees were more important than court fees when it came to decision-making. This report can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162298/factors-influencing-users-decisions-to-bring-cases-to-civil-and-family-courts.pdf

“It is [a factor] in terms of legal fees. You have to say to the client, ‘Your cost estimate is going to be increased because of the delays in the court system.’ ... I say, ‘Well there’s my cost estimate but the reality is that I’m not in control of that. Because I don’t know what your court will do.’”
– Family solicitor

While solicitor participants in this study generally felt they provided clients with as much information available about their legal costs as possible (discussed further in section 5.2.2), research with end clients themselves suggested the overall cost of their case was still higher than they had originally anticipated.³¹

Nonetheless, participants reported that the **personal nature of family cases tended to minimise the extent to which the cost of making an application** (whether this be legal or court fees) influenced their client’s decisions. Participants explained how for their clients, fees were seen as a necessary part of a deeply personal and important process.

“If you’re in a situation where you’re not seeing your kids, for example, then, almost, money’s no object.”
– Family Solicitor

Damages solicitors noted that **their own decision to take on a case was more likely to be impacted by legal fees than by court fees. Frustration was expressed at the fixed rate of recoverable legal costs for certain cases,**³² remarking that these have remained static despite court fees increasing with inflation. A few damages solicitors remarked that **the fixed cost of legal fees that can be recovered from a losing party has put financial strain on solicitor firms and has, in turn, prompted them to be more stringent** on the type of cases they take on (similar to the way in which court fees can prompt further consideration among individuals considering making money claims, as discussed in section 2.4.2).

³¹ Ibid

³² Legal costs are the fees solicitors charge for the legal work they do. Fixed recoverable costs (FRC) refers to the (fixed) costs that can be recovered from the losing party at different stages of litigation. The Government has recently implemented an extension of FRC in civil cases, to cover most civil claims up to a certain value, and for Noise Induced Hearing Loss (NIHL) cases. The levels of FRC are set by the government, with input from the relevant procedural committees

“It [fixed legal costs] does make you more conscious as a law firm operating in that model, particularly if you do end up losing or having a court case that fails, the costs of that are potentially more significant as well. It does mean as a law firm you need to be more savvy and just make sure you are really on the ball with appraising the prospects. And I’d say the knock-on impact of that is law firms are probably, they’re less speculative really about taking on cases that maybe have more borderline prospects or lower prospects of success.”

– Damages solicitor

Damages solicitors interviewed expressed growing frustration about these fixed recoverable costs dictated by government, **feeling that this was making it increasingly difficult for firms to successfully operate**. It was suggested that **if there is no prospect of current fixed recoverable costs being revised this may reduce the volume of claims their firm can make**.

2.5 Length of claim/application process

There was a general view across participant groups that **civil and family courts were understaffed and overwhelmed**.

“The court is severely understaffed. Say 5 years ago, you’d be able to... [contact] people when documents went missing or you’d issued something, and it hadn’t got done and you could find out. Now it goes into the black hole, and it is almost impossible to find out what happens to them. There are great delays in getting court hearing dates.”

– Family solicitor

Some participants across participant groups **raised concerns about the capacity and timeliness of the court process**. Court staff were sometimes seen as poorly trained and having little experience in the court system, limiting their ability to provide support and information.

Participants emphasised how the **backlog of cases from the pandemic had placed additional pressure on the courts system, exacerbating delays**.

2.5.1 Money claims

In terms of impact on decision-making, **delays to the court process were less of a consideration when deciding to make a money claim** compared to a damages or family claim/application. Participants who brought money claims explained that delays mostly occurred when claims were defended (and therefore required a hearing). However, participants noted that most of the **money claims they issued went undefended, meaning they were less subject to delays**. Where money claims are not defended a default judgment is reached within a matter of weeks.

2.5.2 Damages claims and family applications

In contrast, damages and family solicitors interviewed noted that the **length of the court process was important to both their and their clients' decisions** to take on cases. Participants reported that **clients were often deterred when informed about the length of the court process**. They also reflected that it could be difficult to provide clients with a realistic estimate of how long the case might take.

“We always tell them, ‘Look, it’s not going to happen overnight. It’s not just going to be one hearing, it might be months, it could be years. We don’t know.’”

– Family solicitor

Both damages and family solicitors interviewed noted that while delays in the court system tended to be out of their control, they could **reflect badly on firms, especially as delays can lead to additional legal fees for clients**, emphasising the importance solicitors placed on their firms' reputation when deciding whether to make a claim or application (as mentioned in section 2.3).

2.6 Wider economic factors

Participants across all groups spoke of how wider economic factors, in particular the **pandemic and increases to the cost of living**, had already or could in the future impact the decision to make claims/applications to family and civil courts.

However, as interviews took place between December 2022 and February 2023, there was a consensus among participants across all groups that it **was too early to say how**

increases to the cost of living would impact organisations' decisions to make claims/applications.

“Obviously the cost of living...may well have an impact, we'll just have to see, too early to say unfortunately. Mainly because we haven't hit some of the harder periods that people are expecting...I think one of the pinch points coming up this year that people are concerned about is the number of people coming off fixed rate mortgages and then looking to find new deals, whether that's going to impact on discretionary spend.”

– Debt recovery agencies/solicitors who do not purchase debt

2.6.1 Money claims

Organisations who brought money claims spoke of a **decrease in their organisations' volume of claims during the pandemic**. Some attributed this decline to businesses closing or operating at a reduced rate during the pandemic while others explained that their organisations had made the decision not to issue any, or as many, money claims during the pandemic from a moral standpoint. Links were made between the **impact of wider economic factors**, such as the financial impact of the pandemic, and the influence of making money claims on a **organisations' reputation**. Measures put in place could also help mitigate the potential risk to their organisations' reputation if creditors were seen to be chasing after financially struggling individuals or businesses.

“When Covid was on we didn't actually issue any claims for some time. We didn't feel that it was morally, ethically correct to do so. We have, however, started issuing again after the initial lockdown period.”

– Large organisations with in-house litigants who bring money claims

Participants **predicted that increases to the cost of living would impact their organisations' decision to bring money claims in the future**. Some foresaw a decline in the volume of money claims their organisation would make, attributing this to more companies becoming insolvent, reducing the likelihood of creditors recovering their debt from other businesses. In contrast, others suggested that increases to the **cost of living would bring about a rise in money claims**, particularly against sole traders, small businesses, and consumers, as these types of debtors were at a higher risk of being

impacted by increases to the cost of living than large corporate companies. However, as interviews took place between December 2022 and February 2023, there was a consensus among participants across all groups that it **was too early to say how increases to the cost of living would impact organisations' decisions** to make claims/applications.

2.6.2 Damages claims

For damages solicitors interviewed, the **impact of the pandemic on the volume of claims differed by claim type**. For instance, a few cited a decrease in road traffic accident and accident at work claims during the pandemic due to lockdowns and increased working from home meaning fewer cars on the road and less time spent in workplaces. On the other hand, others mentioned how other types of damages claims, such as clinical negligence claims, had risen since the pandemic. They reported instances where the pandemic had prohibited access to medical treatment and created delays to diagnosis, causing an increase in this type of claim now.

“In clinical negligence, we’re seeing a really big boom in claim numbers, they’re really increasing. And that’s likely because through the pandemic people they’ve not been able to access some medical advice or treatment, they’ve had delays with diagnosis.”

– Damages Solicitor

2.6.3 Family applications

Generally, **family solicitors interviewed reported a rise in family applications during the pandemic**. For instance, some cited instances where lockdowns had reduced child contact with one parent, leading to an increase in contact orders or where economic uncertainty caused by the pandemic had been linked to familial breakdowns, increasing divorce cases.

2.7 Factors considered when solicitors purchase debt

As part of the research, a small number of organisations involved in or working on behalf of those working in the debt buying market were also interviewed. Debt buying is where organisations purchase debts from other organisations (e.g. utility companies) and then make debt recovery claims and handle their own litigation in-house. Specifically, three

participants who brought money claims on behalf of purchased debt (group B) were interviewed. In addition, two participants who brought money claims, but did not purchase debt themselves (group C) were able to provide high level insights into the debt-buying market due to their experience acting on behalf of debt buyers. *Due to the small number of interviews, the findings below should be interpreted with caution.*

Participants from this sub-group noted that the **debt buying market was seen as highly competitive** and can be very profitable if a firm is able to successfully recover debt owed. They noted that the market has become even more competitive since the pandemic, as banks have been selling less debt.

Some factors considered when buying debt mirrored those considered by other participant groups who bring money claims when deciding whether to make a claim. For instance, participants considered the **quality of, and risk associated with the debt** when deciding whether to purchase it. The quality of the debt was considered when deciding whether to purchase it from the original debt owner and determined by the likelihood of being able to recover the sums owed, which involved a calculation of the risk associated with recoverability from the debtor (as described in section 2.2.1).

Participants who purchased debt **also reported considering the price they are paying for the debt** and the potential value for money on their investment. For instance, reflecting findings noted in section 2.4, this participant group would consider whether the costs associated with making money claims on the debt they purchased, such as the issuing fee, in addition to the chances of recovering these costs should their claim be successful was financially worthwhile when deciding whether or not to buy the debt.

“It is a very competitive market. There are lots of businesses out there vying for these portfolios of work.”

– Debt recovery agencies/solicitors who do not purchase debt

3. Feedback on online services and reformed online portals

This chapter explores **participants' perceptions and experiences of using certain online services and portals to issue claims/make applications**. This includes the Damages Claims Portal (DCP, used by some damages solicitors) and the MyHMCTS portal for divorce and financial remedy cases (used by some family solicitors). Feedback was also provided on the Secure Data Transfer portal³³ managed by the Civil National Business Centre (CNBC)³⁴ in Northampton (used by participants who bring money claims in bulk). User experiences of online services are briefly touched on within this chapter. There is a full evaluation of the HMCTS Reform programme being carried out by MoJ that will explore user experiences of reformed services in greater depth.³⁵

Summary of key findings:

- Damages solicitors interviewed who had used the **Damages Claims Portal (DCP)** appreciated the **modernisation of the digital system** but some also acknowledged some **teething issues**, noting that further improvement was required.
- The **reformed service for divorce and financial remedy received positive feedback** from family solicitors interviewed who had used it, however, a few users indicated they felt it was **not yet reliable enough** to use for immediate or urgent cases.
- Participants who made money claims had **mostly positive feedback on the Secure Data Transfer (SDT) portal**, managed by the Civil National Business Centre (CNBC), explaining how its automation aided quick and easy processing.

³³ Whilst the SDT portal is a digital product, it is not a product of HMCTS Reform and was developed prior to the reform programme.

³⁴ Previously called the County Court Business Centre (CCBC)

³⁵ More information on the HMCTS Reform evaluation can be found here:

<https://www.gov.uk/government/collections/hmcts-reform-overarching-evaluation-research>

3.1 Damages Claims Portal

Overall, the Damages Claims Portal (DCP) was **generally welcomed** by damages solicitors interviewed as it made the process of administering and issuing claims easier. Several damages solicitors were **positive about the move towards a digital system**, seeing this as a necessary improvement on the previous system which involved more paperwork, and **praised the 24-hour service** provided by 'MyHMCTS' as creating a more efficient process which saved time for claimant and defendant law firms, and the court.

