How has the pandemic changed the way people access justice?

Digitalisation and reform in the areas of housing and SEND

March 2023

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Executive summary

We explored the impact that the pandemic has had on the delivery of, and access to, justice in the areas of housing and special educational needs and disabilities (SEND) in England. We chose to focus on these distinct areas of law as - before the pandemic - the Administrative Justice Council (AJC) had facilitated a familiarisation workshop between Ombuds and Tribunal judges. The aim of the workshop was to develop their relationships and to identify overlaps in administrative justice responsibility to assist help-seekers find the best pathway for their grievance in a complex system. The Housing Ombudsman and the Property Chamber were interested to work together; and in SEND, the Local Government and Social Care Ombudsman (LGSCO), the Parliamentary and Health Service Ombudsman (PHSO), and the SEND Tribunal expressed an interest to start conversations about raising awareness and supporting users navigate the respective pathways to redress.

Our project had three connected aims: (1) to better understand the effect of rapid digitalization on advice system, redress systems and users; (2) to identify the effects on access for marginalised groups; (3) to explore how trust can be built and sustained in a justice system affected by the pandemic.

Two areas of law: *Housing problems* can be varied and complex. The scope of our project includes only the housing issues that the Housing Ombudsman and the Property Chamber deal with. They can relate to residential property, land registration, and agricultural and drainage matters. For *SEND* major reforms announced in 2014, under the Children's and Families Act 2014, have had little impact on a failing system. Appeals/complaints to the Tribunal and Ombudsman on SEND decisions have increased year on year, with a high success rate in both. The issues surrounding the provision of SEND have been compounded by a complicated redress system leaving parents and carers unclear of where to go to resolve their dispute with the local authority. The SEND system is under renewed scrutiny due to the recent SEND and alternative provisions Green Paper, in March 2023 the SEND and AP Improvement Plan was published.

Digitalisation during the pandemic: The pandemic emphasised the importance of online engagement and remote hearings. The courts and tribunals reform programme was already underway by the start of 2020 and the digitalisation agenda was fast-tracked by the pandemic. Some jurisdictions were able to adapt more quickly than others to online delivery and some groups of users coped better with the move to remote interaction and remote hearings. Existing digital tools and an appetite for development of an online system helped the tribunals realise which parts need improvement.

Experience of remote services during the pandemic was not positive for those trying to access local authority services with either SEND or housing problems. In some cases, remote working was not properly implemented with phones not effectively redirected to those working at home. Backlogs

in complaints exacerbated delays in handling both housing and SEND issues at local authority, Tribunal and Ombuds stages.

While judges' experience of remote hearings was extremely positive in the main and some users, especially SEND users, found that remote hearings made it easier to attend a hearing, there were significant issues of inequality of digital arms and online/remote appearance. Many SEND appellants were accessing the hearing via smart phones and found it difficult to identify other parties. Local authority representatives often joined by phone rather than video, making it difficult to understand their input. Dual screens and reliable broadband are crucial to effective engagement and not many litigants in person have these. Large digital bundles (all the paperwork combined in one electronic file) pose a significant problem for those without access to dual screens and reliable broadband and make effective engagement difficult and stressful.

Pathways to justice: In our first report, we mapped help-seekers' journeys in the areas of housing and SEND. We presented the 'ideal case' of pathways for people seeking help, broken down into distinct steps. In reality, as our empirical data shows, the process of help-seeking is not straightforward: steps do not always happen in a clear sequence as we portrayed them in our map; some people do not pursue a problem; others give up, some jump steps, etc. More work is needed to understand the pathways to justice, particularly once people start an online process.

Our data exposed that the pathways to Tribunals and Ombuds are not easy to find even in normal times. The pandemic exacerbated this with the introduction of remote working which was not always efficiently operated. Not everybody is able to cope with online access and the pandemic made it difficult to access help and face-to-face support from trusted intermediaries in the community, particularly affecting the most vulnerable, especially the homeless. On the other hand, our data showed that access was improved for some people who have travel or mobility problems.

For those help-seekers who do manage to identify a pathway to bring their complaint, the process is not straightforward or user-friendly. Many people struggle to understand what will happen and what is expected of them or their representatives. While GOV.UK pages are a useful starting point they do not provide all the support that people need to progress complex, time consuming, and stressful applications. Signposting to expert and specialist websites can be very helpful in providing people with the knowledge, skills, and confidence to navigate these processes. There are several specialist websites that can provide support, for instance IPSEA and SENDIASS for SEND; Shelter and Crisis for Housing, and Advicenow for courts and tribunals that provide resources which support people every step of the way and increase their knowledge, skills, and confidence. Crucially, these websites are constantly updated. For example, Advicenow updated information on access to courts and tribunals throughout the pandemic and provides helpful advice on going to a court or tribunal or attending online hearings. Earlier signposting to them from GOV.UK would be helpful for users –

and crucially for those supporting users with low digital capability- and for councils, Ombuds and Tribunals.

For some issues, the person with the problem has several choices about where to go and it is often very difficult for them to assess the best route. Rapid access to specialist websites or local advice can be very helpful. Clear advice on Ombuds and Tribunal websites is also helpful. The recent evaluation of Housing Right courses (funded by the Ministry of Justice) to raise awareness of rights among trusted intermediaries supporting people in the community, including the new networks of NHS Social prescribing Link Workers are a great resource. This has demonstrated the effectiveness of awareness raising among crucial intermediaries as a way of reaching the most vulnerable and hardest to reach.

Vulnerability: The term 'vulnerability' is often used to understand the complex nature of different situations people find themselves in. But defining vulnerability is difficult, not least because vulnerability can stem from external influences, and depends on historical, cultural, social, environmental, political, and economic conditions of a given setting. Already marginalised communities were likely to be affected the most by the pandemic. We know from historic research pioneered by Dame Professor Hazel Genn and since updated in successive legal needs surveys that the poorest in society have the greatest incidence of problems with potential legal solutions. We know that they often experience them in clusters and that they are the least able to recognise or frame their problem or to take effective action. We know that a high proportion of people in any event do nothing in the face of a justiciable issue. Recent research (Mulqueen *et al* 2022) is exploring the importance of trusted intermediaries in reaching the most vulnerable and hardest to reach. We know relatively little about how members of these groups are accessing the justice system, and what can be done to improve their capacity to obtain advice, support, and redress. Our data has shown that detecting vulnerabilities early on is important as these will impact on how a person navigates through the system and how they will experience it. The very process of pursuing rights through unfamiliar and complex procedures is stressful as many of the interview testify and even those who are normally digitally capable will feel situationally vulnerable, struggling to understand and comply with a complex and often opaque process.

Trust in justice: Our research suggests that in the current context, as in many other justice-related arenas, procedural justice is important to people's perceptions of the fairness not only of the process, but also of the outcome. And, as always it needs to be seen and experienced, and not just done. It is critical that authority figures in these contexts - judges, caseworkers and so on – are given the tools to behave explicitly in procedurally fair ways (that is, there may be a need for both generating awareness and delivering appropriate training). There is a striking difference between the experience of users who experienced clear explanations of what was going to happen in the process, especially in a remote hearing, and those who were just plunged into it.

Recommendations

To preface our recommendations, it is important to acknowledge that resources of institutions are limited, and individuals are doing their best with the resources available. While it is true that some organisations are already implementing best practices, it is important to note that not all organisations are following suit. With that said, we would like to make the following recommendations:

1. Continuing monitoring and evaluation of online courts and tribunals systems to identify pain points and to identify improvement measures is important; sharing of data in the wider justice sphere and collaboration with other organizations will help to develop better strategies.
2. The central resource of GOV.UK with additional signposting to specialist websites and general websites should assist better signposting by local authorities, schools, and housing associations on where a help-seeker can get help for their problem, setting out the process of how and where to appeal and where to get assistance.
3. In addition to better signposting on GOV.UK local authorities should be encouraged to provide signposting to specialist and general websites that offer comprehensive, regularly updated help on where to get legal advice to help resolve the help-seeker's problem.
4. Ministry of Justice (MOJ) and HM Courts and Tribunal Service (HMCTS) should ensure that GOV.UK pages on access to justice topics include signposts to online organisations (such as IPSEA for SEND, Shelter for housing and *Advicenow* for courts and tribunals generally) that can help those who are digitally capable and those supporting users who are not digitally capable. Signposting to these websites would help to manage expectations of users: explaining stages of the process, timelines, and tasks needed throughout the process.
5. Digital Assistance contracts, such as *We Are Digital*, should be linked to more advice sector organisations, who help provide digital and legal support for those who need it. We welcome the partnerships that are already in place, but a wider reach is needed.
6. HMCTS to evaluate the help-seekers' journey through the appeal process and identify where help-seekers drop-off the system.
7. As HMCTS have opted for a multi-channel approach to online reform, there should be assessment of the feasibility of people's ability to use digital bundles and provision of paper bundles in appropriate cases.

8. Ombudsman schemes and Tribunals should continue collaboration on better understanding their remits and overlaps and communicating this simply and clearly on their websites and on other relevant public resources. Further, to share best practice with other jurisdictions to create a better joined-up administrative justice system and a stream-lined journey for help-seekers.
9. MOJ/HMCTS to identify trusted intermediaries such as those in the NHS (social prescribing linkworkers) and local authorities and develop work to increase their awareness of vulnerability and how it can connect to HMCTS support.
10. The concept of procedural justice needs to be made real in the everyday world of users by showing respect, clear explanations of what is going to happen and what has happened in their process. Especially, in remote hearings an expressed recognition of the difficulties help-seekers are encountering needs to be acknowledged.
11. Awareness raising of the importance of user-perceptions of the interpersonal process and to ensure basic criteria are met (being heard, being treated respectfully, having a voice, expressing genuine intentions, and demonstrating reliable behaviour) throughout their engagement with the justice system.

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Structure of the report

This report is made up of eight parts. Part 1 provides an overview of the research project and its context, part 2 outlines the methodology. Part 3 presents the legal context and the pathways to justice for housing and SEND, including the policy developments, the digitalisation agenda (in Appendix 1), and the roles that Ombuds and Tribunals play in the respective pathways. Part 4 discusses the digitalisation agenda in housing and SEND. Part 5 revisits the pathways to justice through the help-seeker journey (Appendix 2), building on our first project report[1] and our empirical data. Part 6 covers vulnerability, and part 7 considers how trust in justice has been affected by the pandemic. Part 8 concludes the report with recommendations for policy and practice

[1] Nuffield project website link to report 1 (September, 2022): https://www.ucl.ac.uk/jill-dando-institute/sites/jill_dando_institute/files/final_report_1.pdf

1. The research project and its context

This report is based on the research project **'Delivering Administrative Justice after the pandemic'** conducted between September 2021 and February 2023. The pandemic has dramatically influenced how people interact with the administrative justice system (AJS). By exploring how a siloed landscape of Tribunals, Ombuds, and advice providers were able to provide access to justice, we sought to draw lessons from the rapid digitalisation of the justice system and its effects on trust in justice. Our focus was on pathways to justice in the AJS in two distinct areas: ***housing*** & ***special educational needs and disability (SEND)***. The Housing Ombudsman[2] and the Property Chamber[3] provide redress for housing grievances, and the Local Government and Social Care Ombudsman (LGSCO)[4], the Parliamentary and Health Service Ombudsman[5] and the First-tier Tribunal SEND[6] provide redress for special educational needs and disability discrimination in schools grievances.

