Ministry of Justice

Dispute resolution in England and Wales – call for evidence

A response by the Association of Personal Injury Lawyers

October 2021

Introduction

We welcome the opportunity to respond to the Ministry of Justice's ("MOJ") call for evidence on dispute resolution in England and Wales. APIL supports the use of a wide range of methods to resolve disputes, and personal injury ("PI") lawyers already use a variety of different approaches to achieve the best outcome for their client. As such, there should not be a blanket roll-out of a "one size fits all" method of dispute resolution; instead there must be consideration of the unique circumstances arising in different cases which determine whether a particular method of dispute resolution is most suitable.

The use of appropriate dispute resolution processes where they promote access to justice for both parties is to be encouraged. Personal injury lawyers, whether primarily working to represent injured individuals or defending such claims have a track record of working together to resolve disputes without the involvement of court and have developed processes, such as the Serious Injury Guide, to supplement the pre-action protocols applicable to this work.

Any proposed changes to ADR processes must be supported by robust data and be justifiable when set against the high engagement and success rates in settlement of PI cases without the need for a final court determination.

APIL is cautious in relation to the conclusions in the Civil Justice Council report of June 2021 that, subject to controls, compulsory ADR is lawful. In particular, a party should always have the option of a court resolution of their dispute and success rates will be higher where the parties are able to tailor the approach to their needs.

It is also important that the significant work being done in many areas at the moment (fixed recoverable costs, a review of the pre-action protocols and the court reform program) be approached in a co-ordinated way. All of those areas are interconnected and there is a significant risk of unintended consequences if conclusions are reached based on the current system where it is known that there are proposals to change that system being considered separately.

We have responded only to those questions in our remit.

General comments

Dispute resolution in personal injury cases

A PI lawyer's goal is to resolve their client's case on the best possible terms, in the best possible manner. In the vast majority of cases, a PI lawyer will aim to resolve a case without the need to go to trial, with the additional stresses and costs that this inevitably incurs.

That alternatives to the court are already well utilised by PI practitioners is evident in the available statistics which indicate the great extent to which most cases are settled before

they are even issued in the court. On average, between 2016 and 2021, only 16 per cent of PI claims are issued in the courts in England, Wales and Scotland. This maps on to the data from the Compensation Recovery Unit ("CRU") from the period 1 April 2019 to 31 March 2021, which shows that of the 811,752 PI cases registered, only 113,756 were issued (14%). To put this in perspective, in the same period the CRU recorded 854,948 PI settlements.

Often parties issue PI claims to ensure that the 3-year limitation period is adhered to, in the knowledge that the case is likely to extend beyond 3 years by virtue of the recovery time necessary to adequately assess the extent of a claim, but all the while conscious of the fact that settlement is the preferred and likely outcome.

After a claim is issued, the incentives on both parties to settle a claim only increases. 48% of the cases issued in the CRU data were resolved prior to the claim being allocated to a track. Of the fast-track claims that were allocated, 77% of those were resolved prior to trial. Of the multi-track claims that were allocated, 90% of those were resolved prior to trial.

Overall, the CRU data suggests that approximately only 1.5% of PI cases are not resolved prior to trial.

Across all areas of PI, there are tailored pre-action protocols which encourage collaboration between claimant and defendant representatives and advocate a "cards on the table" approach with an aim to avoid litigation by agreeing a settlement of the dispute before proceedings are commenced. Even where the pre-action protocols do not apply directly, for example in multi-track claims, parties are still expected to follow the spirit of the protocol, if not the letter. Further, Lord Justice Briggs, in his final report on the civil court structure, set out that PI claims in the fast track are dealt with in a highly efficient manner through the Portal, which leads to many cases being settled without recourse to final resolution at trial.

The success of the Serious Injury Guide ("the Guide") is a further example of the willingness of PI practitioners to explore other options to resolve a case without the need to go to trial (if this is the best option for that particular case), or at least to narrow the issues within a case. The Guide works very well for higher value cases, and is currently being piloted for all cases likely to involve a claim for future continuing loss, regardless of value. In feedback from the most recent survey of signatories to the Guide in 2019, 84 per cent of respondents said following the guide leads to easier access to rehabilitation, and 41 per cent said that the Guide helps them to resolve liability more quickly. Many commented that even where the Guide does not make it easier to resolve liability, it does allow parties to meet earlier, encourages exchange of evidence, candid discussions about primary liability, ongoing dialogue to manage expectations, and generally greater collaboration. Signatory insurers are often willing to engage in rehabilitation and funding interims whilst liability investigations continue.