However, some also expressed **frustration about portal errors and teething issues**. There was reference made to claims not being issued for days after they had been submitted which was particularly a significant issue for cases that were approaching limitation.³⁶ It was also noted that the **information available to view on the portal was not sufficiently detailed** and suggested that this could be improved by making it clearer what steps were required next and by what party. Several damages solicitors felt it would have been beneficial to have more lawyer consultation throughout the development of these reforms to avoid such issues.³⁷

“[DCP] was introduced with very little consultation, and to be honest very little thought, about the practicalities of that, and the implications of doing it. ...Whilst it does make things easier, there's no link to [our] case management systems... so it's not a particularly efficient way of doing it.”

– Damages solicitor

3.2 Reformed service for divorce and financial remedy

Family solicitors interviewed were, in general, **appreciative of the reformed service for divorce and financial remedy** and the shift towards a more paperless system. They noted that an electronic system was **generally easy to use, less prone to delays and lowered the risk of documents being lost**.

³⁶ If the case is not filed before the limitation period expires; the claimant is at risk of losing their right to pursue the claim in court.

³⁷ HMCTS consulted solicitors in the development of the DCP and engagement is ongoing.

“It’s good that it’s online. Because I’m paperless and I don’t like printing stuff and posting stuff, because there are so many delays that are caused with that stuff.”

– Family Solicitor

However, some family solicitors also expressed a lack of confidence in the portal, which often stemmed from the fact they did not yet feel accustomed to it. Some family solicitors articulated that they would be **hesitant to trust the portal with immediate, or urgent, cases**³⁸ and explained that in such circumstances, they would prefer to use more established processes in order to prevent the likelihood of errors causing delays.

“The domestic abuse ones, I have just been filing with the court directly. I haven’t been doing them on the portal because I’m just conscious with them being urgent... and I’m conscious for the clients.”

– Family Solicitor

3.3 Secure Data Transfer

Participants who brought money claims generally found the SDT portal was **straightforward, easy to navigate and worked relatively well**. As this participant group often issued high volumes of claims, they **valued the automation** of the portal as it reduced the need for manual input. These participants stated that most of the cases they issued were not contested, resulting in a default judgment, meaning for many cases, each stage can be processed online.

“The electronic claim process, to a point, works relatively well, because it’s all automated and the system, when it’s straightforward, it’s a relatively efficient and effective service... the core spine of the process for electronic claims, up until the point of judgement, works relatively well. Where there’s the problem is when it becomes contested and then it gets transferred out to another court”

– Debt recovery agencies/solicitors who do not purchase debt

³⁸ To note, some functionality, including for cases involving domestic violence, was not available at the initial rollout of the online service.

4. Alternatives to court

This chapter explores the steps taken by organisations to resolve disputes out of court (through Alternative Dispute Resolution) as well as the extent to which alternatives to court are considered and used by organisations.

Summary of key findings:

- Participants across all user groups interviewed agreed that **going to court was generally the least favourable option** and that they encouraged clients to pursue Alternative Dispute Resolution (ADR) as much as possible. Damages and family solicitors reported that most of their clients tended **not to have considered formal ADR options** before meeting with solicitors.
- Before deciding to make a claim/application, participants outlined several **steps** their organisation took to explore other forms of resolution outside of court.
- **Negotiation and mediation were the most used methods of ADR** (for avoiding the need for a court judgment), with mixed views of effectiveness across participant groups. Mediation was perceived to be the **most effective when both parties were willing to engage** and felt **motivated to avoid court**.
- For family cases, participants saw mediation as particularly **effective in finance cases where both parties were on good terms and there were not many assets involved**.

4.1 Steps taken before making a claim

Participants across all user groups reported taking **additional steps before issuing a claim or application**.

For civil claims, organisations are **required to follow the relevant Pre-Action Protocol**³⁹ within the courts' Practice Direction, which **sets out the steps which each party must take** before making a claim or application. These protocols are aimed at **resolving the matter without the need for the courts to get involved**.

Whilst the exact steps of the Pre-Action Protocol differ depending on the type of claim or application, the steps usually include:

- **Attempts from the claimant to contact the defendant with concise details of the claim.** The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant and, where financial, how the amount is calculated.
- **The defendant responding within a reasonable time** (14 days in a straightforward case and no more than 3 months in a very complex one). The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why.
- **Disclosure of key documents relevant to the issues in dispute** (e.g., invoices)

Participants who bring money claims noted that in addition to following a Pre-Action Protocol, they were also **required to adhere to guidelines**, some of which were put in place by regulatory bodies such as the FCA and others by their own organisation, before they could issue a claim to **ensure fair treatment of customers** (see section 2.3).

In addition to following legal (and regulatory) guidance, participants across money claims, damages and family generally saw ADR as a **lower-risk approach** to resolving the dispute as it could **reduce the cost and time involved, and the legal or regulatory risk**

³⁹ Pre-action protocols explain the conduct and set out the steps the court would normally expect parties to take before commencing proceedings for particular types of civil claims. More information can be found at: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct

exposure. It could also reduce the potential emotional stress which might otherwise be experienced in court.

“[Mediation is] cost effective, time effective. They’re [end clients] in charge of the process. They’re making the decisions, not a judge. And the emotional stress of court, it’s not easy doing mediation, but they get it in a matter of weeks rather than months if not years.”

– Family solicitor

4.2 Overview of alternatives to court

Before deciding to make a claim/application, participants outlined several steps their organisation takes to explore other forms of resolution. Participants **described a variety of ADR options, including:**⁴⁰

- **Direct correspondence**, including a Letter of Claim or Letter Before Action
- If no contact with the other side, using a **tracing service** to establish contact
- **Negotiation** (e.g., a reduced settlement figure or a payment plan)
- **Round-table meetings** (where both parties and their legal representatives are present).
- **Conciliation or mediation** (third-party individual appointed as neutral person to help parties achieve settlement and resolve differences)
- **Arbitration** (settling dispute outside of judiciary courts with independent arbitrator who can impose a settlement if the parties do not agree one themselves)
- **Ombudsmen services** (provide independent dispute resolutions between consumers and businesses).

Wider factors such as increases to the cost of living and pandemic (as described in section 2.6) meant that participants placed an increasing importance on ADR to reduce the length and cost associated with court proceedings.

⁴⁰ This does not cover alternative litigation strategies such as bankruptcy proceedings or winding up proceedings as these still include a court judgment.

4.3 Experience of using alternatives to court

All participant groups were aware of and talked about their experience of using alternatives to court. However, the ADR options used varied by the nature of the claim/application.

4.3.1 Money claims

Participants who bring money claims expressed **mixed views on the effectiveness of ADR overall**, especially in the form of mediation.

Most participants who bring money claims were aware of and had at least some experience of **mediation**. It is, however, important to note that participants interviewed in this research seemed to use the term 'mediation' to describe a range of settlement-focussed activities, including both the small claims mediation service⁴¹ and external mediation services as well as negotiation such as round-table meetings with parties and their representatives.

Some found mediation to be an **effective tool for money claims and used it regularly**, reporting that it could **save time and money** if both parties engage in the process, as well as **take pressure off the courts** and reduce their own workload when successful. However, others found that the debtor rarely showed up and that it merely **prolonged the process** or reported instances where debtors would use mediation as an opportunity to ask creditors to drop the case.

“Usually, it’s when they’ve agreed to mediation but they have no intention of actually coming to an agreement, they’re simply coming to mediation to tell us to drop the case. Those are usually the cases that we can’t really do much on, because they’re not willing to negotiate at all, which is against the spirit of the mediations.”

– Large organisations with in-house litigants who bring money claims

⁴¹ Free mediation is available for money claims under £10,000. More information can be found at: <https://www.gov.uk/guidance/small-claims-mediation-service>

Participants noted that **external mediation services were expensive** and as such, tended to be used more for **high value, multi-party disputes** where there was a higher value of debt at stake.

4.3.2 Damages claims

Damages solicitors felt mediation was **rarely pursued by their clients** as ADR is neither mandatory nor free for this category of claim.⁴² They noted that without the requirement to use mediation, clients **often opted to take cases to court straight away**.

Damages solicitors expressed a view that by the time clients approach them they had often **already made their mind up** that they want to pursue the case in court. For firms operating with a No Win No Fee model, participants remarked that there was **little incentive** for their clients to engage with ADR outside the mandatory Pre-Action Protocol.

“Generally, I think there’s a view across the industry that the ADR options at the moment and the framework around them lack teeth really in that there’s nothing to drive behaviours or force parties to engage in them.”

– Damages solicitor

4.3.3 Family applications

While family solicitors noted that **ADR could be cost and time effective** in many circumstances, a few participants highlighted that for ADR to be successful, it **required willingness from both parties to engage in the process**.

In some cases, while ADR did not offer a complete alternative to court as participants noted it did not always lead to a successful outcome, pursuing these alternatives helped resolve some issues and therefore **narrow the scope of the dispute before the court**. An example mentioned by a family solicitor was using mediation for inter-arrangements (i.e. to agree on supervised contact in childcare cases). This may not always lead to a total resolution but may help resolve some specific points.

⁴² For some family applications, clients are required to attend MIAM to assess whether mediation is suitable. Free mediation is available for money claims up to £10,000 <https://www.gov.uk/guidance/small-claims-mediation-service>.

For many private family cases, a **Mediation Information & Assessment Meeting (MIAM)**⁴³ is legally required before issuing an application to the family court, including 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. It is important to note that participants interviewed in this research did not specify whether their clients had attended a MIAM or full mediation and therefore these findings are based on participants' experiences of mediation more generally.

Participants viewed mediation as particularly **effective in cases such as finance cases where both parties were on good terms and there were not many assets involved**.

Where mediation was seen as appropriate,⁴⁴ participants generally saw this as a **valid option** to resolve the claim outside of court and **advised their clients to embrace the process**, as there was a clear sentiment that for mediation to be successful, both parties have to be **willing to engage**.

“It’s always just what’s in the client’s best interest. So, the types of things you think about is if someone comes into you and they say, ‘My husband’s a lying b*****d who’s never going to tell me what his assets are worth.’ I say, ‘Well, there’s no point in going to mediation then. We have to go via the court room.’”

– Family solicitor

⁴³ 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. More information about MIAM is included in the glossary (Appendix E).

⁴⁴ There are some MIAM exemptions where mediation is not deemed appropriate, for example in cases involving allegations of domestic abuse or where there has been a communication breakdown between parties. The full list of MIAM exemptions can be found at: https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_03#para3.8

5. Views on court fees and legal costs

This chapter explores participants' **views on court fees and the potential impact of court fees on future decision making**. This includes their understanding of the purpose of court fees, their thoughts on the court fee charging structure and court fee amounts. In addition to court fees, this chapter also briefly covers other costs associated with making a claim/application mentioned by participants, such as legal costs. Where relevant, the perceptions of participants' clients are reflected.