For users of both sets of institutions (Tribunals and Ombuds), it is not entirely obvious who to turn to for which part of their problem. Therefore, the pairs have forged an informal agreement of collaboration. Just before the pandemic, in 2019, the Administrative Justice Council (AJC) invited Ombuds and Tribunal judges to join a familiarisation working group[7] to discuss potential collaborations, signposting and sharing best practices. The hoped outcome was to set up memorandum of understanding between the two bodies. The workshop was attended with enthusiasm and some of these initial contacts were carried on during the pandemic and have now developed into more permanent arrangements (e.g. Property Chamber and Housing Ombudsman). An Ombudsman and Tribunals familiarisation working group was set up to build on existing discussions between the Housing Ombudsman and Property Chamber and Local Government and Social Care Ombudsman and First-tier SEND Tribunal. A memorandum of understanding was drafted between the latter and an agreement was put in place between the Housing Ombudsman and Property Chamber on how they could work together on the signposting and referral of cases. Due to the pandemic this process has been paused and will be taken up again soon. Interest was subsequently expressed by the

[2] Housing Ombudsman website (2022). https://www.housing-ombudsman.org.uk/. Last accessed December 2022.
[3] Property Chamber website (2022). https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber. Last accessed December 2022.
[4] LGSCO website (2022).https://www.lgo.org.uk/. Last accessed December 2022.
[5] PHSO website (2022). https://www.ombudsman.org.uk/. Last accessed December 2022.
[6] Property Chamber website (2022). https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability. Last accessed December 2022.
[7] AJC (2022) Ombudsman and Tribunal Working Group. Available at: https://ajc-justice.co.uk/ombudsman-and-tribunals-working-group/. Last accessed December 2022.

Parliamentary and Health Services Ombudsman who was part of the working group. Our study sought to better understand these pathways and how they can work together to enhance access to justice for users.

Our project has three connected aims: (1) to better understand the effect of rapid digitalization on advice system, redress systems and users; (2) to identify the effects on access for marginalised groups; (3) to explore how trust can be built and sustained in a justice system affected by the pandemic.

Building on existing research, we examined the effect of rapid digitalization on the delivery of justice. Lessons learned from delivering remote justice during the pandemic need to be evaluated and translated into practice, and this means documenting what works well and what can be changed, if we are to improve access for those further side-lined because of the pandemic. There has been some excellent work on the impact of the pandemic on individual justice settings, including family court (Nuffield family justice observatory), judicial review[8], video-hearings[9], digital exclusion[10], the advice sector[11], and the civil justice system.[12] With a focus on the *help-seeker journey*, we extend our understanding on effects of the pandemic and the rapid digitalisation of justice systems. We compare the pathways the system offers people to take with what happens in practice, and we explore some of the access gaps in the system that contribute to people not reaching it at all. Reports on access to justice during the pandemic have shown that people who are already marginalised have disappeared from the justice and advice landscape.[13] We urgently need to find a way to engage them. To achieve these aims we bring together a mixed-methods approach to empirically understand access to justice during and after the pandemic.

[8] Tomlinson, J., Sheridan, K., and Harkens, A. (2020) Judicial Review Evidence in the Era of the Digital State (May 31, 2020). Available at SSRN: https://ssrn.com/abstract=3615312.
[9] JUSTICE (2020) JUSTICE Response to HMCTS Survey on Conducting Video Hearings. Available at: https://files.justice.org.uk/wp-content/uploads/2020/04/06165958/JUSTICE-Response-to-HMCTS-Survey-updated-images.pdf. Accessed December 2022.
[10] Good Things Foundation (2020). The digital divide. Available at Good Things Foundation: https://www.goodthingsfoundation.org/the-digital-divide/
[11] Sechi, D., 2020. *Digitisation and accessing justice in the community*. London: Administrative and Justice Council. Accessed December 2022. Available from https://ajc-justice.co.uk/wp-content/uploads/2020/04/Digitisation.pdf; Creutzfeldt, N., and Sechi, D. (2021). Social welfare [law] advice provision during the pandemic in England and Wales: a conceptual framework. Journal of Social Welfare and Family Law. 43, 2: 153-174.
[12] LEF (2019) Developing the Digital- evaluating of Court Reform in England and Wales on Access to Justice, Available: https://research.thelegaleducationfoundation.org/wp-content/uploads/2019/02/Developing-the-Detail-Evaluating-the-Impact-of-Court-Reform-in-England-and-Wales-on-Access-to-Justice-FINAL.pdf. Accessed in December 2022.
[13] Creutzfeldt, N., and Sechi, D. (2021). Social welfare [law] advice provision during the pandemic in England and Wales: a conceptual framework. Journal of Social Welfare and Family Law. 43, 2: 153-174.

Before turning to the pathways to justice for housing and SEND, we first set the scene, providing background and context to the reform agenda.

Court reform and modernisation & vulnerability and exclusion

Since 2016, HM Courts & Tribunal Services (HMCTS) have rolled out an ambitious reform agenda. The aim of the reform is to modernise the courts and tribunals to make them more accessible, efficient, and straightforward to use. To overcome backlogs and long waiting times, large paper bundles are turned into digital bundles and online hearings are implemented bit by bit. In 2018 the Public Law Project published a report on the digitalisation of administrative Tribunals.[14] The report outlined the importance of research on online Tribunals as well as carefully implementing the digital transition. Much of the modernisation agenda is focused on improving access to justice. The challenge is, as we will discuss later in this report, that not all people are able to access an online justice system, for example, those who are digitally excluded or less able to navigate the online space.

When designing online processes for modernisation, *assisted digital*[15] was developed to help those people who are less able to navigate the online system. However, when the pandemic forced the justice system to go online (prematurely), we saw the reality of who can access and who cannot access the system. Digital exclusion and digital poverty are complex; people's needs must be better accounted for and integrated into the (online) justice system. The digitalisation agenda may work well for some people in some areas and be more challenging in others (see section 6). We discuss below that providing a justice system that people can access is essential and might mean a combination of online and face-to-face. There are many challenges to access *digital by design* that the pandemic uncovered. In a recent paper Mulcahy and Tsalapatanis[16] argue that the dynamics of digital disadvantage are frequently misunderstood and underestimated by judges. They conclude that there is a 'need for a more in-depth consideration of the multiple ways in which digital disadvantage manifests itself beyond a lack of equipment or skills. In doing so [digital disadvantage] raises critical questions about what we mean by *user perspectives* and how the *voices of users* are being heard.'

[14] Public Law Project (2018). The Digitalisation of Tribunals: What we know and what we need to know. Accessed December 2022. Available at: https://publiclawproject.org.uk/content/uploads/2018/04/The-Digitalisation-of-Tribunals-for-website.pdf

[15] Public Law Project (2021) Digital Support for HMCTS Reformed Services: What we know and what we need to know. Available at: https://publiclawproject.org.uk/content/uploads/2021/05/210513_Digital-Support-Research-Briefing_v6_Final-draft-for-publicationpdf.pdf

[16] Mulcahy, L. and Tsalapatanis, A. (2022). Exclusion in the interests of inclusion: who should stay offline in the emerging world of online justice? Journal of Social Welfare and Family Law, DOI: 10.1080/09649069.2022.2136713

We begin to address these questions in the following with a focus on housing and SEND. The next part presents the methods we used to collect our data.

2. Research Methods

The project provides novel and urgent empirical understandings of the way in which people are accessing the system (and where they are not). We applied a mixed-methods approach to empirically understand access to, and trust in, administrative justice during the pandemic, to then draw lessons for a more efficient and fair justice system moving out of the pandemic. Our research methods were qualitative and quantitative, to best explore the population we are looking at. We accomplished this through surveys and interviews with those who administer the process (i.e. 'professionals'; advice sector, ombuds, tribunal judges and case workers), those who use Ombuds and Tribunals, and interviewed marginalised groups who do not use the system (i.e. 'users and non-users').[17]

3.1. Surveys

We designed and distributed 11 surveys. They all followed a similar structure and asked about people's trajectories and procedural justice perceptions. These were 4 user surveys (Housing Ombudsman, LGSCO, Property Chamber and SEND Tribunal); 4 case -handler surveys (Housing Ombudsman, PHSO, property chamber, and SEND tribunal); 2 judicial and non-judicial panel members surveys (judges SEND tribunal and judicial and non-judicial members of the Property Chamber); and 1 for the advice sector.

All surveys were hosted on Qualtrics. Individual links were shared with existing networks and distributed in their newsletters. The survey was sent out over 6 months [June 2022 – November 2022] and the response rate was low. We attributed this mainly to survey fatigue and to a general sense of being overwhelmed with workloads. This was a challenge for the project, we did not want to overstretch people and their time but also needed to find a solution to get more responses. We did this through two steps. First, we incentivized the user survey and method to issue vouchers to people who had completed the survey. Second, we expanded the number of interviews we had planned to hold, to be able to fill some of the gaps the low survey response was creating (see 3.2.).

[17] Ethics clearance for our research from the University of Westminster's ethics panel (ETH2223-0051).

However, despite our efforts, the final quantitative dataset had significant levels of missing data rendering it unsuitable for our planned quantitative analyses. However, we draw upon some of the qualitative survey data in this report. To compensate, we conducted an online experimental study using a general population sample (see 3.3.).

3.2. Interviews

Overall, we conducted 52 in-depth semi-structured interviews (total of professional and user interviews). We conducted 34 in-depth interviews with professionals: 9 judges; 5 Ombuds; 7 advice providers; 7 staff members at the institutions and 6 other stakeholders. Interview questions began by asking participants about their role and what their work entails. Participants were then asked about the most common issues they deal with in relation to housing/ special educational needs and disability. Next, questions revolved around the pandemic, getting participants to reflect on their experience with people accessing their service during the pandemic, and on any changes, there have been to services as a result of Covid19. Questions focused on methods of communication, benefits/ downsides of remote hearings, changes in user demographics, and reflections on what worked well/ not so well in delivering remote justice during the pandemic and what can be changed to improve access for those further side-lined. Finally, participants were asked whether institutions in the areas of housing and SEND have collaborated in any way to increase/ improve access to justice for its users, and to reflect on whether a Tribunals / Ombuds partnership would be feasible.

