

The Rt Hon Rishi Sunak, MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
London SW1A 2HQ



30 September 2021

Dear Chancellor of the Exchequer,

Re. Spending Review 2021

The Spending Review 2021 ([SR21](#)) offers the chance to consider the funding necessary and the opportunities available for government departments to improve outcomes as well as manage the public finances. This includes in light of the developments resulting from the COVID-19 pandemic, but also because of the impact and vast potential of new technologies, shifting patterns of work and changing consumer preferences.

The Association of Consumer Support Organisations ([ACSO](#)) was established in January 2019 to represent the interests of consumers in the civil justice system and the reputable, diverse range of organisations who are united in providing the highest standards of service in support of those consumers. Its role is to engage with policymakers, regulators, industry and the media to ensure there is a properly functioning, competitive and sustainable civil justice system for all.

Given that this depends in part on the resources available to the Ministry of Justice (MoJ), it is appropriate that ACSO makes representation to HM Treasury as part of SR21. This letter constitutes our submission. It asks that the government ensures both that there is adequate provision made for the operation of the civil justice system but also that resources are made available to encourage and deliver reform, innovation and an ever-greater focus on the end consumer.

Expenditure on the MoJ was lower in cash terms in 2019/20 (£8.05bn) than it was in 2004/05 (£8.07bn), although even that represented a small cash-terms increase on previous years, with spending falling to just £7.35bn in 2015/16 as the then-government made adjustments in the aftermath of the Global Financial Crisis.¹ In 2017, the Institute for Fiscal Studies calculated that since 2010/11, the MoJ's budget had been cut by around 40 per cent in real terms². Even with small upward revisions since, by 2019/20 the total MoJ budget was still around 25 per cent lower in real terms than a decade before.³

These significant cuts came despite increased pressure on the courts and a steady increase in the UK's population, not least in England and Wales. In July 2020, the Bar Council calculated that spending per person fell in real terms by 29 per cent between 2010 and 2019.⁴ It went on to suggest that restoring spending to 2010 levels per person, after adjusting for inflation, would require an extra £2.48bn on

¹ Statista, [Department expenditure limit \(DEL\) of the Ministry of Justice, 2004/5 to 2019/20](#), October 2019.

² Institute for Fiscal Studies (IFS), [Autumn 2017 Budget: options for easing the squeeze](#), November 2017.

³ Sturge G., Robins, J., Zayed, Y., Bellis, A., [The spending of the Ministry of Justice](#), House of Commons Library, 1 October 2019, p.2.

⁴ The Bar Council, [Small change for justice: funding for justice in England and Wales \(2010 – 2019\)](#), July 2020, p.4.

the justice system as well as an extra £2.33bn for the police, which, it noted, equates to an extra 22 pence per person, per day.⁵ Such a restoration to 2010 spending, in real terms, would therefore be a sensible starting point.

It is acknowledged that current demands on HM Treasury, and therefore on the taxpayer, are considerable. Schemes such as the furlough programme, the COVID-19 vaccine roll-out, as well as the ongoing, record levels of spending on the National Health Service overall, mean that particular attention must be paid to direct spending to where it will have the greatest impact. Inevitably there will be many and varied demands for more public funding, with different departments and agencies claiming unique circumstances. However, requesting a return to historic levels of spending on the MoJ is by no means special pleading. Rather, it is an essential recalibration that will ensure the justice system, which is essential and integral to the functioning of civil society and to widespread confidence in our institutions, can operate properly.

The impact of COVID-19 on civil justice has been immense. Despite civil claims numbers falling over the period, and in some categories – for instance, claims resulting from road traffic collisions – falling precipitously, court delays have increased just as dramatically. HM Courts and Tribunals Service (HMCTS) recently released its quarterly civil justice statistics covering the period from April to June 2021. They showed County Court claims down by 15 per cent compared to the equivalent period in 2019, with personal injury claims down 23 per cent.⁶ While this may be in part the welcome result of lower accident numbers and other factors, they have not resulted in less time being taken for claims to go to trial.

Instead, the average time taken for a small claim - which, despite its name, may be of great consequence to an individual claimant – to go to trial is now 49.2 weeks.⁷ This is 12.6 weeks longer than in 2019 and 7.5 weeks longer than in 2020. Meanwhile the wait for multi/fast-track claims to go to trial is now 71.1 weeks, an increase of 12 weeks on 2019 and 9.7 weeks than for the same quarter in 2020.⁸

In addition, by February 2021 the number of outstanding cases in the Employment Tribunal had increased by 45 per cent compared to pre-COVID levels, with the average waiting time for a hearing increasing from 34 weeks in December 2019 to 49 weeks in December 2020.⁹ For those who believe they have been unfairly treated or dismissed by their employer, and who may be facing considerable disruption to many aspects of their lives as a result, this is egregious.

As William Gladstone, himself Chancellor of the Exchequer on four occasions (as well as Prime Minister four times), said, “Justice delayed is justice denied.” Although this comment now suffers from over-use, it is inherently correct. For those seeking justice, the current, lengthy delays are painful and this situation should not be accepted by any of their fellow citizens.

The ongoing, £1.2bn HMCTS reform programme guidance states that the changes currently being implemented will mean “We can recover from the impacts of the pandemic, ensure our future resilience and provide a platform for future developments to meet the demands of an everchanging society.”¹⁰ Although some of the reforms were long overdue and relate more to updating tired physical infrastructure rather than to improving consumer outcomes, the process of courts modernisation is

⁵ *Ibid*, p.4.