Summary of key findings:

- Generally, participants across all user groups understood **court fees were there to fund the court service and encourage careful consideration** before making a claim/application.
- Overall, most participants across all groups were **relatively content** with the charging structure of court fees and **sympathised with the need for court fees to rise with inflation**. However, a few participants across all groups were **unclear about why court fees differed between claim/application types and the value of claims**.
- **Participants did not anticipate a rise in court fees having a considerable impact on the level of claims/applications issued in the future**. However, participants who issued money claims noted how a rise in court fees could impact the volume of claims where claim values were particularly high or low.
- For damages and family solicitors interviewed, **fixed legal fees could impact the volume of claims/applications firms could make** due to the financial strain they caused for firms.

5.1 Purpose of court fees

Overall, there was a consensus among participant groups that court fees exist to **fund the court service**. More specifically, participants suggested that court fees contributed to the **salaries of court staff, the running costs of court buildings, and administrative costs** such as drawing up orders and processing applications.

“For everything they do – the staff, running of the court, and the only way they can recuperate that is through the court fees.”

– Family solicitor

However, the **discrepancy between the use of court fees to fund the court system and the perceived poor quality of service provided by the courts (e.g., long delays, lack of experienced court staff) was highlighted**. There was a view among some participants who brought money claims especially that the fees for certain civil cases, such as money claims, likely **subsidised other court services⁴⁵ such as the family and criminal courts**. This caused frustration for some participants, perceiving this as part of the reason for the poor value for money they felt they were receiving from the court service.

“All the money that’s being spent, the tens of millions each year, it’s not being put back into the civil system. It’s being put into divorce or family...That’s a bone of contention, frankly, because we’re not a cash cow. Why should we be funding another part of the system? We want to be funding a system that works efficiently and effectively and provides a high level of service.”

– Debt recovery agencies/solicitors who do not purchase debt

⁴⁵ Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 gives the Lord Chancellor, with consent of HMT, the statutory power to set certain court and tribunal fees above cost recovery levels. The income generated must be reinvested back into the courts and tribunals service. Government introduced enhanced fee charging for money claims on 9 March 2015, and further enhanced fees including divorce, civil and some tribunals in March, April and July 2016.

5.2 Views on charging structure and fee amounts

5.2.1 Charging structure

As noted earlier in the report, there are a number of activities within civil and family courts which attract a court fee. In civil cases, fees mainly apply at the issuing stage, the hearing stage, and at enforcement. Overall, participants were **relatively content with the charging structure of court fees.**

“I think it’s reasonable. I don’t know whether there’s any great issue...I have no great qualms with the way they charge fees in the claims situation.”

– Debt recovery agencies/solicitors who do not purchase debt

Several participants who brought money and damages claims noted that **having the highest fees at the beginning of the court process (i.e. at the issuing stage) placed more importance on organisations’ decision whether to issue the claim or not.** This was in line with views from these two participant groups that court fees encouraged more of a focus on how worthwhile a claim was to pursue (as mentioned in section 5.1).

“It’s enough to make you think twice before you just go ahead and do it, but it’s not so high to become unaffordable if you do need to issue the claims.”

– Large organisations with in-house litigants who bring money claims

For instance, one damages solicitor noted how in addition to prompting consideration before making damages claims, **fees can act as a deterrent for the defendant to defend a claim made against them as they are required to pay these fees back** should they lose, encouraging them to reconsider the strength of their counterargument, seeing this as a positive aspect of the charging structure.

“It probably does give us an advantage. It acts as a deterrent to the other side, in forcing us to issue court proceedings as well because they know that they will have to pay it at the conclusion of the claim if our claim is successful. I think it works as it’s intended to work.”

– Damages solicitor

However, there was some disagreement **with the banded fee amounts for different claim values**⁴⁶ among participants who brought money claims (court fee amounts for money claims are included in Appendix C). These participants questioned why the court fees associated with different claim values varied and noted that they would assume the level of service required from the court in terms of time and resources would be similar for claims of different values. This led to some participants from this group **expressing their frustration at the different fee levels.**

“I don't think they should put a scale on it, because it doesn't matter how big the debt is, the same level of work needs to be done, so how you can justify a scale for the hearing fee [for example] is beyond me. It doesn't matter if it's £500 or £5,000 the same level of work is required.”

– Debt recovery agencies/solicitors who do not purchase debt

However **hearing fees generally were not seen as a barrier to continuing with court proceedings** by participants who made damages or money claims. This was namely due to the **likely time and effort already spent on the case** by this point, meaning that the hearing fee would be unlikely to deter them from proceeding.

“[On hearing fee] If we've come that far down the line, at that point, we've spent a lot of time and effort into the claim so we'd be going ahead with it.”

– Debt recovery agencies/solicitors who purchase debt

Unlike for other participant groups, for family applications there is an upfront application fee but no hearing fee. However, **there may be other court fees for 'general applications'** to the court, for example, an application for a consent order, which some family solicitors noted could be frustrating for their clients.⁴⁷

⁴⁶ Issuing fees associated with claims are banded, with fixed amounts associated with claims with a value of £10,000 or below. Once the value of a claim exceeds £10,000, the issuing fee is no longer fixed, instead becoming 5% of the claim value up to a maximum of £10,000 for claims over £200,000. Full breakdown of issuing fees by claim value in Appendix C. Further description of the banded fee structure is provided in section 2.4.1.

⁴⁷ A consent order is a legal document that confirms agreement about assets following divorce or separation.

“Trying to tell a client, ‘I’ve got to charge you 4 fees every single time I make an application to court,’ is difficult to get the client to understand and swallow.”

– Family solicitor

5.2.2 Views on fee amounts

Money claims

Most participants who brought money claims were **generally content with the court fee amounts**. However, as mentioned in section 2.4.1, there was a view among money claims participants that **the issuing fee associated with high value claims (specifically where value of claim exceeds £10,000) was too expensive** and that in some cases might deter organisations from pursuing high value money claims, given the potential financial risk of their claim being unsuccessful and, in these cases, not being able to recover the issuing fee. However, other money claims participants felt that for some **low value money claims cases, the issuing fee could make up a significant proportion of the value of the debt** and as such was deemed too high to be worthwhile pursuing the case.

Overall, participants who brought money claims on behalf of other organisations **did not perceive their clients to have any issues with court fees**. They explained how they **tended to bill their clients monthly or request they pay court fees up front** as and when needed and as such, their clients were fully aware of the court fees incurred.

Damages and family applications

Similarly, damages and family solicitors taking part in the research felt that they were **transparent with their clients about what the court fees covered and how much they were**. They described clearly communicating this with clients at each point in the case so they could monitor any increase in fees. As such, damages and family solicitor participants perceived their clients to have good awareness of court fees incurred throughout their cases. However, this perception by solicitors was somewhat different to what was found in the research conducted in 2023 directly with end users of the court, which suggested that awareness of court fees was generally low among represented parties. This suggests that

solicitors may assume a higher level of awareness of how costs breakdown among their clients than may be the case from clients' perspective.⁴⁸

Family solicitors interviewed explained how court fees differed depending on the type of application made. For instance, while a few participants noted that the application fee for **child arrangement cases seemed more in line with their expectations (and those of their clients), several described the fee for divorce applications as expensive**, explaining how this could be difficult to communicate to clients. Nonetheless, family solicitor participants highlighted the fee remission schemes (e.g., Legal Aid, Help with Fees) which helped some of their clients make these applications should their financial circumstances make them eligible.

There was **overall acceptance of the need for court fees to rise** with inflation. Similarly, when asked about the **rise of online claim/application fees in May 2021**,⁴⁹ this was generally understood and accepted. However, the timing of this change coinciding with the wider economic downturn due to the pandemic was highlighted as heightening the financial strain on their organisations.

5.3 Potential level of impact on claims/applications

Overall, **participants across all groups did not anticipate a modest rise in court fees having a considerable impact** on the level of claims/applications issued in the future.

Money claims

Participants who brought money claims remarked that a **modest rise in court fees would be unlikely to have a substantial impact on the volume of claims** issued overall. There was a **common sense of resignation** when discussing increases in court fees, with participants explaining that although an increase in court fees was frustrating and may have negative financial impacts for their organisation, given that their business models were reliant on the court process, **there was little they felt they could do about it.**

⁴⁸ This report can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162298/factors-influencing-users-decisions-to-bring-cases-to-civil-and-family-courts.pdf

⁴⁹ Ministry of Justice (2021). Alignment of the fees for online and paper civil money and possession claims. Available at: <https://consult.justice.gov.uk/digital-communications/civil-money-possession-claims-fees/>

“We’re kind of beholden to the service, because if the court fees continue to go up, what option do we have? Because ultimately...it’s the last option our client’s got when it’s failing to engage with its individuals.”

– Debt recovery agencies/solicitors who do not purchase debt

However, as reflected in section 2.4.1, **a few participants who brought money claims remarked that a rise in court fees would most likely have an impact on the volume of particularly low or high value claims** as court fees differed depending on the value of the claim. As such, court fees associated with particularly high value claims could become very expensive if increased.

“If the fees are then going to outweigh the debt they have to be proportionate to the debt that’s standing so if it becomes disproportionate then you would get a lot fewer lower-claim values through and sometimes they can be a little bit more successful.”

– Large organisations with in-house litigants who bring money claims

Damages and family cases

As mentioned in section 2.1 ultimately the decision to pursue a case through court lay with their client. Damages and family solicitors interviewed noted that **court fees only made up a small proportion of the overall cost** for their clients. As such, most damages and family solicitors interviewed agreed that **a rise in court fees was unlikely to have a considerable impact** on the volume of claims/applications.

Furthermore, reflecting findings discussed in section 2.4.2, family solicitors interviewed **perceived court fees as less of a deterrent in family cases than in other types of cases, as the circumstances of the cases were often deeply personal**, with the cost of pursuing family cases considered less important given the personal matters at stake.

However, as cited in section 2.5, damages and family solicitors noted that **delays to the court system can sometimes increase the legal fees clients have to pay**, causing frustration for clients. For instance, while court fees may not increase as a result of delays to the court system, legal fees will rise due to the prolonged time spent by solicitors on the case. Therefore, while court fees only play a small role in the decision for clients to pursue family and damages cases, **legal fees feature more considerably in this decision**.

5.3.1 Impact of court fees on debt buying market

Participants who purchase debt predicted a rise in court fees would impact the debt buying market by **making it harder for companies to buy debt in general or meaning that only larger companies with bigger budgets can afford to buy debt.**

They explained that when deciding to buy debt, **organisations will forecast their return** (i.e. weighing up the price they bought the debt for with the amount they will collect from that debt) so **if court fees were to rise, this would reduce the amount of money they would return on their purchase.**

“It all has a knock-on impact because...the creditors and the debt purchasers can only bid for debt if they think they'll be able to make a recovery, and the pence in the pound that they can bid is all based on calculations based on what they'll recover, not just through litigation but through collections as well. So, if the fees go up...then creditors will litigate less and they'll make less profit and then they won't be able to bid as much for the future portfolios.”