We would argue that the existing processes in place in the arena of PI already go a long way towards achieving the MOJ's aim to make all dispute resolution methods more mainstream. Given that there are already effective systems in place to encourage settlement out of court, efforts would be best served improving and building on those systems, rather than implementing something completely new. One area in which improvements could be made is in ensuring greater compliance with the pre-action protocols, with more effective sanctions.

Despite there already being effective dispute resolution methods in place in PI law,, we accept that the MOJ wishes to explore how to make more "traditional" types of ADR more mainstream, and we set out below the factors to consider when doing so.

Increasing the usage of dispute resolution methods – factors to consider

Different approaches based on value

It should be noted that the court user survey, which is referenced in the pre-amble to the consultation, relates to cases with an average worth of between £1,000 and £5,000. Findings from the survey do not reflect higher value cases, therefore, and this must be borne in mind.

In looking to increase the usage of alternative methods of dispute resolution, a blanket approach for all civil cases would not be appropriate. Indeed, a blanket approach for all PI cases would not be appropriate.

In lower value cases, perhaps those where fixed recoverable costs are involved, we are sympathetic to a more structured approach to dispute resolution, perhaps via a court provided dispute resolution process. In fixed costs cases at present, it is unlikely that dispute resolution processes adopted by the parties would be anything more than negotiations between representatives. That is because the constrained costs environment does not provide for the additional cost of dispute resolution and the current level of settlements in those cases is because the parties are represented. A more structured approach to ADR could be of benefit to the claimant in lower value cases, by requiring the defendant to engage to resolve the case in an efficient way. Anything that will assist in narrowing the issues and resolving cases more efficiently is welcomed.

Further, if solicitors are being asked to do extra work, and there are extra stages built into the lower value process, this additional work must be reflected in the fixed costs awarded in these cases, and the amounts paid at each stage of that fixed costs process. If work is being shifted into the pre-action stage, the costs recoverable for that stage must be reflective of this.

In higher value cases, flexibility is very important. It is not in the claimant's interest for there to be prescriptive dispute resolution in higher value claims. The parties must be able to arrange the most suitable method of resolution for their client, in the case at hand. That allows the individual needs, and vulnerabilities, of the parties to be addressed by the parties when agreeing the method to be used and it is well understood that the success of any form of dispute resolution is improved where it is consensual.

Appropriate timing for ADR is also vital. Portsmouth and Southampton County Courts have instituted court ordered mediation at or about the time of a pretrial review, which is usually the same time at which the parties would have held a JSM, therefore rendering a PTR redundant. The outcome of this scheme has been to build in costs without materially increasing the rate of settlement. This suggests that this issue is not the parties' motivation to engage in mediation or other ADR methods, but is in fact when they feel they are in the best position to start seriously considering their position and reaching a settlement.

Defendant conduct

Whether dispute resolution methods can be successfully used on a greater scale than is currently the case is very much tied to defendant conduct. In higher value cases, defendants tend to want to settle the case as early as possible by putting in an offer before medical evidence has been obtained and the full extent of the injury is clear. In lower value cases, defendants tend to employ tactics to lengthen the time spent on the case, and often refuse to engage in ADR, in the knowledge that the claimant's representative is working within a fixed costs regime.

Dispute resolution should be issues based

Particularly in higher value cases, alternative methods of dispute resolution can be beneficial in narrowing the issues at hand; ascertaining where there is common ground; and allowing interim payments to be agreed and disclosure to take place, even if there are outstanding issues of liability and/or quantum that may ultimately require the court's input. Successful engagement with ADR may not necessarily mean an entire case is resolved out of court, but that co-operation between the parties has been facilitated to allow those issues that can be resolved without court, to be resolved.