We conducted 18 in-depth user interviews, they were recruited through the research teams professional networks: 6 SEND tribunal users; and 12 housing users, including 7 homeless people through The Connect. Interview questions revolved around the 8 steps we identified users go through when seeking help (see Section 5). Interviewees were asked to share their stories, including questions around whether they had experienced any housing/ SEND issues during the pandemic, at what point they became aware that there was a problem, and how they went about addressing that problem. Next interviewees were asked a series of questions on taking action, including whether they had tried to get support for their issues, how they looked for services, and whether they experienced any difficulties knowing how and where to look for help. Participants were also asked about the advice sector and any support or guidance they had received before being asked to reflect on their experience of any intermediate processes involving their landlord/ housing association in the case of housing or any organisation involved (e.g. local authority, school or governing body) in the case of SEND. Those participants that had contacted a tribunal or ombuds (housing n=4; SEND

n=3) were asked an additional set of questions revolving around how they went about accessing the justice system, which institution they approached, and how much time they spent trying to sort out their problem before approaching the institution, as well as any expectations they had. Next, they were asked to reflect on their experience of engaging with the institution, including what worked well, what barriers they faced, and the extent to which they trusted the process. Finally, participants were asked what they think could be done during and after the pandemic to improve users' capacity to obtain advice, support, and redress.

Interviews were recorded and transcribed (with participants' permission) and were supplemented where relevant and practicable by the survey data. We listened to the audio recordings and reflected on the survey responses as a team. We then iteratively winnowed the data and descriptions to focus on the most meaningful, relevant, and revealing instances, stories and reports. The data that were judged to best represent the final set of themes were chosen collectively and are presented in the following analysis.

3.3 Public panel survey including vignettes to examine trust in justice

We conducted an online experimental study. The sample comprised 480 participants, who were roughly representative of the UK adult population. We used a text-based vignette describing a person going through a Tribunal/ Ombuds process. We manipulated: (1) the fairness of the process (fair/ unfair), (2) the location of the process (online/ offline), and (3) the authority figure (judge/ tribunal). We explored whether exposure to different tribunal/ ombuds processes was accompanied by a concomitant loss of trust and legitimacy in the administrative justice system. Although the vignettes present a hypothetical scenario, previous research has shown that varying behaviour through text-based vignettes can successfully shift participants' judgements of, for example, police legitimacy.[18]

Recruitment of Participants

The study was hosted on Qualtrics. Residents of England and Wales were recruited via the online crowdsourcing platform Prolific. In line with Prolific recruitment protocols, participants received compensation for their time. We followed Chandler and Paolacci's[19]

[18] Silver, J.R. (2020), "Moral motives, police legitimacy and acceptance of force", *Policing: An International Journal*, Vol. 43 No. 5, pp. 799-815. https://doi.org/10.1108/PIJPSM-04-2020-0056

[19] Chandler, J. and Paolacci, G. (2017). Lie for a Dime: When Most Prescreening Responses are honest but most study participants are impostors. *Social Psychological and Personality Science, 8*(5), 500–508.

advice on how to minimise participant fraud on Prolific: we set constraints so that participants could only take the survey once and included attention checks throughout the surveys. Participants were excluded if they got more than one attention check wrong.

Procedure and Materials

Participants were presented with a short vignette about a person going through a tribunal/ ombuds process. The study employed a 2 x 2 x 2 (fairness of process: fair/ unfair x location of process: online/ offline x authority figure: judge x ombudsman) between-subjects design.

Participants were randomly allocated to one of eight conditions. They were presented with a vignette that presents one of the following:

(1) a fair online Tribunal process
(2) an unfair online Tribunal process
(3) a fair offline Tribunal process
(4) an unfair offline Tribunal process
(5) a fair online Ombudsman process
(6) an unfair online Ombudsman process
(7) a fair offline Ombudsman process
(8) an unfair offline Ombudsman process

After reading the vignette, participants were asked a series of questions tapping into the quality of the process/ outcome, and the justice system more generally. Finally, they were provided with a full debrief.

In sum, part four outlined the research methods we used to collect our data. These include surveys, interviews, and an experimental vignette study. The range of methods allowed us to get a better understanding of the complex areas we are studying from different viewpoints. We were able to gain some insight from those who administer the systems we are studying, from those who are supporting people in their complaint-journey through housing or SEND pathways, and those who are not accessing the pathways.

3. Two areas of law: SEND and housing

The wider context and policy developments can be found in Appendix 1. Here we set out the pathways to resolve grievances through the Ombuds and Tribunals and consider the digitalisation agenda for both SEND and housing pathways. These pathways were chosen as they are part of the court digitalisation agenda (in different phases) and both provide fruitful case studies for exploring access to justice during and after the pandemic.

3.1. SEND

Pathways to resolve grievances: Ombuds and Tribunals

The Local Government and Social Care Ombudsman and First-Tier (Special Educational Needs and Disability) Tribunal provide redress for special educational needs problems. While they both provide redress for SEND issues, they deal with different aspects of a challenge. The LGSCO deals predominately with issues about the (in)actions of local authorities in delivering the EHCP process. This includes areas such:

- complaints about the delay in assessing a child;
- issuing the plan; and
- failure to carry out reviews.

If there is a route to appeal to the Tribunal, the Ombuds is not allowed to investigate these issues e.g. a decision not to assess a child; or on the content of the EHCP. They also do not have the powers to look at what happens inside an educational setting relating to special educational needs provision. Unlike the LGSCO, the SEND Tribunal deals only with *decisions* local authorities make about children and young people with SEND; and with schools that discriminate against a disabled young person, i.e., disability discrimination claims made against schools under the Equality Act 2010.

Common SEND appeals to the Tribunal include, but are not limited to:

- refusal by the LA to undertake an assessment;
- refusal by the LA to make special educational provision through an EHC plan;
- refusal to name a placement in a special school.

Mediation

Another redress mechanism for SEND is mediation.[20] Although this is an additional step in the journey when appealing to the tribunal, appeals can be resolved at this stage of the process. In the statutory framework of the Children and Families Act 2014, elements of mediation were made compulsory whereby parents and young people need to consider mediation before appealing to the tribunal and get a certificate to show that they had considered mediation. Unsurprisingly, because of the change to legislation, mediation increased exponentially from 75 cases in 2014 to 5,100 in 2021.[21]

However, Cullen at al (2017) found a 14 percentage point reduction in the likelihood of an appeal being registered after mediation, 22% of appeals that have been mediated proceed onto the tribunal; of those who did mediate, 36% went on to an appeal.[22] A parent/young person is likely to proceed to an appeal when there are multiple issues in dispute. For example, while issues around provision may be resolved, some issues such as the placement in a school might not be. Dissatisfaction has also been expressed by parents relating to the engagement from local authorities at mediation sessions.

In an interview with a SEND mediator, it became apparent that local authorities are so stretched that they come to a mediation less prepared. The local authority representative needs to have decision-making authority.

> "In mediation, we have to have a conversation with both parties before, help them work out what their position statement is, share that between the parties before the medication, so they're coming in advance knowing the issues to be discussed."

During the pandemic there has been a step-chance in mediation as the process went online.

> "We had lots of disputes with local authorities about whether they could use Zoom or not. Zoom is just a much better platform for mediation for lots of reasons, but even that just became a source of conflict."

[20] Doyle, M (2019) A place at the table, available at: https://aplaceatthetablesend.wordpress.com/final-report/

[21] https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans#dataBlock-bd6ff903-b581-4aeb-acf4-6184df022c59-tables; https://ukaji.org/2022/07/07/send-reforms-mandatory-mediation-in-administrative-justice/

MA Cullen et al, 'Review of Arrangements for Disagreement Resolution (SEND)', CEDAR/University of Warwick, 2017; see https://warwick.ac.uk/fac/soc/cedar/research/disagreementresolution

Interviewees recalled that the real challenge was to get the local authority representatives to communicate with the mediators before the mediation. In many cases they appeared in the online meeting without necessary preparation. However, most mediations are still online today with only a few face-to-face mediations. The local authorities have come to appreciate the ease and speed of conducting mediations online. Further, the online format allows the decision-makers in the SEND department, schools, and professionals (therapists, e.g.) to be present (which sometimes causes problems in an in-person session, due to busy schedules) and to take decisions. If the mediation is not successful, then the route to the Ombuds or Tribunal is still open.

LGSCO vs SEND Tribunal

SEND issues relating to failures to follow policies and procedures, flaws in decision making, poor administrative justice, and not considering an individual's specific circumstances might be dealt with by the LGSCO but as mentioned above, the LGSCO cannot consider matters where the parent or carer has a right of appeal to the SEND tribunal. Additionally, the LGSCO doesn't have the ability to investigate academies or school decisions or actions. The LGSCO and Tribunals deal with different parts of a SEND challenge. It is difficult for a user to understand which types of complaint/appeal are dealt with by which institution. In fact, a user may need to apply to both the LGSCO and the Tribunal to deal with different parts of a complaint/appeal making the process even more lengthy and difficult to navigate.[23] An example is in the publication of LGSCO's SEND investigations which set out the parts they are unable to deal with. In the investigation against Kent County Council (August 2022):

> Miss D exercised her right to appeal to the SEND Tribunal about the content and the educational setting listed in F's EHC plan. The courts have said where the period out of education coincides with an appeal about an EHC plan and there is a link between them, the period from the date on which the appeal right arises until the appeal is heard is outside the Ombudsman's jurisdiction. Therefore, the Council's actions regarding F's education and specialist provision from 4 June 2021 to 4 January 2022 are outside of the Ombudsman's jurisdiction.[24]

[23] Parents can only appeal when an appealable decision has been issued. LGSCO can look at cases where there is delay frustrating the appeal right. Part of their recommendations are likely to be to issue the appealable decision without further delay.

[24] LGSCO, 21_009_839 available at: https://www.lgo.org.uk/decisions/education/special-educational-needs/21-009-839#point1, accessed in December 2022.

This demonstrates the complexity of the SEND appeals system and a need for better interaction between the two institutions to ensure a more streamlined process for their users. The example given above shows how complex the distinction between LGSCO's and the Tribunals jurisdiction is. No matter how much LGSCO interact with the Tribunal, there will remain significant gaps in redress due to the way their respective jurisdictions work and the law that applies to both bodies.

In sum, the LGSCO deals predominantly with the council[20], whereby it is alleged the council has failed to appropriately implement a child's EHCP. The SEND Tribunal also deals with councils (and schools)[21], but unlike the LGSCO the SEND Tribunal deals only with *decisions* local councils make about children and young people with SEND; and with schools that discriminate against a *disabled* child or young person specifically.

Complaints/ appeal process: LGSCO and the SEND Tribunal

This section presents the steps a person must take when dealing with the LGSCO and the SEND Tribunal. Note that it would also be worth the complainant getting advice/ checking Legal Aid eligibility via the Civil Legal Advice (CLA) gateway.[25] The processes presented here are as described on each institution's website.

Making a complaint to LGSCO[26]

The steps through the process include complaining to the organisation involved, a look at the things LGSCO can and cannot look at, timing of the complaint, registering a complaint, how the LGSCO will handle the complaint, and what the outcome might be.

(1) ***Complain to the organisation involved:*** The first thing the complainant should do is complain to the responsible council to give them a chance to sort out their problem. The complainant should go through all stages of the organisation's complaints process.