– Debt recovery agencies/solicitors who purchase debt

5.3.2 Impact of recoverability on court fees

A few participants who brought money claims **made links between the perceived impact of a rise in court fees on volume of claims made and the recoverability of these claims** (i.e. how likely would they be to recover the debt and associated court fees should their case be successful). As mentioned in section 2.2, participants expressed a clear preference for High Court Enforcement Officers over County Court Bailiffs. However they were only able to use High Court Enforcement Officers in cases where the claim value was over £600. A couple of participants suggested that organisations who bring money claims **would be more accepting of a rise in court fees if they had more choice over the enforcement method used**, for example, if they could use High Court Enforcement Officers for claims with a value of £600 or less.

6. Conclusions

The purpose of this research was to provide further understanding on the factors that influence organisations' decisions to make claims/applications to civil and family courts (for themselves or on behalf of their clients).

The research aims were to understand:

1. What factors play a role in organisational decisions to issue claims and bring cases to court, including financial considerations such as court fees, as well as the likelihood of winning the case and the wider economic climate.
2. Organisations' perceptions and experiences of certain online court services (including reformed digital portals).
3. The extent to which alternatives to court are considered and used by organisations.
4. How organisations view court fees and the potential impact of fees, and other factors including the wider economic climate and use of alternative resolutions, on demand for court services.

This chapter summarises the main conclusions from this research. It also includes some reflections on the findings and considerations for further research.

1. There were a wide range of factors that influenced participants' decisions in making claims/applications. However **the probability of a claim/application being successful and, for money and damages claims, that the debt/compensation was recoverable, were the most important factors across all participant groups.**
2. Participants across all groups **also considered their own organisation's and their clients' reputations** when deciding whether to make a claim/application. This meant thinking about potential **unfavourable press coverage for their clients** (e.g., if the respondent/defendant was seen as vulnerable) as well as the **credibility of their own organisation** when it came to achieving positive outcomes for their clients.

3. **Wider economic factors, particularly the pandemic and increases to the cost of living, were seen to influence the decision to bring claims/applications to court by all participant groups.** While participants reported that the pandemic typically led to fewer money claims being brought to court, the number of damages and family applications were less affected. All participant groups agreed that it was too early to say how increases to the cost of living may influence claims/applications brought to court (fieldwork was conducted between December 2022 and February 2023).
4. **The extent to which the court fees associated with bringing a claim/application to court influenced decisions differed both within and across the three participant groups.** Court fees had a greater impact on the decision for participants who brought money claims, compared to participants who made damages and family applications. While not the primary factor considered by organisations who bring money claims, court fees played a **more important role when it came to particularly high value claims** (due to more expensive issuing fees), **and particularly low value claims** (due to the proportion of the value of the debt fees make up), compared to mid-value claims.
5. Damages and family solicitors acknowledged that court fees only made up a small proportion of their clients' overall fees. **Legal fees were more of a consideration for their clients when deciding whether to bring a claim/application to court.** Damages solicitors themselves expressed frustration about fixed recoverable costs,⁵⁰ with the view that these hindered their business development. **Therefore, the role of fixed recoverable costs may be a consideration for these solicitors, impacting which cases they decide to take on.**
6. Participant groups raised some level of concern about the poor value for money they felt they were receiving from the courts due to significant delays. Although delays were unlikely to affect the decisions of participants who bring money claims in bulk utilising an automated system (as these cases were less susceptible to delays), **for family and damages solicitors, delays were cited as having a**

⁵⁰ Fixed recoverable costs (FRC) refers to the (fixed) costs that can be recovered from the losing party at different stages of litigation. The Government has recently implemented the extension of FRC in civil cases, to cover most civil claims up to a certain value, and for Noise Induced Hearing Loss (NIHL) cases. The levels of FRC are set by the government, with input from the relevant procedural committees.

knock-on impact on their clients' end costs. These potential delays and associated costs were primarily considered by family and damages solicitors when deciding to take on cases, less so when deciding whether to bring a case to court.

7. **Mediation was generally seen as an effective, and often a preferred, tool of resolution,** and encouraging uptake may be an effective way to tackle the ongoing delays and backlog within the court system. However, participants acknowledged that **successful mediation requires genuine informed engagement on both sides.**
8. When asked, participants across all groups **did not anticipate that a modest rise in court fees would have a considerable impact on the volume of claims/applications** they brought to the courts. However, reflecting concluding point 1, this was expected by participants who made money claims to have more of an impact for organisations who made particularly high value claims (as they tend to have expensive issuing fees) or low value claim (due to the proportion of the value of the debt fees make up), compared to mid-value claims.

6.1 Reflections on findings and considerations for future research

Findings are broadly consistent with the 2014 MoJ research on a similar topic, but some new factors were important to participants in the current context. The likelihood of achieving a successful outcome remained the key driver of organisations' decisions about whether to bring a case to the civil or family courts, and court fees were generally a smaller factor in decision making. However a number of other factors, including the Covid-19 pandemic, court delays and increases to the cost of living, were raised by participants as being important to decision making in the current context. For the latter, participants reported that it was too early to tell what the full impact of increases to the cost of living would be on the volume of cases they may bring.

Some discrepancies were evident between what solicitor participants in this research reported about their clients, and what other research conducted directly with clients (end users) has suggested – notably around costs. Findings suggest that there may be a gap between what solicitors perceive they have made clear to their clients and how clear their clients feel that they are on some issues. For example, damages and

family solicitors interviewed for this research reported clearly communicating information about court fees to their clients and thought that their clients' awareness of them was generally good. However research conducted with individual and SME end users of the courts published by the MoJ in 2023⁵¹ suggested that awareness of court fees among represented parties was relatively low. Similarly, solicitors in this research reported providing their clients with information about their legal costs and highlighting where there may be uncertainty about costs due to the time the case may take. However, the research with individual and SME end users suggested that the overall cost of their cases were still higher than participants had originally anticipated. Further research could explore expectations and perceptions of costs in more detail.

Despite being described as a preferred option for participants in this research, there are a number of reasons why alternative dispute resolutions (ADR) may not have been explored or fully pursued prior to bringing cases to court. ADR is not suitable in some cases, for example where domestic abuse has occurred. The aforementioned research conducted in 2023 with individual and SME end users of the courts⁵² has also found a number of reasons why people may take their case to court instead of pursue alternatives. This research suggested that one barrier to mediation, for example, was some misunderstanding or lack of awareness about the purpose and role of mediation. The research also found that there was a perception from some participants that alternatives can be 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). Individual participants also tended to feel that they had in fact, from their perspective, exhausted other options. Further research focused on the enablers/incentives and barriers/disincentives to ADR at different stages, and among different stakeholder groups, could explore some of these tensions in more detail.

⁵¹ This report can be found at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162298/factors-influencing-users-decisions-to-bring-cases-to-civil-and-family-courts.pdf

⁵² Ibid

Appendix A

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Appendix B

Discussion guides

Group A: Large organisations with in-house litigants who bring money claims

Section 1: Warm up

To begin, could you please introduce yourself, and tell us a bit about the organisation that you work for and your role in the organisation?

- Type of organisation (e.g., retailer, finance, government department)
- Region(s) organisation operates in and region(s) organisation is based in
- Size of organisation/number of staff

Can you talk a bit about how your organisation deals with the claims that are made to the civil courts and who is involved in the process?

- Do you have an in-house legal team to deal with claims or do you pay for external legal help or both?
 - What's the size of the in-house team (number of staff)? How many dedicated to money claims?
 - What external legal help do you get?

PROBE: Who do you outsource to? What help do they provide – e.g. make claims on your behalf / represent you at hearings?

- What is your involvement/at what stages in the process do you personally get involved?
- How, if at all, has this process changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?

We understand that your organisation makes a number of claims at the civil courts.

- Please could you describe the types of claims that your organisation makes?
 - PROBE: circumstances of the claims (e.g. recovering unpaid bills/ other types of disputes etc), typical amounts involved, type of people claims are

made against (e.g. socio demographic background/ private individuals vs. businesses).

- How, if at all, has the types of claims you issue changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?

Please can you talk me through the steps your organisation takes before issuing a claim?

Section 2: Volume of claims, organisational resources, experience, and effectiveness of court

I'd now like to talk about the volume of debt recovery claims that your organisation makes at the civil courts and how effective the courts are at recovering debt for your organisation.

- Can you provide a rough estimate of how many claims you make each year?
- Over the last few years, do you think the number of claims you've made has remained quite stable or have you seen significant increases/decreases?
 - Why do you think that is?
- Do you expect more or fewer claims to be made next year and in the coming years?
 - Why do you think that is?
- We are aware that HMCTS are carrying out other work about SDT users' experience of the court process but for context, can you briefly tell me about your experience of issuing claims and the court process e.g., experience of hearings?
- How effective is the court process in helping you to recover money that's owed to your organisation? What is your recovery rate? PROBES:
 - Of the claims that you put in, roughly what proportion are found in your favour? Are certain types of case more or less likely to be found in your favour? Why?
 - Of those that are found in your favour, roughly what proportion do you recover the money for? Is recovery more or less likely in certain types of cases? Why?
 - When it comes to enforcing court orders, does your organisation prefer to use County Court bailiffs or High Court Enforcement Officers, where there is a choice? Why is this? What does this depend on?

- To what extent does the enforcement method available to you (e.g. County Court bailiffs or HCEO) impact your organisation's decision to pursue certain types of claim? Why?

Section 3: Factors considered when making a claim

I'd now like to discuss your organisation's procedures for deciding which debts to pursue in the courts.

- How does your organisation decide whether or not to make a claim at the courts?
PROBE: Is there a formal policy /business model for deciding which cases to pursue. Can you explain it to me?
- IF OUTSOURCE LEGAL WORK: To what extent do the solicitors advise you on whether or not to make a claim? What factors do they take into consideration?
- IF NOT COVERED. PROBE ON FOLLOWING: What consideration do you give to:
 - The cost of making the claim (if not specifically covered above).
 - Previous experience of making a claim / previous experience of court
 - Probability of being successful / How do you estimate the probability of the claim being found in your favour in court?
 - Probability of customer paying and ability to enforce this, including enforcement method available and previous experience of enforcement
 - Length of claim process
 - Amount of claim
 - Effect on organisation's reputation
 - Available resources to take a case to court (financial and non-financial e.g., legal personnel)
 - Impact of wider economic factors e.g., state of the economy, cost of living crisis, inflation.
 - What other factors do you consider?

How do you take this into consideration? Does this vary by type of case/ type of person claiming against etc.

- What would you say is the single most important factor? Why?

Section 4: Cost of making a claim and level of recovery

I'd now like to talk a little more about the costs involved in making debt recovery claims.

