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How has Covid-19 affected access to justice?

It already seems trite to suggest that 2020 transformed almost everything in our world. The most obvious shifts, in health, transportation, the workplace and education have been enormous and are clear for all to see. But every aspect of life has been touched by the pandemic in numerous ways, and many are far less obvious to all but those who work in them.

The impact that the pandemic has had on our justice system, has been as seismic as anywhere else in society and will take as long as any other to recover.

For people who have little day-to-day interface with it, talk of “the justice system” typically brings to mind our criminal courts, prisons and perhaps the major civil litigation that might make the news headlines. As such, its inadequacies can seem somewhat remote from most people’s lives.

However, important and sometimes poorly served as the victims of crime may be, they are far outnumbered by those who come into the justice system for other reasons.

Hundreds of thousands of businesses and their employees have cause to use the employment tribunal system each year, not to mention the various other tribunals. Even more people rely on the other branches of the civil justice system to resolve contract, family or property matters, to settle disputes over injuries and recover unpaid debts.

These wheels of justice do indeed turn slowly, and often with good reason. Over the past year, however, some have virtually ground to a halt.

Disclaimer - all information in this article was correct at time of publishing.

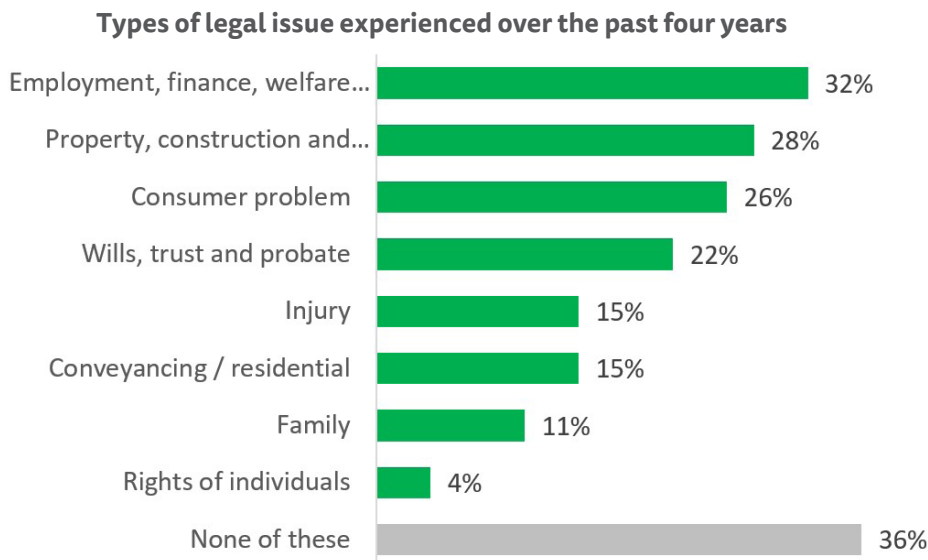


The picture before the pandemic

When we come to assess the impact that Covid-19 has had on access to justice, once the pandemic has receded, we won't struggle for sources to help establish the 'before' picture. Some timely and authoritative studies were released in the months immediately before we all locked down.

The FCA's Financial Lives 2020 survey only touches on the legal world, but provides a very broad picture of the financial situations of people in the UK, as we approached the end of a decade. It offers direct comparison with the first study of its kind, released in 2017, and has been updated by a supplemental study, conducted in October to examine the impact of Covid-19 specifically.

Just as the pandemic broke in the UK, the Legal Services Board released the findings of its own survey into the Legal Needs of Individuals in England and Wales. This is also a very large study, based on responses gathered in 2019, and revealed that almost two thirds of individuals experienced some sort of legal issue over the previous four years.



Source: Legal needs of Individuals in England and Wales - Technical Report 2019/20

Finally, for a global perspective, we can look at the annual Rule of Law Index, a huge study produced every year by the World Justice Project, which compares various aspects of more than one hundred national jurisdictions around the world.

The justice crisis before Covid-19

The UK justice system is used to being taken for granted. While individual cases may grab the public attention from time to time, the state of our judicial institutions is rarely the subject of much discussion beyond their own walls. Our system of justice is, at the same time, revered around the world but largely neglected here at home.

The recent budget report, published in March, offers a good illustration. Of 107 pages detailing how the government will allocate spending, address the impact of Covid-19 and start recouping some of the huge sums invested to date, justice was covered in just one, very short paragraph; fewer than 40 words describing funding allocated last year, most of which has already been spent.