The right to take a case to court must be retained. Parties should not be prohibited from employing a particular method of resolution for part of the case, and then issuing proceedings to resolve other issues should this be necessary. There should not be a situation whereby parties agreeing to a form of alternative dispute resolution are subsequently prevented from pursuing a claim in the courts. The unusual case of *Akay v Newcastle University*[1] demonstrates the need for absolute clarity that employing alternative methods of dispute resolution should not prevent proceedings being issued if necessary. In *Akay,* a compromise agreement was reached in the tribunal proceedings but part of the tribunal proceedings were struck out for lack of information. In the compromise agreement, the making of a PI claim was specifically excluded. Proceedings were brought and shortly before trial the defendants applied to strike out the claim as an abuse of process, and were successful in doing so. This case suggests that it will be necessary to agree when pursuing an alternative method of dispute resolution, that should proceedings need to be issued this will not count as an abuse of process. This does not make the use of alternative methods attractive, as parties may be wary of agreeing to go down this route for fear of potentially blocking off the path to court in future, should it be needed. This approach cannot be right. It is important that solicitors are able to choose the right method of resolution for the issues at hand, and this may mean that some issues are resolved via alternatives to court, but that there are outstanding issues that need to be resolved in court.

Any restriction of the right to issue or go to trial could potentially encourage poor behaviour, as there would no longer be the ultimate testing of evidence before a judge. In *Crosby v Wakefield Metropolitan District Council*[2] the defendant's orthopaedic expert was criticised by the court for failing to give a range of opinion in his reports. The judge in this case commented that the expert's behaviour was "bordering on arrogance". The judge accepted counsel for the claimant's submission that the defendant's expert was "skating close to the role of an advocate, rather than an independent expert", as the expert had criticised the amount of care claimed by the claimant, without first seeing the claimant's medical records. This detailed consideration of the evidence by a judge would not have taken place in any other dispute resolution forum than the courts.

The courts also provide a vital role in the determination of difficult issues of law. The case law relating to accommodation claims is an example of how recourse to the courts is beneficial and necessary in the resolution of difficult issues. Since the case of *Roberts v Johnstone* in 1989, claimants had been faced with an unfair calculation of the amount that

[1] [2020] EWHC 1669 (QB)
[2] *(Unreported Leeds CC January 2020),*

they should be awarded to purchase the accommodation that they would now require as a result of their injuries. In order to avoid the claimant obtaining a "windfall" by simply being awarded the capital sum to purchase accommodation, the "discount rate" was applied to any accommodation awards, which resulted in under-compensation for that part of the claim, and claimants having to borrow from other heads of damage to fund the purchase of accommodation. This situation worsened when the discount rate was recalculated as a negative amount in 2017, resulting in accommodation awards calculated under *Roberts v Johnstone* being zero. A solution needed to be found, and there needed to be guidance from the courts on a way forward. The case of *Swift v Carpenter* in the Court of Appeal provided such guidance, with the court holding that the correct amount to be deducted from the accommodation award to prevent a "windfall" to the claimant, was the reversionary interest on the property. This results in a much fairer outcome for the claimant, and such a solution would simply not have been achieved through other dispute resolution methods. Guidance from the courts was necessary.

Courts must give directions

In order to assist in making dispute resolution a more mainstream approach to resolving cases, the courts should give the direction for the parties to actively consider ADR in every case. We note that all court orders in PI claims allocated to the fast and multi-track include an order that the parties must consider settling litigation through ADR. We would welcome extending this to small track claims.

Call for evidence questions

Drivers of engagement and settlement

Q1) Do you have evidence of how the characteristics of parties and the type of dispute affect motivation and engagement to participate in dispute resolution processes?

A willingness to engage in alternative methods of resolution rather than through the courts may be dependent on what the claimant wishes to get out of the process. In 2018, NHS Resolution conducted research to identify the top motivations for bringing a claim. This research revealed that in clinical negligence cases, one of the biggest drivers for bringing a claim (with 79 per cent of respondents indicating this as a top motivation) was the opportunity to have face to face meetings with the defendant, and obtaining a detailed explanation for what happened.[3] To receive an apology was also one of the most popular reasons for bringing a claim, which accords with our members' experiences.

If a key motivation is to hear from the defendant directly, dispute resolution methods which facilitate this, such as a joint settlement meeting ("JSM"), are ideally suited. One of the benefits of JSMs is the flexibility that is permitted to allow the attendees and the venue to be tailored to best suit the case at hand. In a clinical negligence case, it can be arranged for the treating doctor to be in attendance so that the claimant can have a face-to-face meeting and get answers directly. It would not be appropriate in abuse cases, however, to have the perpetrator of the abuse present, and instead a representative from the institution in question or insurer will be in attendance. In disease cases, one of the drivers for bringing a claim may be to bring about future changes in health and safety practices, and certain types of dispute

[3] Behavioural insights into patient motivation to make a claim for clinical negligence: Final report by the Behavioural Insights Committee (August 2018)

resolution will lend themselves more to this than others. Again, there must be flexibility because it will depend on what the individual client wishes to gain from the claim.