(2) ***Have a look at the things LGSCO can and cannot look at:*** The complainant's complaint must be about something LGSCO can investigate. LGSCO looks at complaints about most council services, all types of adult social care services even if it is paid for privately, and some other organisations providing local services.

[25] Legal aid for tribunal work is limited to Legal Help and doesn't cover representation; https://www.ipsea.org.uk/where-can-i-get-help-with-making-an-appeal#:~:text=The%20type%20of%20legal%20aid,as%20reports%20from%20independent%20experts.
[26] LGSCO (2022). Making a complaint. Accessed December 2022. Available at: https://www.lgo.org.uk/make-a-complaint

(3) ***Check it is the right time to complain to LGSCO:*** If the complainant has completed the organisation's complaints process but are not happy with its response the complainant can put in a complaint to LGSCO. If the complainant has complained to the organisation but has not had a response within a reasonable time (up to 12 weeks) the complainant can also put in a complaint to LGSCO.

(4) ***Register a complaint:*** The complainant must register an account on the LGSCO website and complete the online complaint form. LGSCO has procedures to provide assistance if there is a need for reasonable adjustments etc.

(5) ***How LGSCO will look at your complaint:*** LGSCO will take a look at the complainant's complaint and advise on the next steps. Then they will assess whether they can and should investigate. If they investigate, they may ask the complainant and the organisation for more information. LGSCO will ask the complainant if they need extra help to use their service and do their best to communicate with the complainant in the way they have requested. This is predominantly a desk-based exercise rather than face to face contact.

(6) ***What the outcome will be:*** LGSCO will make an evidence-based decision on the complainant's complaint. If they decide the complainant suffered because of the organisation's faults, they will recommend how it should put things right for the complainant and potentially other people in the same situation. LGSCO publish their decisions, but don't use real names or reveal the identity of those involved.[27] They do this to be transparent, increase accountability for what happened, and to share the learning from complaints to help others improve.

Applying to the SEND Tribunal involves a different process.

Applying to the SEND Tribunal[28]

The process of bringing a case to the SEND Tribunal is divided into the following steps[29]: mediation[30], making an appeal, starting the application notice, before the hearing, the hearing and after the hearing.

(1) ***Mediation (see above):*** The applicant should have a Mediation Information and Advice meeting and get information about SEND mediation. Even if the applicant does not use

[27] The anonymity of complainants is ensured but councils are named in published decisions.
[28] HMCTS (2022). Complaints procedure. Accessed December 2022. Available at: https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/complaints-procedure
[29] It is only possible to follow this process when an appealable decision/final EHCP is issued.
[30] However, mediation is not part of the process of bringing a case to the Tribunal. It is a separate and different part of the statutory legal framework.

mediation, in most cases, the applicant will need a certificate from a mediation service before they appeal. The applicant must ask for this within 2 months of the date on their letter from the council. The applicant has 30 days after the date on the mediation certificate to appeal to the SEND Tribunal.

(2) ***Making an appeal***: The applicant must appeal to the SEND Tribunal within 2 months of the date on the letter telling them the council's final decision, unless they have mediated, in which case they have 30 days from the date of the mediation. The SEND Tribunal is free and the applicant can claim money to pay for their travel to a hearing. The applicant might need to collect evidence to prove why they think the school or council is wrong. Some people can get money to help pay a solicitor for help with this. The Law Society or Citizens Advice can tell the applicant more about this.[31]

(3) ***Starting the application notice (the 'appeal form')***: The applicant will need to download the right form from the website Court and Tribunal forms for: appeals against a decision not to carry out an Education, Health and Care (EHC) assessment or appeals against any other local council decision. When the applicant appeals, they must tell the SEND Tribunal the date of the letter from the council and which of the decisions the applicant disagrees with. The applicant cannot just say they disagree with the decision. The applicant does not have to provide a lot of detail, but it is important they explain the grounds of their appeal. This means why the applicant thinks the decision is wrong; what they want the SEND Tribunal to do. Post the appeal form/ submit it electronically as attachment to email. If anything is missing, the Tribunal will send the form back to the applicant. They might not be able to look at the applicant's appeal. They will tell the applicant what else they need to send them. The applicant must send them in within 10 working days. The applicant can ask for more time. But if the applicant sends it back late and does not tell the Tribunal why, the applicant's appeal will end.

(4) ***Before the hearing:*** The Tribunal will check the applicant's form to make sure their appeal meets their rules. They will do this in 10 working days. They will write to say they received the applicant's form and give the applicant an appeal number to use if they talk to them about their case. They will tell the applicant the date when they arrange their hearing. They will tell the applicant when the applicant needs to send the council and Tribunal information for the hearing. They will send a copy of the applicant's appeal to the council and ask them to reply within 30 days. If the council agrees with the applicant's appeal to change e.g. the EHC

[31] There are a number of specialist services to help parents and YPs with SEND mediation and SEND Tribunal. Organisations like IPSEA or SOS SEN, and services such as SENDIASS, would be the first port of call.

plan the applicant can stop the appeal. If the council agrees to do anything else the applicant asked for then the appeal ends. The council has a set time to do what they say they will.

(5) ***The hearing***: About 10 days before the date, the SEND Tribunal will send confirmation of the date and time of the applicant's hearing and tell the applicant where it will be. The SEND Tribunal tries to make sure the hearing is less than two hours away from the applicant's home.[32] A judge will lead the Tribunal and there will be one or two other people who know about children with SEND, health, and social care matters. These are specialist members of the panel, sitting with the judicial member and taking part in the hearing and the decision-making. The judge will explain what will happen at the hearing. The applicant can agree to a hearing where they do not attend. The Tribunal must be satisfied that it is an appropriate case to be concluded without a hearing (i.e. on the papers).

(6) ***After the hearing***: The tribunal will write to tell the applicant their decision and send a copy to the council. The applicant should get this within 10 working days after the hearing has finished. The council must do what the SEND Tribunal says within a set time. There are different times for different decisions. If the council does not start when they should, the applicant can ask the Secretary of State for Education or the High Court to make them do it. When the tribunal writes to tell the applicant their decision they will also say how to appeal. If the applicant is not happy with the decision, they must write back to them to tell them within 28 days of the decision. The applicant must tell them what they think was wrong and why they want a new decision. If the applicant does it later than this, they must explain why. A judge can decide whether the appeal can go ahead although it is late.

In the next part we turn to housing.

3.2. Housing

Pathways to resolve grievances: Ombuds and Tribunals

The Housing Ombudsman and the Property Chamber provide redress for housing problems.[33] One aim of our research is to identify the impact of digitalisation on the procedures as well as how these institutions might work together, as they deal with broadly the same problems.

[32] Note that these are generally all online now. Also, some decisions are made on the papers and not at hearing.
[33] The LGSCO also have jurisdiction on some housing issues. Complaints relating to homelessness are for the LGSCO; e.g. Medway Council Report

Housing problems can be varied and complex. The scope of our project limits these to the housing issues that the Housing Ombudsman and the Property Chamber deal with. They can relate to residential property, land registration, and agricultural and drainage matters. Common housing issues include, but are not limited to:

- Residential property: repairs and tenant behaviour;
- Land registration matters: disputes over a change to the land register;
- Agricultural land & drainage matters: disputes between agricultural tenants and landlords in relation to certain farming tenancies.

Another area of overlap to mention here briefly are the county courts. Our project focuses on the pathways through the Tribunal and Ombuds. The County Court deals with civil (non-criminal) matters. The County Courts are also undergoing a reform process and have a similar jurisdiction to the Property Chamber. It is important that users, who are similar to the Tribunal users, do not have differing journeys. As a matter of policy, it may be the way in which County Courts deal with possession cases will change within the next 2 years. The 'Renters Reform Bill'[34] is about to be introduced. Michael Gove (Secretary of State for Levelling UP, Housing and Communities and Minister for Intergovernmental Relations):

> For too long many private renters have been at the mercy of unscrupulous landlords who fail to repair homes and let families live in damp, unsafe and cold properties, with the threat of unfair 'no fault' evictions orders hanging over them. Our New Deal for renters will help to end this injustice by improving the rights and conditions for millions of renters as we level up across the country and deliver on the people's priorities.

If this reform will happen, then it will create an opportunity to revisit the ways in which housing disputes are dealt with. One of the consequences of this bill would be a huge increase in the number of rent cases.

The most recent death of a toddler[35] due to black mould in their social housing flat, provides some insight into the scale of the problem in the social housing sector in England.

[34] Department for Levelling Up, Housing and Communities (2022). Press release: New deal for private renters published today. Accessed January 2023. Available at: https://www.gov.uk/government/news/new-deal-for-private-renters-published-today

[35] The Guardian (2022). Accessed January 2023. Death of two-year old from mould in flat. Available at https://www.theguardian.com/uk-news/2022/nov/15/death-of-two-year-old-awaab-ishak-chronic-mould-in-flat-a-defining-moment-says-coroner

Complaints/ appeals about residential property, land registration, agricultural land and drainage

On the surface it might appear that there are overlaps in the kinds of housing issues the Housing Ombudsman and the Property Chamber deal with. Similar types of housing issues might be dealt with by either the Housing Ombudsman or the Property Chamber. However, the Housing Ombudsman will not consider complaints which concern matters where the Ombudsman considers it quicker, fairer, more reasonable, or more effective to seek a remedy through the courts, a designated person, another Tribunal or procedure, such as the Property Chamber. These differences in services are designed around jurisdiction, rather than based on users' needs and access considerations.

Indeed, upon closer inspection it seems that the problem areas appear to be distinct. The Housing Ombudsman deals predominately with residential property issues, where the most common problem area is repairs, followed by tenant behaviour. The Property Chamber deals predominately with disputes between leasers and lessees, appropriate levels of rent payable by tenants and action to ensure compliance by landlords with various obligations within the jurisdiction of the tribunal, and registration and agricultural land and drainage matters. However, there are two main areas which have been identified by the Property Chamber and Ombudsm as having a sufficient level of cross-over: service charges and rent arrears. There are, though, distinct differences in the parts which each institution can look at. For service charges, the Ombuds' jurisdiction looks at the process around the service charge rather than the level; the amount of service charge is a matter for the Tribunal. This is in accordance with paragraph 39(g) of the Housing Ombudsman Scheme which states that the Ombudsman cannot consider complaints which "concern the level of rent or service charge or the amount of the rent or service charge increase."