- Can you talk me through what costs are involved for your organisation when making a claim? PROBES:
 - E.g. Costs for legal help (e.g. solicitors' legal fees/internal running costs) and court fees?
 - What proportion of overall costs do fees make-up? Roughly what's the balance between the legal fees and the court fees?
 - What, if any, other costs are you aware of when it comes to making debt recovery claims?

Section 5: Alternatives to court

- Of all of the debts your organisation pursues, roughly what proportion are dealt with by the courts? And roughly what proportion are dealt with elsewhere?
- What other avenues (outside of the civil court) are available for you to try to get your money back?
 - PROBE: Alternative Dispute Resolutions such as mediation or direct correspondence/negotiation with the respondent, arrears scheme, etc.
 - Which do you tend to use to resolve issues for debts you deal with outside of court?
- To what extent do you pursue these before making claims?
- Why/in what circumstances do you use/not use these alternatives?
 - PROBE USE OF MEDIATION:
 - Awareness/views of free small claims mediation service
 - Effectiveness and value of mediation
 - Benefits/Barriers to mediation
 - What role does the cost of alternatives play in making this decision?
- What proportion, if any, of your defended claims tend not to proceed to court hearing? What happens in these cases?
 - PROBE: free mediation service, other type of negotiation, defendant drops out and pays

- Can you tell me about your experience using these alternatives (where used – probe for each mentioned as using from question above)?
 - How effective are these alternatives?

Section 6: Perspectives on court fees

- What, in your view, is the purpose of court fees? PROBE: for example, need for cost to deliver the service, reducing burden on taxpayer
- What are your views on the way that court fees are charged at different points in the process?
 - What are the main advantages and disadvantages of this charging structure?
 - What, if any, activities within civil money claims do you think should attract a fee or not?
- What are your views on the fee amounts that are charged at the various charging points? Are the amounts too high/low/about right? Why do you say that?
- To what extent does the hearing fee discourage you from progressing claims when they are defended?
- Are you aware of the changes to fees implemented in 2021/2022? What are your views on this change?
 - What do you see as an acceptable fee increase? Does this differ by stage of claim/fee? PROBE: in relation to inflation?
- How likely, if at all, are the costs of bringing claims to court to influence the volume of cases your organisation takes to court?
 - What sort of fee level would make an impact on the volume of claims that you make, if at all? I.e. what proportion of your claim amount would they need to exceed for them to influence whether you make a claim?
 - How, if at all, does this differ by value of claim or stage e.g. court fees at issue of claim vs hearing fees/ warrant issues fees? Or by anything else, e.g. who recovering the debt from? Why do you say that?
- What, if any, factors other than costs may influence the volume of cases your organisation takes to court in the future?

- To what extent are these factors likely to influence the decision to take a case to court, compared to financial considerations?

Section 7: Wrap-up

Finally, before we close the interview is there anything else that you would like to say about the court fees system or money claims more broadly?

CLOSE INTERVIEW.

Group B: Debt recovery agencies/solicitors who purchase debt

Section 1: Warm up

To begin, could you please introduce yourself, and tell us a bit about the organisation that you work for and your role in the organisation?

- Type of organisation (e.g., retailer, finance, government department)
- Region(s) organisation operates in and region(s) organisation is based in
- Size of organisation/number of staff

Can you talk a bit about the debt buying market and the competitiveness of the market regarding buying debts?

- What factors do you take into account when buying debt?
- Do you have many competitors/who are your main competitors?
- Does the type of competitors or level of competition for debt vary depending on the type of debt being bought? Which types?

Can you talk a bit about how your organisation deals with the claims that are made to the civil courts and who is involved in the process?

- What is your involvement/at what stages in the process do you personally get involved?
- Do you have an in-house legal team to deal with claims or do you pay for external legal help or both?
 - What's the size of the in-house team (number of staff)? How many dedicated to money claims?

- What external legal help do you get?

PROBE: Who do you outsource to? What help do they provide – e.g. make claims on your behalf / represent you at hearings?

We understand that your organisation makes a number of claims at the civil courts.

- Please could you describe the types of claims that your organisation makes?
 - PROBE: type of organisations they buy debt from, circumstances of the claims (e.g. recovering unpaid bills/ other types of disputes etc), **typical amounts involved**, type of people claims are made against (e.g. socio demographic background/ private individuals vs. businesses).
- How, if at all, has this process of making claims changed over the last few years?
- How, if at all, has the types of claims you issue changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?

Please can you talk me through the steps your organisation takes before issuing a claim?

Section 2: Volume of claims, organisational resources, experience, and effectiveness of court

I'd now like to talk about the volume of debt recovery claims that your organisation makes at the civil courts and how effective the courts are at recovering debt for claims you issue.

- Can you provide a rough estimate of how many claims you make each year?
- Over the last few years, do you think the number of claims you've made has remained quite stable or have you seen significant increases/decreases?
 - Why do you think that is?
- Do you expect more or fewer claims to be made next year and in the coming years?
 - Why do you think that is?
- We are aware that HMCTS are carrying out other work about SDT users' experience of the court process but for context, can you briefly tell me about your experience of issuing claims and the court process e.g., experience of hearings?
- How effective is the court process in helping you to recover money that's owed to your organisation? What is your recovery rate? PROBES:

- Of the claims that you put in, roughly what proportion are found in your favour? Are certain types of case more or less likely to be found in your favour? Why?
- Of those that are found in your favour, roughly what proportion do you recover the money for? Is recovery more or less likely in certain types of cases? Why?
- When it comes to enforcing court orders, does your organisation prefer to use County Court bailiffs or High Court Enforcement Officers, where there is a choice? Why is this? What does this depend on? To what extent does the enforcement method available to you (e.g. County Court bailiffs or HCEO) impact your organisation's decision to pursue certain types of claim? Why?

Section 3: Factors considered when making a claim

I'd now like to discuss your organisation's procedures for deciding which debts to pursue in the courts.

- How does your organisation decide whether or not to make a claim at the courts?
PROBE: Is there a formal policy /business model for deciding which cases to pursue. Can you explain it to me?
- IF OUTSOURCE LEGAL WORK: To what extent do the solicitors advise you on whether or not to make a claim? What factors do they take into consideration?
- IF NOT COVERED. PROBE ON FOLLOWING: What consideration do you give to:
 - The cost of making the claim (if not specifically covered above).
 - Previous experience of making a claim / previous experience of court
 - Probability of being successful / How do you estimate the probability of the claim being found in your favour in court?
 - Probability of customer paying and ability to enforce this, including enforcement method available and previous experience of enforcement
 - Length of claim process
 - Amount of claim (may get covered above under bullets 1 and 2) and how much you paid for the original debt
 - Effect on organisation's reputation

- Available resources to take a case to court (financial and non-financial e.g., legal personnel)
- Impact of wider economic factors e.g., state of the economy, cost of living crisis, inflation.
- What other factors do you consider?

For each of the above PROBE FULLY: How do you take this into consideration?

Does this vary by type of case/ type of person claiming against etc.

- What would you say is the single most important factor? Why?

Section 4: Cost of making a claim and level of recovery

I'd now like to talk a little more about the costs involved in making debt recovery claims.

- Can you talk me through what costs are involved for your organisation when making a claim to court? PROBES:
 - E.g. Costs for legal help (e.g. solicitors' legal fees/internal running costs) and court fees?
 - What proportion of overall costs do court fees make-up? Roughly what's the balance between the legal fees and the court fees?
 - What, if any, other costs are you aware of when it comes to making debt recovery claims?

Section 5: Alternatives to court

- Of all of the debts your organisation pursues, roughly what proportion are dealt with by the courts? And roughly what proportion are dealt with elsewhere?
- What other avenues (outside of the civil court) are available for you to try to get your money back?
 - PROBE: Alternative Dispute Resolutions such as mediation or direct correspondence/negotiation with the respondent, arrears scheme, etc.
 - Which do you tend to use to resolve issues for debts you deal with outside of court?
- To what extent do you pursue these before making claims?
- Why/in what circumstances do you use/not use these alternatives?
 - PROBE USE OF MEDIATION:
 - Awareness/views of free small claims mediation service

- Effectiveness and value of mediation
- Benefits/Barriers to mediation
- What role does the cost of alternatives play in making this decision?
- What proportion, if any, of your defended claims tend not to proceed to court hearing? What happens in these cases?
 - PROBE: free mediation service, other type of negotiation, defendant drops out and pays
- Can you tell me about your experience using these alternatives (where used – probe for each mentioned as using from question above)?
 - How effective are these alternatives?

Section 6: Perspectives on court fees

We have a few more questions about court fees specifically now. As you are aware, court fees are charged depending on how far your claim progresses. For example there are charging points are when a claim is first issued, if/when it's listed for a hearing, and, if needed, at enforcement stage.

- What, in your view, is the purpose of court fees? PROBE: for example, need for cost to deliver the service, reducing burden on taxpayer
- What are your views on the way that court fees are charged at different points in the process?
 - What are the main advantages and disadvantages of this charging structure?
 - What, if any, activities within civil money claims do you think should attract a fee or not?
- What are your views on the fee amounts that are charged at the various charging points? Are the amounts too high/low/about right? Why do you say that?
- To what extent does the hearing fee discourage you from progressing claims when they are defended?
- Are you aware of the changes to fees implemented in 2021/2022? What are your views on this change?
 - What do you see as an acceptable fee increase? Does this differ by stage of claim/fee? PROBE: in relation to inflation?

- How likely, if at all, are the costs of bringing claims to court to influence the volume of cases your organisation takes to court?
 - What sort of fee level would make an impact on the volume of claims that you make, if at all? I.e. what proportion of your claim amount would they need to exceed for them to influence whether you make a claim?
 - How, if at all, does this differ by value of claim or stage e.g. court fees at issue of claim vs hearing fees/ warrant issues fees? Or by anything else, e.g. who recovering the debt from? Why do you say that?
- How, if at all, do you think changes to fees associated with claims impact the wider market for buying debt?
 - E.g. does this change which companies buy debt or the value of the debt? If so, why?
 - What factors, if any, other than fees might impact the wider market for buying debt?
- What, if any, factors other than costs may influence the volume of cases your organisation takes to court in the future?
 - To what extent are these factors likely to influence the decision to take a case to court, compared to financial considerations?

Section 7: Wrap-up

Finally, before we close the interview is there anything else that you would like to say about the court fees system or money claims more broadly?

CLOSE INTERVIEW.

Group C: Debt recovery agencies/solicitors who do not purchase debt

Section 1: Warm up

To begin, could you please introduce yourself, and tell us a bit about the organisation that you work for and your role in the organisation?

- Type of organisation
- Region(s) organisation operates in, and region(s) organisation is based in
- Size of organisation/number of staff

Can you talk a bit about how your organisation deals with the claims that are made to the civil courts and who is involved in the process?

- Do you have an in-house legal team to deal with claims or do you pay for external legal help or both?
 - What's the size of the in-house team (number of staff)? How many dedicated to money claims?
 - What external legal help do you get?