JSMs allow the claimant solicitor to suggest the best forum for their client in that particular case. Members note that the use of remote JSMs – the use of which has risen due to the pandemic – suit some claimants better than an in-person meeting. We expand on this further in answer to section 5, below. This new flexibility is welcomed, and it is important that if there is a greater push towards alternative methods of dispute resolution, such flexibility must remain, particularly in higher value cases and in cases involving a vulnerable claimant. Adopting an approach which is flexible would reflect the approach taken by both the Civil Justice Council (CJC)and the Civil Procedure Rule Committee in their work on vulnerable witnesses and parties. The CJC has not defined vulnerability, to allow for all of the different types of vulnerability to be catered for. Each person's vulnerability is different and requires treatment in a different way.

Satisfactory resolution of the case for the claimant should be the goal, and there must be flexibility to allow the parties to navigate the best approach to reaching this. In higher value cases, mandating certain types of dispute resolution will have a negative impact overall – increasing costs and ultimately delaying resolution of the case - and particularly where there is a vulnerable claimant. Parties should be free, for example, to instigate a JSM that suits their needs, rather than going through a "tick-box" mediation process, purely because it is compulsory for them to do so. In higher value PI cases, there are experienced practitioners on both sides, and these practitioners should have the freedom and flexibility to do what is appropriate for their clients in each individual case, rather than being constrained by rules requiring them to follow a mandatory dispute resolution approach.

Another way that the characteristics of the parties affect motivation in PI cases is the differences in behaviour and approach between different insurers. Some insurers are very keen to meet with the claimant and engage with them. Others, less so. Claimants should not be beholden to, or penalized because of, the unknown drivers of a particular defendant's behaviour. Again, there is a need for consistent flexibility around the needs of the parties. If there is a vulnerable claimant involved, their needs should be at the forefront of any considerations.

Q2) Do you have any experience or evidence of the types of incentives that help motivate parties to participate in dispute resolution processes? Do you have evidence of what does not work?

There is no 'typical' type of case or incentive to help motivate parties to participate in dispute resolution. Again, it is very much down to the individual case and the claimants needs. In some cases, views and behaviours are so entrenched that ultimately, the only way that particular case can be solved is via the court process. APIL, together with FOIL and a number of major insurers, has developed a Guide to the Conduct of Cases Involving Serious Injury. While the guide facilitates early discussion, collaboration between parties and could itself be seen as a method of facilitating dispute resolution, it is not a panacea. There are simply some cases that, for a variety of reasons, will need to go through the courts to achieve resolution. As experience of the Guide demonstrates, however carefully considered or regularly reviewed any form of ADR is, in order for it to be successful there must be a genuine desire by the paying side to work towards a settlement.

In terms of incentives to help motivate parties to participate in dispute resolution processes, one of the key factors will be financial considerations. Currently in lower value cases within the fixed costs regime, parties cannot afford to engage in alternative methods of resolution

such as mediation, so the uptake is low. As stated above, if there is to be the introduction of more structured or mandated alternative dispute resolution in lower value cases, this must be reflected in the costs allowable.

Q3) Some evidence suggests that mandatory dispute resolution gateways, such as the Mediation information and Assessment Meeting (MIAM), work well when they are part of the court process. Do you agree? Please provide evidence to support your response.

There is no evidence to suggest that a mandatory gateway, which may or may not be successful in family cases, would be successful if applied in PI cases. In 2013, a mandatory telephone gateway was introduced for legal aid in education, debt recovery and discrimination cases. This was abandoned in 2020, and throughout its existence, it drew criticism from numerous housing, disability and children's charities, the Law Society and the Bach Commission[4] among others, for failing to cater to vulnerable groups such as children, the deaf, those with communication difficulties, complex problems or chaotic lives. The gateway was not manned by legal experts, and it was perceived as a barrier to justice, rather than facilitating access to it. The Public Law Project published a report on the mandatory gateway in 2015, finding that there was an inconsistency of advice, reliance on scripts by those handling the calls, that it was confusing and bureaucratic, and a barrier to access to justice.[5]

The Civil Legal Aid Gateway serves as a cautionary tale against introducing a mandatory "one-size-fits-all" approach to dispute resolution. Each area of law is different and presents different challenges, and clients in each of those areas have different needs. There has been no indication to suggest such a solution would be any more successful in PI cases than it has been in other areas in which it has been trialed.