Information about what areas are outside of the jurisdiction are explained in the Ombuds report of the investigation. In the Guinness Housing Association Ltd complaint in June 2022, regarding the landlords handling of the resident's rent and service charge payments, the scope of the investigation was made clear in the report:

"It is important to be aware that it is outside the role of the Ombudsman to review complaints about the increase of service charges and determine whether service charges are reasonable or payable. However, we can review complaints that relate to how information about service charges was communicated by the landlord. This is in line with paragraph 39(g) of the Housing Ombudsman Scheme, which states that the Ombudsman will not consider complaints that concern the level of

service charge or rent or the increase of service charge or rent. Complaints that relate to the level, reasonableness, or liability to pay rent or variable service charges are within the jurisdiction of the First-Tier Tribunal (Property Chamber) and the resident would be advised to seek free and independent legal advice from the Leasehold Advisory Service (LEASE)[36] in relation to how to proceed with a case if she wishes to pursue this aspect of his complaint further."[37]

The Property Chamber and Housing Ombudsman have fostered a strong working relationship during the pandemic, with signposting and training between the two institutions. The Ombudsman, for example, would signpost cases to the Tribunal if the complaint is outside their jurisdiction, or if most elements can be dealt with by the Tribunal (where it would make sense to deal with the whole case in one place).

Complaints/ appeals process: Housing Ombudsman and the Property Chamber

In the following we provide the information about how to bring a complaint to the Housing Ombudsman and the Property Chamber as per information available on their websites.

Making a complaint to the Housing Ombudsman[38]

The steps to take when bringing a complaint to the Housing Ombudsman are divided into the following stages: tell the landlord about the problem, complain to a designated person, escalate the complaint to the Ombuds, and the consideration stage.

(1) Tell the landlord about the problem: The first step for complaints is to report the problem to their landlord. They may be able to put things right. If the complainant has difficulty reporting the issue or is dissatisfied with the service they received in response, the Housing Ombudsman can help the complainant and their landlord resolve the issue. All landlords have complaint's procedures that should be easy to use, fair and designed to put things right. If the complainant thinks their complaint

[36] Brighton Leaseholders Association (2022). Accessed January 2023. Available at: https://www.leaseadvice.org/
[37] Housing Ombudsman Service (2022). Guinness Housing Association Limited (202121926). Accessed January 2023. Available at: https://www.housing-ombudsman.org.uk/decisions/guinness-housing-association-limited-202121926/
[38] Housing Ombudsman Service website. Accessed December 2022. Available at: https://www.housing-ombudsman.org.uk/residents/understand- complaints-process/

is not being dealt with correctly, for example if they receive a delayed or no response, the Housing Ombudsman can help ensure their complaint is responded to by their landlord.

(2) Complain to a designated person: If the complaint is unable to resolve their complaint through their landlord's complaints procedure, they can contact a designated person who can also help find a solution. The designated person can be an MP, a local councillor or a Tenant Panel. Their role is to help resolve disputes between tenants and their landlords which they can do in whatever way they think is most likely to work. If the designated person cannot help, they can refer a complaint to the Ombudsman. If the complainant has decided not to contact a designated person, they can go directly to the Ombudsman after their landlord has given them its final response to their complaint.

(3) Escalate your complaint to the Ombudsman: Before the individual makes a complaint, they will need to answer a few questions online. The complainant will then be taken to the online complaint form or signposted to other helpful information.

(4) Consideration of complaint: The Housing Ombudsman will deal with each complaint to find the best outcome for the specific circumstances involved. Once they receive the complaint they may:

- Refer the case to a different organisation if it is an issue they cannot make a decision about because it is not in their jurisdiction
- Work with the complainant and their landlord to resolve the dispute under their early resolution procedure. For example, the Ombudsman can use their experience of resolving complaints to make suggestions to the landlord and/or the resident if they believe there is a way to resolve the complaint
- Carry out an investigation; the Ombudsman service only does this for those complaints where they decide an investigation is proportionate to the circumstances and evidence before them, for example complex complaints involving many issues.

Applying to the Property Chamber involves a different set of steps. We outline these next.

Applying to the Property Chamber[39]

The steps taken to bring a complaint to the property chamber include: to get help and advice before applying, consider mediation, apply to the property chamber, and the consideration of the application.

(1) **Get help and advice before you apply:** The applicant should contact Leasehold Advisory Service or Citizens Advice or another advice sector organisation. The complainant can also get legal advice, including from a lawyer.

(2) **Consider mediation:** The applicant should consider whether they can use other methods of settling the dispute, such as alternative dispute resolution. Mediation is a way of resolving disputes through effective communication and compromise. Mediation involves a third party acting as a go-between to ensure the parties are able to communicate with one another.

(3) **Apply to the Property Chamber:** To apply to the Tribunal, the applicant will need to fill in an application form. Forms can also be obtained from a regional rent assessment panel. If no specific form exists for the applicant's case category, then the applicant should write to the tribunal including specified information. There is a fixed fee of £100 for most applications to the tribunal. There are arrangements in place for the fee not to be charged in some circumstances, for example if the applicant is receiving certain benefits.

(4) **Consideration of your application:** Once an application is received, it will be assessed to check that the form is correctly completed and that the required attachments are present. If something is missing the Property Chamber will request this from the applicant and the application will not be accepted until all the required information and attachments are provided. If the required information is not provided, the application will not be accepted by the Property Chamber and the case will be closed. The applicant will be advised of this, and informed that they may submit a fresh application when they have all the required information and documents. Complete applications will be passed to the member with delegated powers within the Property Chamber, who will consider the application. The Property Chamber will decide how best to progress the case. The Property Chamber will write to the applicant and any other parties to notify them of what will happen next (including information on the hearing).

[39] Application to the First-tier Tribunal (Property Chamber): https://www.lease-advice.org/advice-guide/application-first-tier-tribunal-property-chamber/

Taking all the above together, in section 5 of the report we present the ideal case help-seeker journey for those in need of support for housing problems using the map we developed. We provide real-life case studies of the housing pathways from step 1 (awareness) to step 8 (outcome).

3.3. Digitalisation agenda

HMCTS Courts and Tribunals Modernisation Programme

In 2016, HMCTS started a £1bn programme involving over 50 projects to improve court and tribunal services, to introduce new technology and modern ways of working.[40] The aim in Tribunals was to "create simpler processes and online routes, allowing people to manage and resolve disputes fairly and speedily".[41] New tools to support online dispute resolution and 'continuous online hearings', channels for judges to communicate directly with parties and the increased responsibilities of case officers were all included in the programme. The early stages of the programme focussed on the Social Security and Child Support Tribunal, and Immigration and Asylum Tribunal. In 2022, the design of a core service began within some of the Special Tribunal jurisdictions (including SEND and Mental Health), however, some jurisdictions experienced a delay to the start date (including housing), and the Tax and the General Regulatory Chambers are no longer part of the reform programme.[42] As the reform programme is ongoing it is subject to change and things might be different at the time of publication of this report (March 2023).

Digital Support

'Assisted Digital' support services have been introduced as part of the reform programme to assist those who are unable to interact with the online justice system. The contract was initially awarded by HMCTS to *The Good Things Foundation* between September 2017 and August 2020, who were commissioned to co-design and pilot face-to-face digital support; and subsequently awarded to *We Are Digital*, who currently provide the service.

[40] The Ombuds process is mainly online and not part of the court modernisation agenda.
[41] GovUK (2018). HMCTS reform programme projects explained. Accessed December 2022. Available at https://www.gov.uk/guidance/hmcts-reform-programme-projects-explained#civil-family-and-tribunals-projects
[42] Senior President of tribunals (2022). Senior President of Tribunals' Annual Report. Accessed December 2022. Available at https://www.judiciary.uk/wp-content/uploads/2022/10/14.121_JO_SPT-Annual-Report-2022_WEB.pdf

Digital exclusion has been a concern by stakeholders since the introduction of the reform programme. In a report by JUSTICE, on Assisted Digital, the Chair of the working party, Amanda Finlay noted that:

> The term "digital exclusion" should be considered broadly as it includes those who lack access either to the internet or to a device, or the skills ability, confidence with digital interactions may be vulnerable".[43]

The initial focus of assisted digital was on digital literacy rather than the provision of legal advice and support which was of huge concern to advice sector providers. The report by the Administrative Justice Council (AJC), *Digitisation and Accessing Justice in the Community*, stated that "a large number of people approaching for help with a legal problem would need support and legal advice, together with ongoing digital assistance to navigate the online justice system." [44] In addition to the support service provided by HMCTS, frontline organisations also found that they needed to provide digital assistance to clients who sought advice. From a survey conducted in 2020 (pre-pandemic), the report indicated that there was a high level of need for digital assistance; those barriers (such as lack of staff, lack of IT equipment, time constraints etc) were preventing front line advice providers from meeting demand for digital assistance; lack of funding was preventing providers from scaling up to offer digital assistance; and frontline organisations were unable to meet demand.

While this report does not go into detail about digital support, we want to highlight the role the advice sector play in assisting users, not only with their legal needs and helping individuals to navigate through the system, but also helping them to digitally access the system (which has been vital throughout the pandemic and going forwards).

Online Procedural Rules Committee

A new addition to the reform programme was the announcement of the creation of an Online Procedural Rules Committee (OPRC) which went ahead under the Judicial Review and Courts Act 2022. The proposal was created as an enabler for the HMCTS Reform programme. The aim of the OPRC is to transfer cases that have not been resolved in the pre-action stage to the online courts system. Chaired by the Master of the Rolls, and membership

[43] CBE (2018). 'Preventing Digital Exclusion from Online Justice', Chair of the Working Party Amanda Finley CBE, April 2018. Accessed January 2023. Available at https://justice.org.uk/new-justice-report-on-preventing-digital-exclusion/)
[44] AJC (2020). Digitalisation and accessing justice in the community. Accessed January 2023. Available at https://ajc-justice.co.uk/wp-content/uploads/2020/04/Digitisation.pdf

including the Senior President of Tribunals and President of the Family Division (along with lay members), the OPRC is part of the wider work of increasing access to justice online across civil, family and tribunal jurisdictions. The MoJ are considering how dispute resolution services (e.g. mediation, Ombuds) can use technology to help people resolve their issues quickly and efficiently. This will also help users to understand what options are available to them and could help them increase their knowledge about the best pathway to resolve their problem.

More importantly, the OPRC are considering an online signposting tool, which would help users to understand their options for addressing their problems e.g. housing disrepair issues in private rented accommodation, which is signposted to users by local authorities, as well as the Finding Legal Advice and Information page on GOV.UK.[45]

In the following we outline the current progress of the digitisation agenda for housing and SEND, in two different trajectories.

Housing – the Digitisation agenda

While initially part of the HMCTS Reform Programme, the Property Chamber received disappointing news in 2022 that there was insufficient funding or capacity to take forward the reform programme in the Chamber. The Property Chamber already had an effective case management system in place, which staff were able to access remotely during the pandemic, but it was hoped that it would be moved to a more sophisticated system that could be accessed by judges. The Chamber was in discussions with HMCTS about what a new system might include.

In terms of progress, prior to the pandemic, the Chamber had several workshops on what their requirements were, what they already had and what could be improved. Another series of workshops followed the pandemic in January 2020 with similar content to the first. However, shortly after the second round of workshops, the Chamber was informed that it would be moved into phase two of the special Tribunals' development, which would take place further down the line (if at all). Despite this disappointing news, the Chamber is continuing to work with HMCTS to ensure that effective plans are in place and to ensure that they have an effective IT system.