⁶ Ministry of Justice, [Civil justice statistics quarterly: April to June 2021](#), 2 September 2021.

⁷ *Ibid*.

⁸ *Ibid*.

⁹ HM Courts & Tribunals Service, [HMCTS management information](#), 9 September 2021.

¹⁰ HM Courts & Tribunals Service, [The HMCTS reform programme](#), 14 May 2021.

welcome and is already having an impact, with 426,000 people having used HMCTS online services by May 2021,¹¹ including some 190,000 making an online civil money claim.¹² Plans for improving the digital services for probate were also released in September 2021, albeit with acknowledgment that there have been delays.

It is also noted that some additional funding has been made available to support HMCTS in its COVID-19 pandemic recovery. However, it is clear that more may be needed if the backlogs are not to increase, faith in the justice system be eroded and thousands of people potentially never achieving justice.

More money is not the only route to improve this situation. It is welcome that the MoJ is currently undertaking a Call for Evidence on Dispute Resolution in England and Wales.¹³ All forms of dispute resolution – including mediation and various types of online and alternative dispute resolution (ADR) – need to be explored, encouraged and, where necessary, given full support by the government, the judiciary and the wider justice and insurance sectors. As the Master of the Rolls, Sir Geoffrey Vos, said on taking office, “In my new role as Head of Civil Justice, I intend to make sure that the provision of ADR is at the heart of all parts of the civil justice firmament.”¹⁴ He also noted that “An understanding of the wide range of available ADR methods is critical to early resolution and effective resolution.”¹⁵

ADR has the potential to reduce dramatically the current pressure on the courts, not least for lower-value cases. It is regrettable that the government chose to remove ADR from its plans for the ‘Official Injury Claim’ (OIC) portal which launched on 31 May 2021 to assist those making a claim for minor soft-tissue injury after a road traffic collision. This would have presented an excellent opportunity to demonstrate that there are and should be different ways of doing things, not least in areas with relatively high claims volumes. New technologies and platforms can deliver effective resolution quickly while providing savings for defendant insurers and their customers and ensuring claimants receive proper representation and do not therefore face under-compensation, unnecessary delay or added distress and inconvenience.

Assurances have been received from MoJ officials that ADR could yet be introduced into the OIC. It is essential it is if there is not to be a disparity in arms between claimants and defendants under the new small-claims regime, as well as further burden on the courts. ACSO has brokered pilots between a number of the UK’s largest insurers as well as law firms and ADR providers to work together on fast-track personal injury claims. The pilot schemes have already resulted in hundreds of claims being resolved, often in just a few days, with claimants receiving the same damages but much sooner, insurers benefiting from reduced operational costs – savings from which may be passed onto consumers - and fewer claims entering the courts system when they might otherwise have done, which in some instances could be on up to four separate occasions. Further data from these schemes will be provided to the MoJ’s Call for Evidence, where they will demonstrate the impact that more pragmatic and technology-enabled approaches can have.

Meanwhile NHS Resolution has accelerated its use of mediation in clinical negligence cases, with a 110 per cent increase from 2017/18 to 2018/19 alone.¹⁶ However, this only relates to 397 from the around 12,000 clinical negligence cases made each year, despite the fact that 74 per cent of mediated cases

¹¹ *Ibid.*

¹² <https://www.gov.uk/guidance/hmcts-services-online-civil-money-claims>

¹³ Ministry of Justice (MoJ), *Dispute resolution in England and Wales: call for evidence*, 3 August 2021.

¹⁴ Sir Geoffrey Vos, *The relationship between formal and informal justice*, Hull University, 26 March 2021, p.2.

¹⁵ *Ibid.*, p.6.

¹⁶ NHS Resolution (NHSR), *Mediation in healthcare claims – an evaluation*, 12 February 2020, p.7.

were settled on the mediation day or within 28 days of it.¹⁷ More should be done to improve uptake and understanding of mediation and others forms of ADR in this area, as elsewhere.

Indeed, there is no area of civil law where new approaches should not be considered, with better information made available to consumers about the options open to them, what the process will involve and the likely outcomes. This is a role for all parties to assume, but there is a particular duty on the government to promote dispute resolution in all its forms, given the enormous challenges faced by the courts and, more importantly, their users.

ACSO's representation to SR21 therefore focusses on two requests. First, that HM Treasury accept that current levels of spending on justice remain too low in real terms for the MoJ to operate effectively. Second, that the resources both human and financial necessary to accelerate reform programmes, encourage new ways to resolve disputes and ease the immense and increasing backlogs in the courts system are allocated where they are both required and desirable.

We would be delighted to provide further commentary, data and proposals to ensure that ACSO and its increasing membership are helping to ensure that there is a properly functioning, competitive and sustainable civil justice system for all consumers. Given that our submission relates solely to the work of the Ministry of Justice, I have copied in the Lord Chancellor and Secretary of State for Justice.

With thanks and all good wishes.

Yours sincerely,

Matthew Maxwell Scott

Executive Director

The Association of Consumer Support Organisations (ACSO)

Email: matthew.maxwellscott@acso.org.uk, Tel: +44 7834 288862

cc The Rt Hon Dominic Raab, MP
Lord Chancellor and Secretary of State for Justice

¹⁷ *Ibid*, p.7.