In terms of "gateways", there is already a tailored pre-action process for certain PI claims, through the claims portal. If there is a drive to encourage increased dispute resolution outside of courts, a key area to focus on would be ensuring defendant compliance with the pre-action protocols and claims portal.

Q5) Do you have evidence regarding the types of cases where uptake of dispute resolution is low, and the courts have turned out to be the most appropriate avenue for resolution in these cases?

As mentioned above, there is no particular type of case where uptake of dispute resolution is low. The main factors which determine whether a case can be resolved out of court are the facts of the particular case at hand and the behaviours of the parties involved.

Q6) In your experience, at what points in the development of a dispute could extra support and information be targeted to incentivize a resolution outside of court? What type of dispute does your experience relate to?

PI solicitors strive to achieve the best possible outcome for their client, in the best possible way. Where appropriate, they provide the necessary support and information to their client to incentivise a resolution out of court, as they understand that a settlement that can be

[4] https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf

[5] https://publiclawproject.org.uk/content/uploads/data/resources/199/Keys-to-the-Gateway-An-Independent-Review-of-the-Mandatory-CLA-Gateway.pdf

reached outside of court, where both parties work co-operatively to achieve the best outcome for the claimant. However, as stated above, some cases simply cannot be settled in any way other than through the courts, and claimants should not be prevented from pursuing a claim through the courts if the claimant, in consultation with their solicitor, agrees that it is the best option for them.

Regarding the point in the development of a dispute in which it would be most effective to incentivise an out of court settlement, for any form of settlement to be achieved there must be full disclosure of all of the relevant evidence. No party should be funnelled into resolution of a dispute until they are in a position to identify what it is that is required to resolve the dispute. In all cases this means sufficient information to identify what the position is in relation to fault and the necessary compensation to right the wrong they have suffered. There must be a "cards on the table" approach. Any attempt to introduce methods of dispute resolution before disclosure has taken place would be futile. It must also be acknowledged that even full disclosure may not mean that parties will be in a position to fully settle the claim at that point. Parties could work together to resolve some of the issues, for example liability, but should not be obliged to fully settle the claim if the time is not right to do so – for example the extent of the claimant's injuries is still unclear, so questions over quantum remain.

Some form of pre-proceedings stock-take would be beneficial, and we would suggest that the system in Scotland where this is a compulsory requirement before a case proceeds to trial, should be adapted for use pre-proceedings in England and Wales.

Dispute resolution will be most effective where parties are able to employ different methods to resolve different issues within the case, and just because one particular method is used to resolve some issues should not mean that the parties are bound to that method for the whole case. There must not be a rigid approach – "successful" dispute resolution may mean in some cases that some issues are settled out of court, and some issues require judicial determination.

Section 2: Quality and outcomes

Q8) Do you have evidence about whether dispute resolution processes can achieve better outcomes or not in comparison to those achieved through the courts?

What is meant by "better" here? Is it purely based on financial outcome, or is efficiency also taken into account?

It would also be difficult to compare whether a different or better outcome would have been achieved had the case been settled in a different way.

As above, solicitors select the most appropriate forum for their client's case based on their individual circumstances. JSMs can be hugely beneficial in, for example, a clinical negligence case, where the claimant may want the opportunity to meet with the treating doctor and have a conversation with them directly. JSMs also give the parties more control and scope to agree or otherwise.

There are certain issues, however, which ultimately can only be resolved through the courts. In cases of protected parties and children, any dispute resolution outside of the court will always need to have the additional safeguard of court approval. Also, only the court has the power to order damages to be paid in the form of periodical payments.

Q9) Do you have any evidence of where settlements reached in dispute resolution processes were more or less likely to fully resolve the problem and help avoid further problems in future?

Often in a PI case, clients will want to see that a difference has been made as a result of them bringing their claim. One member spoke of a wife whose husband who was a GP had suffered a head injury and then had gone back to work, and had subsequently died by suicide. The wife was very keen that as a result of her case, there should be greater support in place for people who have suffered head injuries and then returned to work. In dispute resolution processes outside of the courts, it may be more likely that these issues can be explored, and there can be conversations with the defendant about what can be done to prevent similar incidents occurring in the future.