[45] AJC (2022). Newsletter. Accessed December 2022. Available at https://mailchi.mp/c4f4f76d7558/newsletter-5899775

The Chamber's main priority is to focus on, and improve, their Case Management System in Residential Property. In our interview with Chamber President Judge Siobhan McGrath, Siobhan told us that "we are working with a decommissioning and legacy project to see how the case management system can be enhanced, and at some stage in the future, subject to finance, we can either have a new system or it can be made much, much better." The Chamber still requests applications and references to be made to the Tribunal online (where possible), while still making paper applications available to those who find uploading digital bundles more challenging, as well as requesting digital uploads of documents, evidence and submissions. The Chamber would like to continue to offer remote video and telephone hearings.

In the Senior President of Tribunals Annual Report 2022[46], the Chamber President of the Property Chamber reported that, following the pandemic, the Chamber would like to take forward the best of what they learnt and would continue to offer options for hearings including paper based, telephone, fully remote and hybrid hearings and will use PDF hearing bundles.

The Chamber will learn from its experience of the pandemic and continue to develop its own case management system to make processes easier for staff and users of the Chamber. Hybrid systems will be used to ensure that those who are unable to engage with digital processes are not inadvertently affected.

SEND – the Digitisation agenda

In contrast to the Property Chamber, the SEND Tribunal (at the time of writing this report) is part of the reform programme under the special tribunals. SEND is scheduled to start under phase one of the special tribunals at the tail-end of the programme. Prior to the reform programme commencing, similarly to the Property Chamber, the SEND Tribunal had already started working digitally. Files had already gone digital in 2016 and video hearings was being tested for instances when it was difficult to convene an in-person panel. In 2019, they began testing CVP (owned by Kinly), a video software package. By Autumn 2019, they commenced the reform programme, however, it was paused around Christmas 2019 and then the pandemic hit in March 2020. To get the tribunal online quickly, Kinly provided HMCTS with additional rooms for the tribunal, allowing more hearings to take place at the same

[46] Senior President of tribunals (2022). Senior President of Tribunals' Annual Report. Accessed December 2022. Available at https://www.judiciary.uk/wp-content/uploads/2022/10/14.121_JO_SPT-Annual-Report-2022_WEB.pdf

time. The transition seemed to be a quick and seamless process and was up and running within three weeks. We discuss this in more detail in part five.

The tribunal continued using video hearings post-pandemic and had moved to using digital bundles by the end of April 2020, although paper bundles are still available as a reasonable adjustment for judges are generally available to parents and young people, when requested.

The reform programme commenced again in the Summer of 2022 and the first phase included Criminal Injuries Compensation, SEND, First tier tribunal Care Standards and First tier tribunal Primary Health Lists and Mental Health - SEND was due to be completed by December 2022. This included a new listing tool for HMCTS administration and for improvements to be made to the case management system. There was, however, delays to the roll-out and the tribunal is awaiting information on the revised timetable.

The reform programme was accelerated due to the pandemic. Lessons have been learnt and tribunals have moved relatively seamlessly into using digital processes and conducting remote hearings. Due to funding, there have been delays to some parts of the reform programme and as mentioned above, some jurisdictions will sadly no longer take part in the reform programme. The end date for the programme has been extended and we wait to see which parts of the programme will be rolled out by the end of 2023. Both SEND and housing have seen the benefits of remote working and the jurisdictions are keen to continue with the programme, retaining some digital aspects that can be managed internally.

Our report will look at how those using the technology - judges, users, and advice providers - have experienced digitisation including both the challenges and the benefits. We hope that these experiences might be factored into the final roll out of the programme.

In sum, this part set out the context and recent developments in the areas of housing and SEND. For both areas we have outlined the pathways to resolve grievances with a focus on the advice sector, Ombuds and Tribunals. We concluded this section with a brief update on the digitalisation agenda in housing and SEND. This report was written in March 2023 and therefore reflects the developments at that time. In the next section we discuss our data on experiences of a digital justice system.

4. Digitalisation during the pandemic

In this part, our data provided the organising structure. We start with survey data collected from those who administer the process (i.e. 'professionals'; advice sector, ombuds, tribunal judges and case workers. We then discuss the effect the pandemic had on the digitisation agenda and how the pre-pandemic reform plans had to change. Then we share experiences of online hearings in Tribunals.

SEND Tribunal judges (n=23)

We asked SEND Tribunal judges: *'How successful / effective would you say was moving to online services during the pandemic in your tribunal?'* Six participants said 'somewhat successful/ effective', and 17 said 'successful/ effective'.

We also asked SEND Tribunal judges: *'Has your chamber's response to the pandemic made a difference to your daily job?'* One said 'no', six said 'not sure', and sixteen said 'yes'.

Finally, we asked SEND Tribunal judges: *'Would you say that the pandemic made it more challenging for people to access the hearing?' Eleven* said 'no', ten said 'not sure', and three said 'yes'.

In sum, the scarce survey data shows that SEND tribunal judges thought the digital transition was a success, this transition has made a big change to judges' daily jobs, and that this mode of delivery did not necessarily make access more difficult for their users.

4.1. Covid-19 fast-tracked the digitalisation agenda for Housing and SEND

The digitalisation agenda has been fast-tracked by the pandemic and has uncovered those parts of the process that work, and those parts that need improvement. We draw here on our interviews with those who have the responsibility to run the Tribunals and Ombuds. Their accounts of how the rapid shift to online delivery was put into practise depended on the stage their Tribunal was at in the overall modernisation programme, as well as what they had already developed in relation to digital tools. We share the experiences recalled by Meleri Tudur (Deputy Chamber President of the Health Education and Social Care Chamber and the Senior President of Tribunal's judge for reform) and Siobhan McGrath (President of the Property Chamber).

Meleri Tudur stated that... *we were the good news story of the pandemic, as far as HMCTS were concerned, because in the twelve months to March 2020, we'd postponed over a thousand cases, because we had a lack of judiciary, a lack of hearing rooms, a lack of secure venues. And suddenly all our problems were solved. We were seeing many more young people and children. It was lockdown, people were at home, and children were joining.*

When asked about the reform and its digitalisation agenda, Judge Tudur said:

We were very keen to work digitally, to work paperless, and our files went paperless in 2016. So, ahead of the reform programme, not as part of it. But we were keen, because it's a national jurisdiction, to be able to maximise our resources and for judges to be able to work remotely. […] We were already testing video hearings in certain circumstances, which was when we had the parties' consent and when we were struggling to deliver a panel.

I had done some personal testing of video hearings, prior to the summer of 2019 and could see that it would offer a good solution. But, at that time, it was me on a video in a courtroom, and the parties, and in one of the cases, one of the panel members, in another courtroom, in another building, in fact. […] So it was a good test, we wouldn't have got a judge to cover the hearing otherwise. We were using the CVP rooms for internal meetings, and we liked it, so we were keen to develop. We were still producing paper bundles for hearings. I love paper and I have worked with paper for 30 years. I didn't think I would be able to move to fully taking notes and working from a digital bundle at that point. And, in fact, a lot of people are still the same, they like paper bundles and they will ask for them when they need them.

On the 23rd March 2020, we went into the first lockdown. A week prior to that, we had a meeting with the administration. We were already doing a lot of telephone case management hearings, and our only option for hearings to continue would be for us to move to fully telephone hearings, or to see whether we could have more CVP rooms and develop an entirely remote video system. You can imagine, I've got a really dedicated team, both administratively and judicially, and there was no question of simply abandoning ship. We had the benefit of digital files. Because we were sending out paper bundles about 3 weeks in advance, we already had the paper bundles issued for the coming 3 weeks. […] Kinly and HMCTS created for me 20 or 25 rooms, because that was about the number of cases that we were running every day. We were making the request on a Tuesday, we had the rooms by Friday. It was just brilliant. And on the Monday, we, to all intents and purposes, moved seamlessly to fully video, fully digital working.

It was not without a huge input from judges and administrative staff. We trained our judicial office holders in how to manage digital working, how to manage videos, we did surgeries for our users, to get them to understand how the platform worked. One of the big advantages of the CVP system was that it was browser-based and that it was very simple. Archaic, some may say now, but it was just very simple. You send a link, and the surprising thing was the biggest problem we had was with corporate users who had very fancy firewalls. Our ordinary users, our young people with a smartphone, were romping into our hearing rooms with no problem at

all. And it was mostly local authorities who were struggling to join, rather than our users. So, we issued guidance, we prepared that guidance, we issued it to users, we issued it to our judicial office holders, and we simply kept going.

We've settled into a pattern of video hearings, it's ongoing. We moved to fully digital bundles fairly early on, probably before the end of April 2020 and, whilst some judicial office holders are still getting paper bundles as a reasonable adjustment, the expectation is that everyone will be able to work from a digital bundle in the same way as they do from paper. It meant a lot of training in the sense of adapting, teaching people to work with split-screens, with multiple screens, that was never something that we did before. And HMCTS, again, stepped up to the plate and provided judicial office holders with a second screen where they didn't already have one and so on. The equipment is an important aspect that hasn't been fully addressed, but it's vital, I think, that people understand the benefits of multi-screen working and they're able to use it effectively. We've continued to direct local authorities when parents ask to send paper bundles because a lot of the families that we see don't have multiple devices from which they can manage a bundle and a hearing. On the whole, I don't think that's been a problem. It was during lockdown because people weren't going into local authority offices, in order to post bundles. But I think we've got over that now and it's settled into a routine. I've not heard of any difficulties lately.

For my money, what the pandemic did was to accelerate what might have otherwise taken years to achieve. It made people work outside their comfort zones. It made us address immediate problems and we happened to do so very successfully.

The story and events in the Property Chamber make for a different read. Judge Siobhan McGrath has a different story to tell about the modernisation agenda and the pandemic.

We have a case management system which was developed about 20 years ago, but for its time it was pretty advanced, it is really good. It has workflows on it, and it is an interactive product for the staff. At the beginning of the pandemic, our two main venues shut. We were very fortunate that one of our members of staff was an expert on the case management system and had already developed plans for staff to be able to access the system remotely, and so we rushed around getting laptops and setting up, so that they could access remotely.

What we learnt apart from the fact that the staff could do with the system, was that the judiciary were also very, very adaptable, and are now much more able to work digitally, that's salaried and fee paid judiciary, but it would be enhanced if we could have a system analyst or something just to look at what we do to make it more efficient.

Further, Judge McGrath told us about funding she received for looking at mediation in more detail. *I received some funding to do more extensive mediation training, and I would like to build it up to such a point that I've got sufficient mediators that I can not only offer, but incorporate meditation into the Tribunal processes, and I think by this time next year I'll have been able to do it in some categories of case, but*

this is just part of the process. So, when an application is made we offer mediation, very early on, before they have to start investing time and money on going to a tribunal hearing.

In sum, these accounts provide an insight into how the court reform and modernisation agenda were overtaken by the pandemic which forced creativity and reaction in relation to online operations. Both accounts clearly state the need not only for the appropriate technology but also for the training of those who provide the online process as well as those who use it.