Whatever money is allocated to address the impact the pandemic has had on justice, it will not reverse the years of decline that preceded 2020. The number of court and



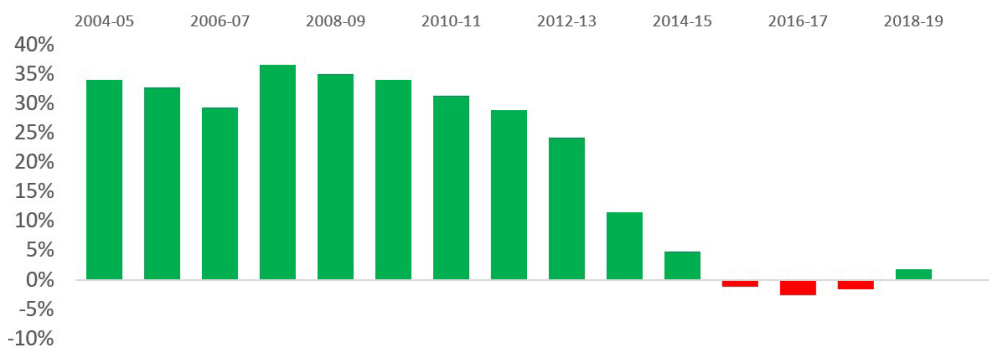
tribunal buildings that have closed, the time that parties have to wait for a hearing and the huge cuts to Legal Aid and the wider Ministry of Justice budget, have all taken their toll.

Access to justice has become more difficult and more expensive to achieve, so it is not surprising that insured legal protection solutions are becoming increasingly popular.

A decade of decline

Underinvestment in our justice system is nothing new. Over the past decade, the Ministry of Justice (MoJ) has seen cuts as severe as almost any other government department.

Resource Department expenditure limit (including depreciation) in real terms, indexed to 2019/20 prices



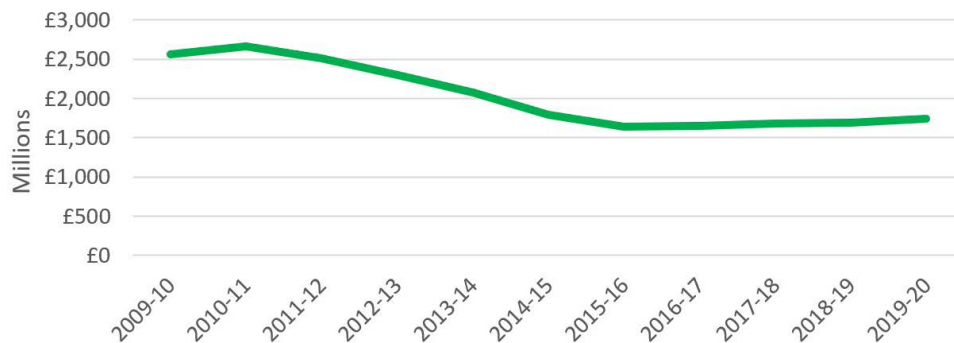
Source: The Spending of the Ministry of Justice, House of Commons Library, 1 October 2019

The programme of austerity introduced after the financial crisis in 2008, saw the closure of many court buildings, widespread dilapidation of those still in operation and significant cuts to the budget and availability of Legal Aid.

Even before the passage and implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in 2013, government expenditure on legal aid was already in decline, but the past decade saw this continue, reducing legal aid spending by roughly a third.

Legal Aid is no longer an option

Overall Resource Departmental Expenditure Limit for legal aid in real terms, indexed to 2019/20 prices



Source: Legal aid statistics England and Wales bulletin April to June 2020



Where Legal Aid once provided access to justice for many who otherwise could not have afforded it, now it is only available in very few, specific types of case.

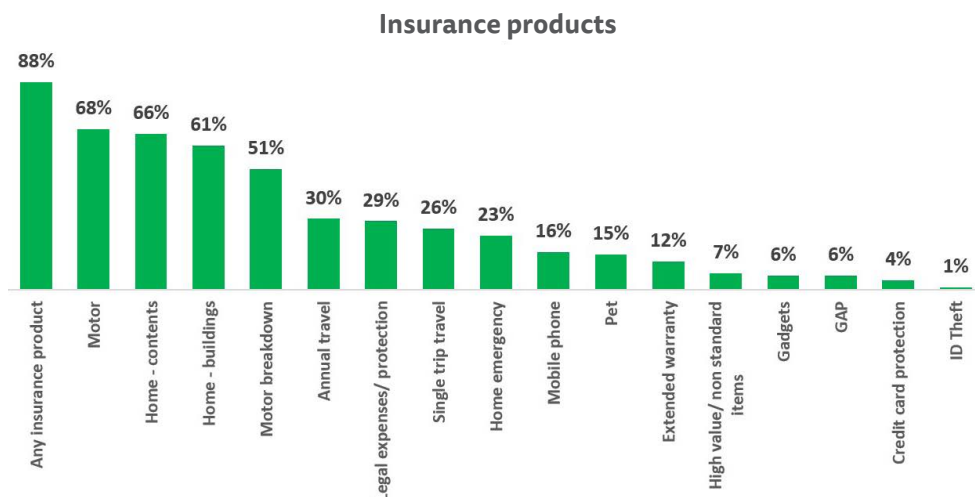
The gulf between the issues that members of the public believe Legal Aid should and is available for, and what it actually covers has widened.

