

Motor Accident Solicitors Society (MASS): Written evidence submitted to the House of Commons' Justice Select Committee on 'Court Capacity Inquiry'

1. The Motor Accident Solicitors Society (MASS) is the primary organisation representing road traffic accident solicitors acting for the victims of motor accidents. We represent 100 solicitor firm Members throughout the UK, representing approximately 2,000 claims handlers, who handle an estimated 400,000 PI motor accident claims annually on behalf of the victims of those accidents.
2. For over 25 years, MASS has worked with the Government and other stakeholders on the regulatory issues impacting accident victims, regularly engaging with Ministers and officials at the Ministry of Justice. We helped establish both the Portal and MedCo and a MASS representative sits on the board of both the Claims Portal Board and MedCo Board. We successfully negotiated with the ABI to set up the AskCUE PI enquiry service to combat fraud. We regularly engage with parliamentarians and have provided oral evidence to Select Committees on a number of occasions.
3. With most courts closed during the coronavirus lockdown, civil claims are being pushed back even further in the backlog of cases. This is having a major detrimental impact upon thousands of civil litigants. It is estimated that the backlog in magistrates' courts is now around 500,000 with around 40,000 cases waiting for the Crown Court. This has undoubtedly been exacerbated by the closure of nearly 300 courts between 2010 and 2019 during the period of Government austerity. In April 2020 the Institute of Government estimated that an additional £220 million funding would be necessary over two years to clear the backlog of court cases. This has probably doubled in cost by now.
4. The victims of motor accidents have been badly impacted by the coronavirus pandemic. Although the number of car journeys during the national lockdown fell dramatically, accidents still occurred, particularly amongst pedestrians and cyclists, with an increased incidence of speeding and dangerous driving.
5. Motor accident victims have faced more limited police resources, traumatic conditions in hospitals for relatives and severe restrictions on bereaved families. Accident victims have been discharged as quickly as possible to free-up hospital capacity for dealing with Covid-19 victims, often with little or no support, increased waiting times for further surgery and access to only limited rehabilitation.
6. With implementation of the Government's delayed whiplash reforms due in April 2021 and the introduction of a new online Portal dedicated to encouraging more self-litigants, we are extremely concerned that self-litigants with disputed claims will be forced to wait for extended periods of time to get the justice that they deserve unless urgent action is taken to reduce the significant current backlog.
7. Although the Government has introduced several measures – including social distancing measures in existing courts, 10 new temporary Nightingale courts and remote hearings – we feel that these will be insufficient to cope with the backlog of cases. Significant investment will be required if our civil justice system is not to deteriorate further. The new Nightingale courts have taken up to two months to become operational rather than the two weeks experienced by the Nightingale hospitals with increased urgency and investment. With not all Nightingale courts yet operational, those that are are not operating at full capacity. Empty but unsold court buildings in England and Wales should be rapidly refurbished and brought back into operation to help deal with the backlog. In order to ensure that justice is preserved, a further, dramatically increased, wave of new Nightingale courts must be announced shortly along with a suitable policy for recruitment of staff with the necessary skills and experience.

8. One of the key measures announced by the Government to mitigate the impacts of Covid-19 has been an increased use of remote hearings, medical assessments/examinations and rehabilitation. Whilst we fully recognise the necessity of an increased focus on online medical assessments, hearings and rehabilitation during the Covid-19 pandemic and national lockdown, we have significant concerns about how this is adopted for the future.
9. We would not wish, for instance, the conducting of digital medical examinations to become a permanent feature of the claims process until considerable evidence based research has been obtained. Whilst remote examinations may be beneficial for some individuals and types of injury, that is not necessarily the case for all. Similarly, remote rehabilitation may also be less suitable for many accident victims and we also anticipate possible disputes over the fees that will be paid by insurers.
10. Whilst these have benefits in terms of time and travel savings, we also believe that there are various practical issues around remote assessments and hearings, such as difficulties ensuring that all parties having access to the right documents and sufficient access to digital communications for all. We believe that whilst remote hearings may work well when both sides are professionally represented, self-representing litigants may be at a distinct disadvantage. With difficulties in assessing, we also have concerns that online/digital assessments and hearings may not meet the same standards of justice when conducted physically.
11. Whilst professional representatives may have found the time and costs savings positive, it must be remembered that the Governments' policy is to move towards self-litigation, specifically in several civil law areas, including motor accident claims and family law matters. The use of digital communication and remote hearings will not suit all sections of society. Significant areas of the country have insufficient broadband capacity to rely upon when giving evidence via video platforms and this is unlikely to improve until at least 2025. Whilst there are clearly a number of positive aspects of remote claims handling and court hearings, the experience throughout Covid has shown that considerable thought and research is required before it should be regarded as the working norm.
12. If a digital transformation across the court estate is to be considered then we urge that sufficient time and resources are provided to thoroughly research the impact that such a move will have. Priority must be to ensure that the accident victim is not only provided with full access to justice but is not disadvantaged in anyway, regardless of where they live, their financial circumstances or physical or mental capacity in which to cope with digitalisation.
13. For professional representatives, there also must be consultation with stakeholders to ensure that a full, fair and equal process is obtained. The current temporary remote process during the pandemic has naturally highlighted a number of areas that have caused difficulties, inequalities and discrepancies. For example, it would be helpful to have a consistent platform to use and for courts to operate in the same way. Differing platforms or rules between court centres become hard to follow and are more likely to lead to errors especially in case or bundle preparation. Different and quite convoluted orders have been experienced and there appears some uncertainty on what to do, compounded by the fact that communicating with the court is now slower due to the backlog of cases.
14. There are many other factors that need to be considered in order to ensure that any remote process is cost effective and fair. For example, the cost of telecommunication fees should be considered and appropriate rule amendments or guidance made for recovery of such fees as a disbursement. Whilst this example may be regarded as a small fee, in volume this could become a significant.
15. Rehabilitation is another area for accident victims that has been adversely impacted by the pandemic. With hospital appointments largely cancelled, the rehabilitation that has happened has been conducted remotely via telephone or video calls. Due to their condition, many injured victims have been entirely unable to access the necessary rehabilitation they so desperately need.

16. In conclusion, MASS believes that before any consideration is given to encompassing remote case handling and court hearings in its entirety, we urgently call upon the Government to ensure that the Ministry of Justice/HM Courts and Tribunals Service has sufficient resources and political commitment to urgently clear the backlog of court cases. Once this has been achieved, then evidence based research should be undertaken with all stakeholders involved in civil litigation before full digitalisation of the justice process is considered.

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