Q10) How can we assess the quality of case outcomes across different jurisdictions using dispute resolution mechanisms, by case types for example and for the individuals and organisations involved?

If dispute resolution is going to be built into a portal system for lower value cases, then openly discussing and making available the types of management information that the portal system collects will be one way of assessing the quality of case outcomes for these cases. For cases where CPR 21 requires court involvement, that would be an appropriate place to record outcomes. One potential way to do this would be for there to be a narrative attached to court judgments providing an indication as to how resolution of the case was achieved, although we are unsure of the courts' appetite for this.

Q11) What would increase the take up dispute resolution processes? What impact would a greater degree of compulsion to resolve disputes outside court have?

In lower value cases fixed fee regimes should reflect the increased work and higher costs generated if dispute resolution methods are employed. Providing access to a form of dispute resolution via any digital pre-action system or portal where the cost is not directly borne by the parties may assist in that regard.

In higher value cases, there must be flexibility for legal professionals to assist their clients in the way most appropriate for the case at hand. There should not be a rigid structure whereby a particular method of dispute resolution must be used purely as a "tick box" exercise, when that method may be completely unsuitable for a particular case. As suggested above, we suggest that some form of compulsory stock-take, where the parties come together and consider the evidence and arguments to determine whether litigation can be avoided, would be beneficial.

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

There is an overall need to protect vulnerable claimants from parties not engaging in litigation appropriately, or using a dispute resolution process to apply pressure to the claimant to settle the claim inappropriately.

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

Dispute resolution methods are sometimes be treated as a "tick box" exercise. As stated throughout this response, if a method of dispute resolution is mandated at an incorrect stage of the case, or is an unsuitable method of dispute resolution for the case at hand, the

compulsory compliance with the dispute resolution simply becomes a “tick box” exercise, generating higher costs, and ultimately delaying resolution of the claim.

Dispute resolution service providers

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

It is important that mediators are subject to continuing professional development, and this should be standardised, monitored and regulated. It is also important that mediators come from a variety of different legal backgrounds. There will be reluctance to engage in mediation from parties if there are no mediators available who have an understanding of the area of law in which the mediation will take place.

APIL, together with the Forum of Insurance Lawyers, developed a register for PI mediators, which is now administered by the Civil Mediation Council. The register was developed as it was identified that it was difficult to obtain a mediator who had knowledge and experience of PI law. In order to appear on the register, mediators must demonstrate training and continuing professional development in relation to mediation, and also demonstrate experience and knowledge of PI law. We believe that if mediators wish to operate in the PI forum, they should have to prove their knowledge and experience of this ever changing and often complex area.

Financial and economic costs/benefits of dispute resolution systems

Members’ experiences of mediation are that it is a costly process. PI cases must be conducted in a proportionate way, and the current costs of mediation will make it an unsuitable option in cases other than those of higher value. If mediation is to be rolled out more widely as a viable option in more cases, there must be an examination of the fees charged, and a factoring in of the higher spend for solicitors pre-proceedings.

It is also important, if a wider roll out of dispute resolution systems is to be successful, that parties are able to apply for fee exemptions in the same way that they can for court fees.

Technology infrastructure

The ability for parties to attend JSMs remotely during the last 18 months has been very beneficial. Remote JSMs can be more easily organised and tend to be less stressful for the client. They provide the option for the client to be kept up to date in the comfort of their own home, rather than having to travel somewhere potentially far away and unfamiliar. The flexibility to hold remote JSMs must be maintained. Certain video conferencing platforms lend themselves very well to JSMs – Zoom, for example, has the function for parties to be placed in separate virtual breakout rooms. It would be helpful, in due course, for there to be recommended providers for video conferencing software, who are accredited so that parties can use this technology with confidence that their privacy and confidentiality of the matters discussed, is preserved.

It is likely that throughout the justice system, there will be continued uptake of remote and electronic methods of conducting business, and this is a key area where there must be proper investment to ensure that the software can meet the needs of users, and issues such as confidentiality and privacy can be catered for. There should be a general presumption that meetings/hearings should not be recorded unless the court orders as such.

Public Sector Equality Duty

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

There should be facilities available for Welsh language users in any dispute resolution process.

Any queries about this response should be, in the first instance, directed to:

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