Has ownership of legal protection increased?

Looking at this deterioration in our justice system, it is easy to see why the public's belief in the accessibility of justice is not high.

The Legal Needs of Individuals in England and Wales study uses a series of nine questions to measure the perceived accessibility of justice. The results show that less than a quarter of respondents think that justice is easy to access.

Given such sentiment, it's equally easy to accept that the number of people reporting ownership of legal expenses insurance products is increasing. The FCA's Financial Lives 2020 survey indicates that 29 per cent of UK adults held some sort of legal protection product, a huge increase on the 17 per cent that claimed to hold such a product in 2017.



While there is some evidence of growth in product ownership, the increase seems unlikely over such a short period and does not tally with other data gathered within the sector. This difference is possibly the result of subtle changes in methodology but also of efforts the insurance industry has made to increase awareness of ancillary products, such as legal protection.

A global perspective

If there were any doubt that access to justice has indeed diminished in the UK or that the decline was inevitable in the context of a massive global recession, our steady descent in the World Justice Project's Rule of Law Index certainly suggests otherwise.

The 2020 report, which now ranks some 128 countries after scoring them for criteria as diverse as 'fundamental rights' and 'regulatory enforcement', saw the UK slip another place to 13th, leapfrogged by countries such as Canada, Australia and Estonia, over the past 5 years.

The category in which the UK achieves the lowest score is Civil Justice, and it comes as little surprise that our lowest individual score out of all 44 detailed ratings, and the one that sits furthest below our peers is for the 'accessibility and affordability' of civil justice.

While the pandemic has disrupted justice all over the world, it is hard to imagine that the UK will not fall further, when World Justice Project publishes its 2021 report.



The impact of the pandemic

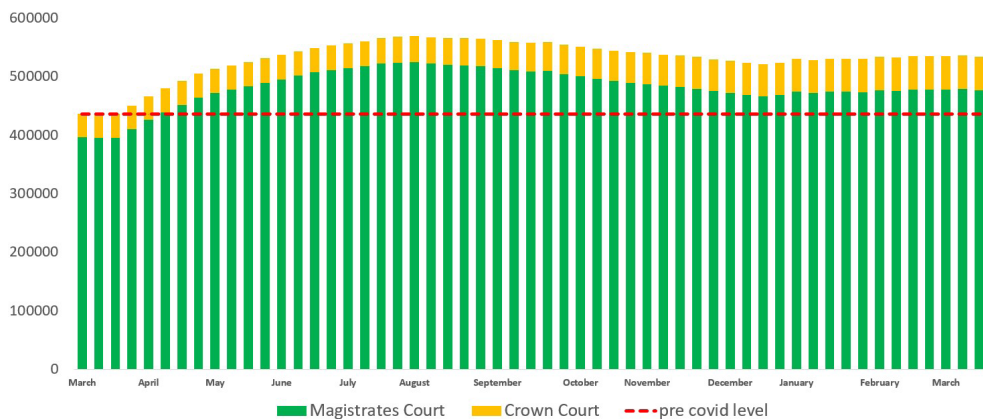
For a justice system already debilitated by years of underinvestment, the pandemic could scarcely have arrived on our shores at a worse time. The immediate closure of court and tribunal buildings slowed the administration of justice to a snail's pace.

Fortunately, the flow of new cases into many parts of the justice system also dropped significantly. Just as the lockdown inhibited the crime-rate, furlough arrangements held back the inevitable tide of employment disputes and legislation also prevented landlords from seeking to remove tenants, through the courts.

The various parts of the system were also quick to adapt. Courts and law firms alike, shifted quickly to virtual hearings, reserving the practical challenges of in-person hearings for those case in which there was no alternative.

Despite all of these best efforts, the backlog of cases in almost all courts and tribunals increased substantially during the pandemic. In criminal cases, this inevitably means that the innocent will take much longer to prove their innocence, while the guilty have a better chance of evading justice.