PROBE: Who do you outsource to? What help do they provide – e.g. make claims on your behalf / represent you at hearings?

- What is your involvement/at what stages in the process of your organisations' handling of money claims do you personally get involved?
 - To what extent does your organisation advise your clients on whether to issue a claim? Probe: differences between their advisory role to businesses vs individuals
 - Do they come to you for general advice on how to recover their money, or do they come to you primarily to handle litigation for them? Probe: variation by type of client
- How, if at all, **has this process** of making claims changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?

We understand that your organisation makes a number of claims at the civil courts.

- Please could you describe the types of claims that your organisation makes?
 - PROBE: circumstances of the claims (e.g. recovering unpaid bills/ other types of disputes etc), **typical amounts involved**, type of people claims are made against (e.g. socio demographic background/ private individuals vs. businesses).
- Please could you talk a bit about your organisation's client base for these types of claims?
 - Are they individuals (what are their socio-demographic characteristics?) or businesses (what sectors?)
 - Do you represent any clients who **purchase debt**?
 - If able, can you talk a bit about the debt buying market and the competitiveness of the market regarding buying debts?
 - What factors do organisations take into account when buying debt?
 - What types of organisations do they buy debt from?
- How, if at all, **has the types** of claims you issue changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?
- Please can you talk me through the steps your organisation takes before issuing a claim?
- Are you able to comment on any steps your clients may have taken before approaching you?

Section 2: Volume of claims, organisational resources, experience, and effectiveness of court

I'd now like to talk about the volume of debt recovery claims that your organisation makes at the civil courts and how effective the courts are at recovering debt for your clients.

- Can you provide a rough estimate of how many claims you make each year?
- Over the last few years, do you think the number of claims you've made has remained quite stable or have you seen significant increases/decreases?
 - Why do you think that is?
- Do you expect more or fewer claims to be made next year and in the coming years?

- Why do you think that is?
- We are aware that HMCTS are carrying out other work about SDT users' experience of the court process but for context, can you briefly tell me about your experience of issuing claims and the court process e.g., experience of hearings?
- How effective is the court process in helping you to recover money that's owed to your clients? What is your recovery rate? PROBES:
 - Of the claims that you put in, roughly what proportion are found in your client's favour? Are certain types of case more or less likely to be found in your client's favour? Why?
 - Of those that are found in your client's favour, roughly what proportion do your clients recover the money for? Is recovery more or less likely in certain types of cases? Why?
 - When it comes to enforcing court orders, does your organisation prefer to use County Court bailiffs or High Court Enforcement Officers, where there is a choice? Why is this? What does this depend on? Do your clients tend to have a view on this?
 - To what extent does the enforcement method available to you (e.g. County Court bailiffs or HCEO) impact your organisation's advice on whether to pursue certain types of claim? Why?

Section 3: Factors considered when making a claim

I'd now like to discuss your organisation's procedures for deciding which debts to pursue in the courts.

- How does your organisation decide whether or not to make a claim on behalf of your clients at the courts? PROBE: Is there a formal policy /business model for deciding which cases to pursue, or do you consider each individual case on its own merits? Can you explain it to me?
- IF OUTSOURCE LEGAL WORK: To what extent do the solicitors advise you on whether or not to make a claim? What factors do they take into consideration?
- IF NOT COVERED. PROBE ON FOLLOWING: What consideration do you give to:
 - The cost of making the claim (if not specifically covered above).

- Previous experience of making a claim / previous experience of court
- Probability of being successful / How do you estimate the probability of the claim being found in your client's favour in court?
- Probability of the client's customer paying and ability to enforce this, including enforcement method available and previous experience of enforcement
- Length of claim process
- Amount of claim (may get covered above under bullets 1 and 2)
- (IF ACT ON BEHALF OF DEBT BUYERS) How much their client / debt agency paid for the debt
- Effect on organisation's reputation
- Available resources to take a case to court (financial and non-financial e.g., legal personnel)
- Impact of wider economic factors e.g., state of the economy, cost of living crisis, inflation.
- What other factors do you consider?

For each of the above PROBE FULLY: How do you take this into consideration?

Does this vary by type of case/type of person claiming against, etc?

- What would you say is the single most important factor? Why?

Section 4: Cost of making a claim and level of recovery

I'd now like to talk a little more about the costs involved in making debt recovery claims.

NOTE: these costs may be paid for by your organisation or by your client.

- Can you talk me through what costs are involved for your organisation when making a claim? PROBES:
 - Own legal fees and running costs and court fees?
 - Are there any costs that must be covered by your organisation or client prior to making a claim? For example, the cost of sending a chaser letter. IF THERE ARE COSTS, who would cover these costs and at what point do they need to be paid?
 - What proportion of overall costs do court fees make-up? Roughly what's the balance between the legal fees and the court fees for your clients?

- What, if any, other costs are you aware of when it comes to making debt recovery claims?
- And **for each of these fees (e.g., issuing fee, hearing fee, enforcement fee)**, how does your organisation charge your clients for these types of cases?

PROBES:

- Do you operate on a no-win or no-success no-fee basis? Do you invoice for all costs at the end of a case, or throughout?
- IF OPERATE ON NO WIN NO FEE BASES – Do you cover court fees yourselves upfront or pass them on to client?
- IF OPERATE ON NO-WIN-NO FEE BASIS – If the case is not found in your client's favour, does your organisation absorb the court and legal fees?
- IF CLIENTS ARE INDIVIDUALS: As far as you are aware, how do your clients generally meet their costs? What financial resources are available to them? PROBE savings vs credit vs legal aid/other scheme
 - IF CLIENTS ARE INDIVIDUALS AND **NOT** ELIGIBLE FOR LEGAL AID: Do you have a sense of what steps clients who are not eligible for legal aid take next? E.g., do they self-represent or pursue out of court means?
- Do you apply for Help with Fees on behalf of your clients? How often? Which types of clients? What is your experience/view on this?

Section 5: Alternatives to court

- Of all of the debts your organisation pursues, roughly what proportion are dealt with by the courts? And roughly what proportion are dealt with elsewhere?
- What other avenues (outside of the civil court) are available for you to try to get your clients' money back?
 - PROBE: Alternative Dispute Resolutions such as mediation or direct correspondence/negotiation with the respondent, arrears scheme, etc.
 - Which do you tend to use to resolve issues for debts you deal with outside of court?
 - To what extent do you pursue these / advise your clients to pursue these before making claims?

- Why/in what circumstances do you use/not use or advise clients to use these alternatives?
 - PROBE USE OF MEDIATION:
 - Awareness/views of free small claims mediation service – also among clients (how aware/have they tended to try mediation before coming to you?)
 - Effectiveness and value of mediation
 - Benefits/Barriers to mediation
 - What role does the cost of alternatives play in making this decision?
- What proportion, if any, of your defended claims tend not to proceed to court hearing? What happens in these cases?
 - PROBE: free mediation service, other type of negotiation, defendant drops out and pays
- Can you tell me about your experience using these alternatives (where used – probe for each mentioned as using from question above)?
 - How effective are these alternatives?

Section 6: Perspectives on court fees

We have a few more questions about court fees specifically now. As you are aware, court fees are charged depending on how far your claim progresses. For example, there are charging points when a claim is first issued, when it's listed for a hearing, and, if needed, at enforcement stage

- What, in your view, is the purpose of court fees? PROBE: for example, need for cost to deliver the service, reducing burden on taxpayer
- What are your views on the way that court fees are charged at different points in the process?
 - What are the main advantages and disadvantages of this charging structure?
 - What, if any, activities within civil money claims do you think should attract a fee or not?
- What are your views on the fee amounts that are charged at the various charging points? Are the amounts too high/low/about right? Why do you say that?

- What effect, if any, does it have on your decision to take on and pursue a case?
- How aware are your clients of court fee costs?
 - When do they tend to know about them? Do they tend to express any views on the fee amounts?
 - What effect does it have on their decision to continue with a case?
 - How easy or difficult do you find advising clients on fees? Probe on: how easy or difficult is it for clients to understand fees? What is their initial reaction?
- To what extent does the hearing fee discourage you from progressing claims when they are defended?
- Are you aware of the changes to fees implemented in 2021/2022? What are your views on this change?
 - What do you see as an acceptable fee increase? Does this differ by stage of claim/fee? PROBE: in relation to inflation?
- How likely, if at all, are the costs of bringing claims to court to influence the volume of cases your organisation takes to court?
 - What sort of fee level would make an impact on the volume of claims that you make, if at all? I.e. what proportion of your claim amount would they need to exceed for them to influence whether you make a claim?
 - How, if at all, does this differ by value of claim or stage e.g. court fees at issue of claim vs hearing fees/ warrant issues fees? Or by anything else, e.g. who recovering the debt from? Why do you say that?
- (IF ACT ON BEHALF OF DEBT BUYERS) How, if at all, do you think changes to fees associated with claims impact the wider market for buying debt?
 - E.g. does this change which companies buy debt or the value of the debt? If so, why?
 - What factors, if any, other than fees might impact the wider market for buying debt?
 - What, if any, factors other than costs may influence the volume of cases your organisation takes to court in the future?

- To what extent are these factors likely to influence the decision to take a case to court, compared to financial considerations?

Section 7: Wrap-up

Finally, before we close the interview is there anything else that you would like to say about the court fees system or money claims more broadly?

CLOSE INTERVIEW.

Group D: Damages solicitors

Section 1: Warm up

To begin, could you please introduce yourself, and tell us a bit about the firm that you work for and your role in the firm?

- Type of organisation PROBE: type of work firm does generally, level of focus on damages within firm
- Region(s) organisation operates in and region(s) organisation is based in
- Size of organisation/number of staff

Can you talk a bit about how your firm deals with the claims that are made to the civil courts and who is involved in the process?

- What is your involvement/at what stages in the process do you personally get involved?
- To what extent does your organisation advise your clients on whether to issue a claim? Probe: differences between their advisory role to businesses vs individuals
- How, if at all, has this process changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?

We understand that your firm makes a number of damages claims at the civil courts.

- Please could you describe the types of claims that your firm makes?

PROBE: circumstances of the claims (e.g. personal injury, road traffic accident, accident/injury at work, clinical negligence, trip or slip), **typical amounts involved**, type of people claims are made against (e.g. socio demographic background/ private individuals vs. businesses, insurance companies).

- Please could you talk a bit about your firm's client base for these types of claims?
 - Are they individuals (what are their socio-demographic characteristics?) or businesses (what sectors?)
- How, if at all, has the types of claims you issue changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?

Please can you talk me through the steps your firm takes before issuing a claim?

Are you able to comment on any steps your clients may have taken before approaching you?

Section 2: Volume of claims, organisational resources, experience, and effectiveness of court

I'd now like to talk about the volume of damages claims that your firm makes at the civil courts and how effective the courts are at awarding damages for your clients.