4.2 Experiences of online hearings in SEND tribunals and Property Chambers

In the following, we present SEND tribunal and property chamber interview data and survey responses of the advice sector, case handlers, judges, and users. Five themes emerged from the data; (1) online hearings and working from home; (2) ability for young people to join in (SEND); (3) ability for people to join online hearings; (4) problems with technology; (5) benefits of face-to-face hearings.

1. Online hearings and working from home

a. Professional perspective

Most of our interviewees (judges, lawyers, and case handlers) expressed a clear preference for online hearings and working from home. They are all equipped with technology, relevant training, and a reliable internet connection to manage their caseloads and access to online bundles from a home office. For example, a SEND tribunal judge commented on the impact online hearings had on her life, and the fact that it was convenient as she didn't have to travel 300 miles a day. Another SEND tribunal judge commented on the ease of holding different hearings in different places within a click of a button, again highlighting the benefits of not having to travel to different geographical locations.

In terms of the tribunals the efficiency with which we can be deployed, I can sit with somebody from Newcastle and Brighton in the morning and people are off somewhere else and we've got a hearing in Manchester or whatever it happens to be. So no one's going to say 'Well how long's it going to take them to get there?

The interviews highlighted some of the benefits experienced by professionals; ease of working from a home office, no time wasted in the car, in traffic or in a hotel, which means less time away from family. Also, they stated that it is no problem to hold a remote hearing

in different places on the same day, which is not possible for in-person-hearings. It was also mentioned by some professional respondents that time and money is saved, they get paperwork done faster and have more quality time with their families.

A judge observed, from the point of view of a person bringing a case to the SEND tribunal online:

I get the feeling when people join and they're talking to you and they're sat there in the living room, they're sat on their sofa, they're in their environment, they're in a safe space for themselves. And I think it feels to me that they feel more able to talk more freely, and you can get a lot out of people with some really easy open questions. Whereas I just feel in the formalities of a face to face courtroom you might not get that same level of feedback. Again, I haven't got any empirical evidence for that, it's just the feeling I get.

This observation, that people might find more comfort from their homes is probably true for some, but not in all cases. We cannot forget that, despite hearings being remote and accessible from anywhere, they are still decisions about peoples' lives. A Housing Law Practitioners Association member observed that:

Judges felt like they were more able, or it seemed like judges were harsher in what they did, like granting possession when there wasn't a human being and maybe their family sitting in front of them and they weren't telling that person, 'You're now homeless'.

As stated in excerpts above, the quality a screen can bring to a hearing is limited when it comes to body language or reading peoples' reactions to what has been said. In balance, it might have to be taken into account who is needed at a hearing (panel members and school teachers for evidence) and that they might find time in their busy schedule easier when it is online. A SEND tribunal judge commented on this in relation to online and in-person-hearings:

If you're going to have an in-person hearing your panel needs to be together wherever they are. You have schools that have to send deputy headteachers, headteachers, that may spend a full day in a hearing room to simply answer 1 or 2 questions. It's a massive waste of their time, but they need to be there in case they are needed. If they could join remotely, that's a much better use of their time.' They went on to say that: 'I'm not averse to face-to-face sitting. I would do that where it's required. I have my own prejudices, in that respect. [...] It's the wider return to the office piece. I think there has to be a value in something that you're doing. You can't just do it for the sake of it, or because it was there before. For me, I feel I've worked fairly successfully from here [home].

The points made by the professional interviewees provide a snapshot of emerging imbalances. Our data suggests that judges feel at ease operating from their homes as work

can be more efficient, they have the equipment to conduct remote hearings. Further, judges stated that people who bring a claim to the tribunal seem at ease in an online hearing from their own living room. There is another side to these observations, those of the tribunal users. The pandemic created a fertile ground for understanding better how online hearings and online communication with users worked and where the challenges lie. Our data showed that the experiences of tribunal users, with varying levels of legal and digital capabilities, did not always match the narratives of the professionals. The user perspectives are discussed in the following four themes, as well as the professional perspectives.

2. Ability for young people to participate (SEND)

a. ***Professional perspective***

The SEND tribunal judges we interviewed all commented on the benefits a remote hearing has had for the service user and in some cases for the young person who the case was brought about to be able to join. They found that the overall experience was more relaxed than having to come in front of a court in a face-to-face setting. For example, a SEND tribunal judge stated that:

The accessibility for our service users was fantastic. We're supposed to be an informal tribunal, so the parties were coming in, especially parents, who were feeling more relaxed, they didn't have to find childcare for their child if they're home educated. We could hear from the child or young person if they wanted to. It's amazing how many young people, and children, are coming to talk to us. And it's nice to put a face to the person who we're seeing. Because we wouldn't see them in court generally, we wouldn't want them to be in court, we don't want them to hear what can seem quite negative, for a whole day. [...] So it's nice that they can come in, come out, come say hello to us, give us their views, tell us something. Some children can't tell us anything, but it gives us a better viewpoint. And I think it's made me think how dangerous any judging is because you don't know that person who you're judging, you've got a snapshot.

The fact that young people can join the online hearing, if they choose to, has benefits if this does not put additional stress on the parent or guardian fighting for better support for the child in an online hearing. However, as the spectrum of challenges, a young person faces can be so complex, it is not easy to make a claim that the online format is a good option for inclusion and access for all.

However, we present two more accounts of the described benefits, as judges perceive them. First, a comment made by a judge about young children with autism:

With a focus on the children who the decisions are about, those with autism, for example, 'find this easier as well, because it's like a video game for them. But also, we can alter this in so many ways that we couldn't alter a court [...] I think you can make it more accessible this way, than you ever could in courts.

Second, another SEND tribunal judge told us about one of their hearings …

I had the young person concerned come and join with his mother and his grandmother, actually. As it happened it was a fairly uncontested matter in the end, we ended up going to a consent order, but he was there, he was present. We had a chat, as it were. But we certainly thanked him for turning up, and it makes the experience a lot more pleasant to deal with the person that you're helping decide their fate, effectively.

The judges in our dataset see online hearings as an advantage for young persons as they can choose to be part of the hearing; it provides the judges with a 'face to a story'. Our data clearly shows that for the judges, seeing the young person they are making decisions about provides for a far better process and a more personal experience.

b. ***Tribunal user perspective***

There is, however, also the side of the parent, carer, lay-representative and the young person themselves. Here we present data that shows a combination of agreement and disagreement with the judge's statements above. A SEND tribunal user, for example, stated that …

… the video system was rubbish (May 2020) but I heard they later changed it. It is hard focussing on a hearing whilst looking after a child who was shielding so no one else could help. LA [local authority] people only on phone, not video, which didn't seem fair.

Some of our respondents, digitally and legally savvy, still experienced challenges with the online process. The challenges were caused by their surroundings and the reality of their lives (e.g. caring responsibilities and other demands on them). This puts emotional stress onto an already stressful situation and will undoubtedly influence how people perceive the online process. The perceived unfairness that some participants to the hearing were not seen but only heard will impact the overall experience of the online hearing. We discuss this below.

An account that is slightly different, from a SEND tribunal user, is that of an entirely paper-based hearing. She recalls that …

… they [the tribunal] were really good because sometimes they'd send documents out and I didn't really understand it because they wanted the council to prepare something, papers, which first when you read it you think, what have I missed? What have I done? I don't understand this. Every time I rang the tribunal they were

helpful. Obviously, the council knows the system very well. They save documents up until the last hour, not always inclusive of what they share with the tribunal with you.

The above account shows the reassurance and security a tribunal user felt with the option of calling a tribunal officer to help them navigate the system. They are digitally savvy, not fully at ease with the process, and find reassurance in human guidance. They are fully aware of the power imbalance between themselves and the council who are used to the system and process. SEND cases are about children that are currently not getting what they need from the system, no matter how digitally and legally savvy a parent might be, emotions and unexpected challenges of the [online] process can tarnish their experiences.

3. Ability for people to join online hearings

a. Professional perspective

Our professional interviewees provided us with some examples of the benefits for people to join a hearing remotely, from their homes. The data speaks to themes of vulnerability and access. The responses show some of the benefits to a remote hearing for those users that are confident with technology and have a good understanding of the legal process. However, these people might have a vulnerability that prevents them from easily travelling to a tribunal or they might have other responsibilities that affect their ability to go to a face-to-face hearing. Here, we see clearly how other considerations, besides legal and digital capabilities, play a role in shaping peoples' attitudes towards the online justice system.

For example, a law centre lawyer shared:

Good is the fact that if you've got somebody who is disabled and can't travel it's good for them to be able to sit in their own homes.

A property chamber case handler commented that…

… the benefits of face to face are that tech issues are less of a problem, but increased travel time, less accommodating for disabled etc, video hearings exclude the digitally challenged but can save time, can more easily be recorded and reviewed in case of dispute, easier to accommodate some disabilities and caring responsibilities.

An advantage to attending a hearing from home, assuming that the person's internet connection is stable and that they can navigate the online hearing, is for those people who have different variations of anxieties and fears about leaving their homes and interacting with

people face-to-face. Like the judges' reasons mentioned above, people save time and money as they do not have to embark on a potentially long journey to a courthouse. On the other hand, the fact that a hearing can be done from a living-room also means that there is an abrupt end once the screen is shut down. There is no debrief, social interaction or ritual that would usually occur in a courtroom.

A Tribunal Enforcement Services Lead commented that they would make sure to talk through the hearings with the tenant applications afterwards to explore what they made of the online process. The clients reported it was easier and they were less flustered by the cross-examination process. Interestingly, this also applies to landlords. A lot of the times, the reason why they are entitled to an action is at its root cause: because they are poor and they don't have money, therefore they are in the housing situation. This means there is a lack of alternatives, and it may not always be easy to take a day off, arrange for childcare, and pay for transport to get into central London. This is not a lived reality for those who work in a tribunal.

As the data only touches upon, there are many different, and context specific, good reasons for people to join a hearing online. There are also many reasons why an online hearing can be problematic. We might have to ask ourselves what is lost in an online hearing and for whom; as well as documenting the benefits of online hearings for all parties. Can the online space provide the same outcome and experience for users, at least for those that possess digital and legal capabilities?

b. ***Tribunal user perspective***

The accounts of tribunal users with digital and legal capabilities to access and navigate the online hearing, report the benefits of being able to attend the hearing from home, but recall the time it took to get a judgement as a problem (which is not related to the online process, but rather to the tribunal process).

A SEND tribunal user reported that

Video hearings were much better for us. With our SEN children, not having to commute made it much easier to attend. There have been long delays in getting responses from the tribunal. We did a video hearing in April or May 2020 - it took more than 4 weeks and some chasing to get the judgement. I think the May 2021 judgement was quicker. Most recently, we submitted a consent order jointly with our LA [local authority] in

Jan 2022. It took until very late Apr 22 to get the consent order confirmed - meanwhile our daughter was left without the necessary support.