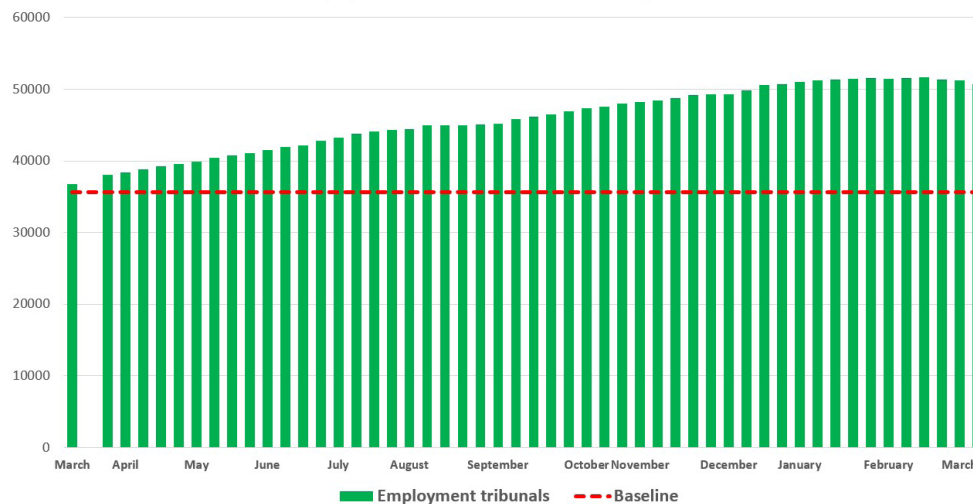
Magistrates' and Crown Courts workload outstanding in 2020



Source: HMCTS weekly management information during coronavirus - March 2020 to March 2021

In civil matters, such as employment tribunals, witnesses will similarly find it much harder to recall events and both the business and the employee will have to wait longer for justice to be served.

Employment tribunals workload outstanding in 2020



Source: HMCTS weekly management information during coronavirus - March 2020 to March 2021



While the Ministry of Justice introduced further measures throughout 2020, such as the opening of “Nightingale Courts” and drafting underutilised, non-specialist judges to sit in employment tribunal matters, the backlogs have persisted into 2021. The huge delays in getting a matter resolved in a court or tribunal have made alternative means of resolving disputes, such as mediation, much more attractive.

It is not simply court and tribunal delays that have forced parties to explore alternative methods for resolving civil disputes. The legal ban on evicting private tenants, introduced in March 2020, put many landlords, especially those dependent on income from a single property or small property portfolio, in an impossible situation.

Following the swift passage of the Coronavirus Act 2020, ARAG introduced an alternative claims process that enabled landlords to agree rent reductions or negotiated termination with tenants, providing a legal remedy for all parties where none was available through the courts.

At the end of March, the Law Society Gazette reported that the Civil Justice Council was considering whether or not mediation should be made compulsory in some cases.

The insurance provider’s perspective

Legal expenses insurance providers have a unique insight into the demands on our justice system, and this has proved particularly useful throughout the course of the pandemic. The volume and subjects of legal advice calls offer a strong indication of future claims trends and potential litigation.

Early in the pandemic, there was a huge influx of enquiries, particularly around the previously unknown concept of furlough but also around wider employment, contract and tenancy issues. Small business owners and employees in general were desperate to know what their rights were and how to proceed in this unprecedented new legal environment.

Call volumes settled back to more normal levels over the Summer, but there was another surge in activity in the Autumn, as uncertainty over the end of the furlough period prompted enquiries about redundancy and other employment questions.

While furlough may have held back the tide of unemployment among small and medium-sized businesses to some extent, it is unlikely to prevent the wave of redundancies that legal expenses insurers know, from experience, will accompany a recession.

Of these, some will inevitably result in disputes and employment litigation, which is not good news for a tribunal system already struggling to cope with claims that started early in 2020 and even before.

At the same time, disputes over commercial contracts are also likely to increase, both as a result of pressures brought about by the recession, but also as a consequence of Brexit.

The future role of legal protection

Legal expenses insurance has always offered a highly affordable and widely available means of accessing justice that has become ever more valuable as other paths to justice have been blocked or made increasingly difficult and expensive.

This value has also increased over the years, as the range of insured risks has broadened and additional benefits such as different helpline and digital legal services tools have been added to enhance and differentiate products in this maturing market.

While claims are almost certain to increase significantly in the short to medium term, they will help to sustain the trend of increasing awareness about the availability and enormous benefits offered by legal protection products.

While the next few years look set to prove extremely difficult for the justice system and busy for legal expenses insurance providers, it is clear that legal protection has a critical role to play in helping the UK recover from the immediate and longer-term impact of Covid-19.