- Can you provide a rough estimate of how many claims you make each year?
- Over the last few years, do you think the number of claims you've made has remained quite stable or have you seen significant increases/decreases?
 - Why do you think that is?
- Do you expect more or fewer claims to be made next year and in the coming years?
 - Why do you think that is?
- Can you briefly tell me about your experience of issuing claims and the court process e.g., experience of hearings?
 - Can you tell me about your experience using the Damages Claims Portal (DCP)?
- How effective is the court process in awarding damages to your clients? What is your success rate? PROBES:

- Of the claims that you put in, how many/what proportion are found in your clients' favour? Are certain types of case more or less likely to be found in their favour? Why?
- Of those that are found in your clients' favour, how many/what proportion do your clients receive compensation for? Is recovery more or less likely in certain types of cases? Why?
- When it comes to enforcing court orders, does your organisation prefer to use County Court bailiffs or High Court Enforcement Officers, where there is a choice? Why is this? What does this depend on? Do your clients tend to have a view on this?

To what extent does the enforcement method impact your organisation's decision to pursue certain types of claim? Why?

Section 3: Factors considered when making a claim

I'd now like to discuss your firm's procedures for deciding which damages claims to issue.

- How does your firm decide whether or not to make a claim at the courts? PROBE: Is there a formal policy /business model for deciding which cases to pursue. Can you explain it to me?
- IF NOT COVERED. PROBE ON FOLLOWING: What consideration do you give to:
 - The cost of making the claim (if not specifically covered above).
 - Previous experience of making a claim / previous experience of court
 - Probability of being successful / How do you estimate the probability of the claim being found in your favour in court?
 - Probability of defendant paying and ability to enforce this, including enforcement method available and previous experience of enforcement.
 - Length of claim process
 - Amount of claim (may get covered above under bullets 1 and 2)
 - Effect on firm's reputation
 - Available resources to take a case to court (financial and non-financial e.g., legal personnel)

- Impact of wider economic factors e.g., state of the economy, cost of living crisis.
- What other factors do you consider?

For each of the above PROBE FULLY: How do you take this into consideration?

Does this vary by type of case/ type of person claiming against etc.

- What would you say is the single most important factor? Why?

Section 4: Cost of making a claim and level of recovery

I'd now like to talk a little more about the costs involved in issuing damages claims with the courts.

- What costs are involved for your firm when making a claim? PROBES:
 - Own legal fees and running costs and court fees?
 - Are there any costs that must be covered by your organisation or client prior to making a claim? For example, the cost of sending a chaser letter. IF THERE ARE COSTS, who would cover these costs and at what point do they need to be paid?
 - What proportion of overall costs do court fees make-up? Roughly what's the balance between the legal fees and the court fees for your clients?
 - What, if any, other costs are you aware of when it comes to making damages claims?
- And how does your firm charge your clients for these types of claims? PROBES:
 - Do you operate on a no-win-no fee basis? Do you invoice for all costs at the end of a case, or throughout?
 - IF OPERATE ON NO-WIN-NO FEE BASIS – Do you cover court fees yourselves upfront or pass on to client?
 - IF OPERATE ON NO-WIN-NO FEE BASIS – If the case is not found in your client's favour, does your organisation absorb the court and legal fees?
 - IF CLIENTS ARE INDIVIDUALS AND NOT NO-WIN NO-FEE: As far as you are aware, how do your clients generally meet their costs? What financial resources are available to them? PROBE savings vs credit vs legal aid/other scheme

- IF CLIENTS ARE INDIVIDUALS AND **NOT** ELIGIBLE FOR LEGAL AID:
Do you have a sense of what steps clients who are not eligible for legal aid take next? E.g., do they self-represent or pursue out of court means?
- Do you apply for Help with Fees on behalf of you clients? How often? Which types of clients?
- What is your experience/view on this?

Section 5: Alternatives to court

- Of all of the damages cases your firm pursues, how many/what proportion are dealt with by the courts? And how many/what proportion are dealt with elsewhere?
- What other avenues (outside of the civil court) are available for you to try to reach a settlement?
 - PROBE: Alternative Dispute Resolutions such as mediation or direct correspondence/negotiation with the respondent etc.
 - Which do you tend to use to resolve issues for cases you deal with outside of court?
- To what extent do you pursue or advise your clients in using these avenues before making claims?
- Why/in what circumstances do you use/not use these alternatives?
 - PROBE USE OF MEDIATION:
 - Awareness/views of mediation services – also among clients (how aware/have they tended to try mediation before coming to you?)
 - Effectiveness and value of mediation
 - Benefits/Barriers to mediation
 - What role does the cost of alternatives play in making this decision?
- What proportion, if any, of your defended claims tend not to proceed to court hearing? What happens in these cases?
- PROBE: mediation, other type of negotiation, defendant drops out and pays
- Can you tell me about your experience using these alternatives (where used – probe for each mentioned as using from question above)?
 - How effective are these alternatives?

Section 6: Perspectives on court fees

We have a few more questions about court fees specifically now. As you are aware, court fees are charged depending on how far your claim progresses. For example, there are charging points are when a claim is first issued, when it's listed for a hearing, and, if needed, at enforcement stage.

- What, in your view, is the purpose of court fees? PROBE: for example, need for cost to deliver the service, reducing burden on taxpayer
- What are your views on the way that court fees are charged at different points in the process?
 - What are the main advantages and disadvantages of this charging structure?
 - What, if any, activities within damages claims do you think should attract a fee or not?
- What are your views on the fee amounts that are charged at the various charging points? Are the amounts too high/low/about right? Why do you say that?
 - What effect does it have on your decision to take on and pursue a case?
- How aware are your clients of court fee costs?
 - When do they tend to know about them? Do they tend to express any views on the fee amounts?
 - What effect does this have on their decision to take on a case?
 - How easy or difficult do you find advising clients on fees? Probe on: how easy or difficult is it for clients to understand fees? What is their initial reaction?
- To what extent does the hearing fee discourage you from progressing claims when they are defended?
- Are you aware of the changes to fees implemented in 2021/2022? What are your views on this change? INTERVIEWER NOTE: Fees for damages claims were increased in line with inflation in September 2021
 - What do you see as an acceptable fee increase? Does this differ by stage of claim/fee? PROBE: in relation to inflation?
- How likely, if at all, are the costs of bringing claims to court to influence the volume of cases your firm takes to court?

- What sort of fee level would make an impact on the volume of claims that you make, if at all? I.e. what proportion of your claim amount would they need to exceed for them to influence whether you make a claim?
- How, if at all, does this differ by value of claim or stage e.g. court fees at issue of claim vs hearing fees/ warrant issues fees? Or by anything else e.g. who is defending the claim? Why do you say that?
- What, if any, factors other than costs may influence the volume of cases your firm takes to court in the future?
 - To what extent are these factors likely to influence the decision to take a case to court, compared to financial considerations?

Section 7: Wrap up

Finally, before we close the interview is there anything else that you would like to say about the court fees system or damages claims more broadly?

CLOSE INTERVIEW.

Group E: Family solicitors

Section 1: Warm up

To begin, could you please introduce yourself, and tell us a bit about the firm that you work for and your role in the firm?

- Type of organisation PROBE: type of work firm does generally, level of focus on family cases within firm
- Region(s) firm company operates in and region(s) firm is based in
- Size of firm/number of staff

Can you talk a bit about how your firm deals with the applications that are made to the family courts and who is involved in the process?

- What is your involvement/at what stages in the process do you personally get involved?
- How, if at all, has this process changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation

- How likely is it to change in the future? Why might it change in the future?

We understand that your firm makes a number of applications at the family courts.

- Please could you describe the types of applications that your firm makes?

PROBE: e.g. Divorce, child arrangements

- If firm deals with a mix of case types, probe proportions of each case type, and to what extent clients are involved in complex cases falling under more than one type (e.g. getting divorced and sorting out child arrangements and the family finances/assets)
- Please could you talk a bit about your firm's client base for these types of cases?
 - What are their socio-demographic characteristics?
- How, if at all, has the types of cases you handle and bring to court changed over the last few years?
 - PROBE: (briefly) result of COVID, cost of living crisis, inflation
 - How likely is it to change in the future? Why might it change in the future?
- To what extent does your firm provide legal advice to clients who self-represent?

Section 2: Volume of cases, firms resources, experience, and effectiveness of court

I'd now like to talk about the volume of applications that your firm makes and how effective you think the courts are at getting the desired outcome for your clients.

- Can you provide a rough estimate of how many private law family applications you make each year?
- Over the last few years, do you think the number of applications you've made has remained quite stable or have you seen significant increases/decreases?
 - Why do you think that is?
- Do you expect more or fewer applications to be made next year and in the coming years?
 - Why do you think that is?

Can you briefly tell me about your experience of making applications and the court process e.g., experience of hearings?

- If relevant, what is your experience using the reformed service for divorce and financial remedy?

- How effective is the court process in helping you to get an acceptable outcome for your clients? PROBES:
 - Of the applications that you make, in what proportion do you get the client's desired outcome? (PROBE: difference between desired outcome as stated before the case begins and outcome which, while not the original desired outcome, is acceptable to the client?)
 - How does this vary for different types of case or different types of client? Why?
 - To what extent do you advise your clients on what to apply for?

Section 3: Factors considered when taking on and pursuing cases in court

I'd now like to discuss your firm's procedures for deciding which cases to take on and advise your clients to take to court.

- How does your firm decide whether or not to advise a client to make an application to the family courts? PROBE: Is there a formal policy /business model for deciding which cases to take on and/or bring to court? Can you explain it to me?
- IF NOT COVERED. PROBE ON FOLLOWING: What consideration do you give to:
 - The cost of making the application (if not specifically covered above) – explore what costs are considered important, and how important court fees are specifically.
 - Previous experience of making an application/ previous experience of court
 - Probability of getting the desired outcome for your client
 - Alternative methods of resolving the dispute (i.e., uncontested divorces still have to go to court, so no alternative, but other types of family law must consider mediation through attendance at a MIAM / to explore potential mediation first)
 - Length of application/case process
 - Effect on firm's reputation
 - Available resources to take a case to court (financial and non-financial e.g., legal personnel)

- Impact of wider economic factors e.g., state of the economy, cost of living crisis.
- What other factors do you consider?

For each of the above PROBE FULLY: How do you take this into consideration?

Does this vary by type of case/ type of claimant etc.

- What would you say is the single most important factor? Why?
- And, thinking about it from a client's point of view, what tend to be the most important/ least important factors influencing your client's decision?

Section 4: Cost of making an application

I'd now like to talk a little more about the costs involved in making applications with the courts.

- What costs are incurred when making an application? PROBES:
 - Own legal fees and running costs and court fees? Any other fees (e.g. medical reports/external legal help)?
 - Can you talk me through the costs that your client would pay for? If all costs are not covered by the client, are there any costs that your firm would cover?
 - What proportion of overall costs do court fees make-up for clients? Roughly what's the balance between the legal fees and the court fees?
- And how does your firm charge your clients for these types of cases? PROBES:
 - Do you invoice for all costs at the end of a case, or throughout? Do you have a fixed fees model (for some/all clients/case types)
 - IF CLIENTS ARE INDIVIDUALS: As far as you are aware, how do your clients generally meet their costs? What financial resources are available to them? PROBE savings vs credit vs legal aid/other scheme
 - IF CLIENTS ARE INDIVIDUALS AND **NOT** ELIGIBLE FOR LEGAL AID:
Do you have a sense of what steps clients who are not eligible for legal aid take next? E.g., do they self-represent or pursue out of court means?
 - Do you apply for Help with Fees on behalf of you clients? How often? Which types of clients?
 - What is your experience/view on this?

Section 5: Alternatives to court

- Of all of the cases your firm takes on, how many/what proportion are dealt with by the courts? And how many/what proportion are dealt with elsewhere?
- What other avenues (outside of the family court) are available for you to help your clients reach a settlement?
 - PROBE: Alternative Dispute Resolutions such as mediation or direct correspondence/negotiation with the defendant etc.
 - Which do you tend to use to resolve issues for cases you deal with outside of court?
- Does your firm have a policy or agreed approach around encouraging consideration of alternative resolutions? At what stage in the process does your firm inform clients about mediation?
 - What types of mediation does your firm inform clients about?
 - Does your firm offer mediation services in-house?
 - Why/in what circumstances do you / do you not advise or assist clients to pursue these alternatives?
 - PROBE USE OF MEDIATION AS NEEDED:
 - Awareness/views of mediation services – also among clients (how aware/have they tended to try mediation before coming to you?)
 - Effectiveness and value of mediation
 - Benefits/Barriers to mediation
 - What role does the cost of alternatives play in your clients making this decision?
- Can you tell me about your experience using these alternatives (where used – probe for each mentioned as using from question above)?
 - How effective are these alternatives?
 - Can you tell me about the type of clients that mediation works for/doesn't work for and why?

Section 6: Perspectives on court fees

We have a few more questions about court fees specifically now. As you are aware, court fees are charged depending on the type of case.

- What, in your view, is the purpose of court fees? PROBE: for example, need for cost to deliver the service, reducing burden on taxpayer
- What are your views on the fee amounts for different case types?
 - Are the amounts too high/low/about right? Why do you say that?
 - What, if any, activities within private family law cases do you think should attract a fee or not?
 - What effect, if any, does it have on your decision to take on a case or advise to take the case to court?
- How aware are your clients of court fee costs?
 - At what point in the process do they tend to know about them?
 - What effect does this have on their decision to pursue a case?
 - How easy or difficult do you find advising clients on fees? Probe on: how easy or difficult is it for clients to understand fees? What is their initial reaction?
- Are you aware of the changes to fees implemented in 2021/2022? What are your views on this change?
 - What do you see as an acceptable fee increase? Does this differ by type of case? PROBE: in relation to inflation?
 - Are fees more / less likely to influence the decisions of certain types of clients?
 - Probe on probate fee specifically here
- How likely, if at all, are the costs of bringing cases to court to influence the likelihood of you client wanting to go to court?
 - What sort of fee level would make an impact on the volume of applications that you make, if at all?
 - How, if at all, does this differ by type of case or type of client? Why do you say that?
- What, if any, factors other than costs may influence the volume of applications your firm takes to court in the future?

- To what extent are these factors likely to influence the decision to take a case to court, compared to financial considerations?

Section 7: Wrap-up

Finally, before we close the interview is there anything else that you would like to say about the court fees system private family law more broadly?

CLOSE INTERVIEW.

Appendix C

Overview of court fees

Court fees for civil money claims

Court fees must be paid when making a money claim. Court fees associated with different claim values are outlined in the table below. These are the fee levels set at the time of the research. For more information and the current fee levels, please visit:

<https://www.gov.uk/make-court-claim-for-money/court-fees>

Table C.1: Court fees for civil money claims

Claim Amount	Fees
Up to £300	£35
£300.01 to £500	£50
£500.01 to £1,000	£70
£1,000.01 to £1,500	£80
£1,500.01 to £3,000	£115
£3,000.01 to £5,000	£205
£5,000.01 to £10,000	£455
£10,000.01 to £200,000	5% of the claim
More than £200,000 or unspecified amount	£10,000

Court fees for family applications

Court fees must be paid when making a family application. Court fees associated with different applications are outlined in the table below. These are the fee levels set at the time of the research. For more information and the current fee levels. For more information, please visit: <https://www.gov.uk/government/publications/fees-in-the-civil-and-family-courts-main-fees-ex50>

Table C.2: Marriage and civil partnership proceedings

Application Amount	Fees
Filing an application for a divorce, nullity or civil partnership dissolution	£593
Filing an application for judicial separation	£365
Filing an application for a second or subsequent matrimonial or civil partnership order with permission granted	£95
Filing an answer to an application for a matrimonial or civil partnership order	£245
Filing an amended application for a matrimonial or civil partnership order	£95
Filing an application to start proceedings where no other fee is specified	£245
Filing a Declaration as to marital status, parentage, legitimacy or adoptions effected overseas	£365

Table C.3: Financial orders

Application Amount	Fees
Application for a financial order, other than by consent	£275
Application by consent for a financial order	£53

Table C.4: Applications under the Children Act 1989

Application Amount	Fees
Any new applications under the Children Act 1989 to request permission to issue proceedings or for an order or directions to be made concerning the child(ren) e.g. Child Arrangements Order, Prohibited Steps Order, Specific Issue Order or Special guardianship order – with the exception of applications for care and supervision orders which are issued by Local Authorities.	£232
An application for an enforcement order under the Children Act 1989 or an order for compensation for financial loss, due to the breakdown of a child arrangement order	£232
Application to revoke, amend, extend or take action following the breach of an existing Children Act 1989 enforcement order	£102

Appendix D

Detailed sample breakdown

31 interviews were completed in total.

Table D.1: Organisations who bring money claims

Subgroup	Number of interviews
Group A – Large organisations (in-house)	5
Group B – Debt recovery agencies/solicitors who purchase debt	3
Group C – Debt recovery agencies/solicitors who do not purchase debt	6
Total	14

Number of staff	Number of interviews
None (sole trader/practitioner)	0
1–9	0
10–19	1
20–49	1
50–249	7
250+	5
Total	14

Table D.2: Damages solicitors

Subgroup	Number of interviews
Specialist firms	4
Generalist firms	3
Mostly/all NWNF	6
Total	7

Number of staff	Number of interviews
None (sole trader/practitioner)	0
1–9	0
10–19	0
20–49	1
50–249	4
250+	2
Total	7

Table D.3: Family solicitors

Subgroup	Number of interviews
Specialist firms	3
Generalist firms	7
Mostly legal aid/remissions	4
Mostly not legal aid/remissions/private	4
Mix legal aid and fee paid	2
Total	10

Number of staff	Number of interviews
None (sole trader/practitioner)	0
1–9	2
10–19	2
20–49	1
50–249	5
250+	0
Total	10

Table D.4: Regions covered (all samples)

N.B. some organisations cover more than one region. They have been listed in this table in each region they cover. Numbers do not therefore sum to the total.

Region	Completed
North West	3
Yorkshire & Humberside	4
South East	1
London	3
West Midlands	1
North East	3
East of England	3
Wales	5
England	3
All UK	10
Total	31

Appendix E

Glossary

Acorn score	The acorn score refers to a geo-demographic segmentation of residential neighbourhoods in the UK.
After-the-event insurance	Insurance which is taken out once the legal dispute has arisen and covers the costs involved in litigation including the court fees should a case not be successful.
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. ADR comprises a range of activities including negotiation, mediation and arbitration. 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 applicant 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.
Arbitration	Settling dispute outside of judiciary courts with an independent arbitrator who can impose a settlement if the parties do not agree one themselves
County court and family court bailiffs	Employees of HM Courts & Tribunals Service responsible for enforcing orders of the County Court by recovering money owed under County Court judgments. Bailiffs can seize and sell goods to recover the amount of the debt.
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.

Conciliation	Conciliation is similar to mediation (see definition below) whereby a third-party individual is appointed as a neutral person to help parties achieve settlement and resolve differences. It is normally used to find a solution to employment disputes.
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.
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.
Damages Claims Portal (DCP)	The Damages Claims Portal (DCP) is a digital service allowing registered legal professionals to issue a claim for damages on behalf of their client on an online portal. The portal is managed by HM Courts and Tribunals Service
Default judgment	Default judgement refers to a judgment without a trial where a defendant has failed to file an acknowledgement of service or has failed to file a defence.
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 (note with 'no fault divorce' there is now a mandatory 20 week period of reflection). 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.
Enforcement fee	If a court order is enforced to collect debt, there is an enforcement fee attached.

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 remission schemes/ Help with Fees (HwF) remission scheme	The government fee remissions system is called 'Help with Fees' (HwF) and 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. It 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.
Financial Conduct Authority (FCA)	The Financial Conduct Authority is a financial regulatory body in the United Kingdom but operates independently of the UK Government and is financed by charging fees to members of the financial services industry.
Fixed recoverable costs	Fixed recoverable costs (FRC) refers to the (fixed) costs that can be recovered from the losing party at different stages of litigation. The Government has recently implemented the extension of FRC in civil cases, to cover most civil claims up to a certain value, and for Noise Induced Hearing Loss (NIHL) cases. The levels of FRC are set by the government, with input from the relevant procedural committees.
Hearing fee	If a civil claim is defended and proceeds to a hearing, there will be a court fee attached to this.
High Court enforcement officer	A High Court enforcement officer is an officer of the High Court of England and Wales responsible for enforcing judgements of the High Court, often by seizing goods or repossessing property.
Issuing fees	Court fees for issuing civil claims. Issuing fees associated with civil claims are banded, with fixed amounts associated with claims with a value of £10,000 or below. Once the value of a claim exceeds £10,000, the issuing fee is no longer fixed, instead becoming 5% of the claim value up to a maximum of £10,000 for claims over £200,000. A full breakdown of issuing fees by claim value can be found in Appendix C.
Ombudsmen services	These look into complaints about companies and organisations and provide independent dispute resolution services between consumers and businesses.
Pre-Action Protocol	Pre-action protocols explain the conduct and set out the steps the court would normally expect parties to take before commencing proceedings for particular types of civil claims. There are specific Pre-Action Protocols for different times of claims.

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.
Legal costs/fees	Legal costs are the fees solicitors charge for the legal work they do.
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 more 'informal' negotiation, in which, for example, a family member or similar who is not necessarily independent of both parties, and who is not 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 'Alternatives to court' 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 and including £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.
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.
Pre-action protocols	Pre-action protocols explain the conduct and set out the steps the court would normally expect parties to take before commencing proceedings for particular types of civil claims.
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.
Track of civil claim	Civil claims can take three routes called 'tracks' which have different associated court fees. These are the small claims track, fast-track and multi-track. More information can be found here: Small claims track, fast track and multi-track EX305 and EX306 – GOV.UK (www.gov.uk)