Another user reflected upon the sense of safety the online process provided them, as compared to the possibility to have an in-person hearing. They articulate the tension between online and in-person hearings. A SEND tribunal user shared with us that …

… a lot of the stuff has been done online, which if I had gone in person to a hearing, would I feel overwhelmed even more? Probably would because, obviously, you've got a qualified solicitor against the parents.

These examples illustrate the benefits of accessibility to an online hearing for people with different needs. Further, the pandemic taught us that working from home included realities of children, pets, and other distractions during online meetings. This learning seems to be applied and acceptable in an online hearing.

When asked about the best solution in relation to online or in-person hearings, an interviewee reflected that they thought the fairest option would be to have the hearing in-person if one party so wishes, it could even be hybrid. They went on to recall that hybrid hearings worked well because it enabled anyone who wanted to be there physically to do so.

Overall, there are benefits for people to join an online hearing, especially if they can choose to do so and possess legal and digital capabilities that equip them with the skills to navigate it. However, technology is necessary for access and use of the online justice space and, as we all know, can create challenges. These challenges are experienced in different ways by professionals and users.

4. Challenges with technology and communication

a. ***Professional perspective***

Technology inevitably creates problems, which can be a challenge for all parties in a remote hearing. The pandemic has shown that certain groups of the population, with varying digital and legal capabilities, are not as able to access the online justice system as others. If there is only an online option to access justice, they are excluded.[47] Below we return to marginalisation in relation to technology and access.

[47] JUSTICE (2018). Preventing Digital Exclusion from Online Justice. Accessed December 2022. Available at https://justice.org.uk/our-work/assisted-digital/

Another interviewee, a housing caseworker, commented on the shift to online working during the pandemic and the discussion about digital capabilities:

Zoom suddenly became everybody's favourite video conferencing technology, when nobody had done video conferencing, unless you had relatives in Australia. So that happened overnight, and there are technophobes, but there are real technology zealots in the legal sector, so there was and is quite a tussle still going on about all that. Also, 'suddenly people did become digitally very literate. But again, I think it's a class thing, in that is something that the middle classes did. I'm not so sure that the working poor and benefits-claimants community engaged in that so much.

This leads to an important discussion about those who are less able to access the online space. A judge commented:

I think one of the problems is, and again I'm probably being a bit classist here, but people from more deprived backgrounds, and some of them do come before the tribunal, are typically not as au fait with this computer business. A lot of them don't even have a computer so they use their smartphone. And it becomes apparent that they're looking at everything on a tiny screen and the screen is wobbling all over the place because they haven't put it on a stand. Occasionally, someone has, you know, 'my battery has run out, can I just go and get my charger' those sorts of things.' In other words, 'I think that it [online hearings] probably discriminates against people of lower means on a number of levels, understanding the technology, having the equipment, having an environment in which to use it and kind of understanding some of the things that others of us take for granted. [...] So, yes, I guess there are social obstacles, technological obstacles, spacial obstacles if you want to call it that, but the thing that strikes me is that all of those appear to be unfairly loaded onto particular sectors of particular types of people. Low-income, perhaps not a lot of education, those kinds of things.

This is touching upon a bigger problem in our society, brought to light through the reality of access and non-access to justice observed during the pandemic. For example, there seem to be misconceptions of what the other participants can and cannot see on a screen, informed by one's own experiences. For example, a case worker found that lawyers and judges often think

… as long as you can see a screen, as long as you can hear everything then we can all do business here. And of course, there are real people involved and real people tend to not react in that way and tend to find it quite offensive to have their family members being talked about over video or telephone, and not being part of that.

Further, a respondent stated that …

… there is a tendency to think, oh but people do all sorts of things on their smartphones these days, they do their shopping on their smartphone, they organise their holidays on their smartphone. It's an extremely middle class view, it really is, because it is true, I think that many people have smartphones, but what they use their

smartphones for, and how they use their smartphones, is really different. I think the argument that gets made is so disingenuous and really misses the point. When I see a client, I almost always have to have a look at their phone, because most of them are on universal credit, and there is no paper on universal credit, it's all done in a journal on someone's phone, so I get to see a wide range of phones that people have. So, it's madness to suggest that we have a population ready to jump into digital dealing, we're just not there yet.

A SEND tribunal judge recalled the importance of being able to see appellants at hearings ad being able to read their body language. They recalled that…

… I had a really difficult hearing where I couldn't see anyone, but they could see me. And the problem was I only realised when the registrant basically got very upset at something that I'd said. I would not have said as much as I did if I'd been able to see her face and know that there was a problem emerging. And I thought that was really unfortunate and I think in retrospect perhaps I should have insisted that we get to the point where my connection had been established. I think that visual connection is quite important for that.

This is a good example of how only listening to a voice and not seeing (even if on a screen) the person's reactions to what is being said, can affect the hearing in a negative way. This quote also illustrates the judge's limited technological expertise. Firstly, if it is evident that everyone can see you during the hearing, despite your inability to see them, the judge should either adjust the proceedings accordingly or pause the hearing until the problem is resolved. Secondly, and more importantly, the judge made a comment that disturbed the appellant. This raises the question of whether the judge should have made the statement in the first place, rather than whether they would have made it had they been able to see the appellant.

The technological challenges were set out by a property chamber case handler who noted that parties were not familiar with procedures and court proceedings, there were drops in video conferencing, noise interruptions, equipment failure, WIFI failure, witnesses were given promptings from persons not visible on screens and managing it all on a screen is straining on the eyes. The creation of digital bundles for each case could mount up to hundreds of pages and these can provide challenging to read and follow if you only have one screen. A lot of claimants use their mobile phones for the hearing and find it a challenge to view the proceedings on the screen as well as opening the digital bundle.

Another property chamber case handler commented that …

… the production of digital bundles is not something available to most unrepresented users, even though I didn't have the software to create a bundle despite my day job being a local authority employee with a role of assisting preparation of RRO cases. Of course, we probably won't know how many potential applicants have

given up an attempt at getting justice/redress when they become aware of the expectations of how a case will need to be prepared.

In contrast to these accounts, a SEND tribunal judge stated that …

… I've not had an appellant have any problems. I've had a representative drop off, I've dropped off when my internet's fallen off. You can tell people that are doing it on a phone. It's a lot harder on a phone because you have multiple windows in the same way as Teams, but a decent screen makes life a lot better.

This account comes from a judge who will have been provided with appropriate technology and an internet connection to carry out their role. We need to be mindful of the plethora of challenges someone might have with connecting to the internet, finding a quiet space to attend the hearing, and being aware of how to best conduct themselves and navigate the hearing, to name only a few. In some places, there is assistance available for those who know where to find it. For example, a professional member of the property tribunal, told us that some councils support tenants who want to make a rent repayment order, for example.

I think they've supported those applicants and some of these it's like justice for tenants and safer renting, who are charitable type organisations that support tenants as well. So yes, they've generally been helped through the process. In some of the online platforms there are consultation rooms in which a person can ask to be put in to have a private conversation with their representative.

Another account of the online process paints a different picture. An interviewee said that…

… my experience is that I felt people had the opportunity to be heard. I've got great admiration for the chairs because that's the role that they play, dealing with it remotely, but making sure that people are still feeling connected with that hearing, and it is a daunting process. If you've never done that you think, it's a legal system, how's it all going to work? The judges and the chairs do explain what's going to happen and the format for the hearing, so they know, and they get the opportunity to put their views across. Certainly, people have appealed, that's the nature of people, but I haven't heard anybody come back to say, I wasn't allowed to say this, or I found this difficult to get across, etc.

One of the interviewees, a SEND representative, recalled that it is difficult to see participants faces on the small phone screen. Further, they noted that in an online hearing the appellant often didn't know who everyone was as no job title was next to their name on the screen. In an in-person hearing, you know who everyone is due to their location in the hearing room e.g., the panel would sit together.

The data illustrates lived experiences of professionals in online hearings. These experiences differ according to the confidence (and training) the professional has with the system they operate and use as a medium through which to lead their hearing and convey their outcomes. As to be expected, some professionals are more comfortable with the use of technology than others. Those who have encountered challenges during their hearings will have developed a method on how to address these through which they have developed their attitudes and expectations of technology. The data shows that professionals have different sensitivities towards the other participants in the online hearing. Some are aware that there are differences in access and ease of use, others assume that everyone has the same access and capabilities, based on themselves.

*b. **Tribunal user perspective***

When asked about how content users were with the communication with the Tribunals, some responses were: '*the tribunal clerks were very responsive and helped me with queries, another person recalled sometimes certain issues are time critical someone to directly speak to would have been better suited.*' Further, another person said that '*given the challenges at home, I am often not able to answer a call, or I miss it. Email only is ideal, plus there is an audit trail.*' Another user stated that '*Communication works well in terms of response content, but timescales are a real problem. Phone calls are quicker, but the person answering never has a direct answer. Either they need to go away and check, or they just ask you to keep waiting another few days/weeks.*' Others stated in relation to the process, that *'I had time to understand the process, but it is not user friendly. Instructions are not that clear I don't think. It isn't accessible. For instance, you might struggle if English was your second language.*'

Finally, some respondents said they were terrified of the online hearing. *'We were up against the LA [local authority] by ourselves with our expert witnesses we paid for. These were very basic but fundamental issues about identifying our son's needs and how they should be met.'* Clearly, technology creates added obstacles for some users. A further example, as a tribunal user stated, is the layout of the online hearing: '*Others appeared very small on the screen, I could not see expressions which is a vital part of communication. LA [local authority] people joined on phone, no video, hiding.*' This situation creates an imbalance in communication and makes it impossible to read facial expressions and non-verbal cues. As a property chamber case handler told us '*there were less benefits to the Tribunal panel, as panel members always benefit from seeing the Appellants in person.*'

It is apparent from our data that technology can be an obstacle for those who have a bad internet connection and even *'highly problematic when you've got somebody who's, for instance, profoundly deaf. And you then need a British Sign Language interpreter. Now that throws up a whole new ecosystem of problems,'* a social housing lawyer told us. *'We continue to see a divide between those who are able and those who are less able and disadvantaged to access the online environment.'* An interviewee [housing lawyer] commented that there is an extent to which all progress leaves some trail of devastation, but surely, we must be minimising that, surely that's the aim. '*I'm quite struck by those two paradigms; it is inevitable that court reform and the digital revolution will go hand in hand. But they don't have to, there's no compulsion to shut down courts through digital working.*' This suggests that it is important for people to have the choice to opt for an in-person hearing.

5. The benefits of face-to-face hearings

Our data showed mixed responses to the question between the benefits and disadvantages of face-to-face hearings. Some think that there is no difference between online and face-to-face hearings and others suggest that it depends on the type of problem. It also depends on the person bringing the claim and their digital and legal capabilities. As mentioned above, there is a strong narrative that emerges from the data about nuanced emotional responses, as recalled by interviewees, as a result of online hearings. This will inform perceptions about the online hearing and be a part of forming peoples' digital legal consciousness[48] (more on this in the conclusion).

a. ***Professional perspective***

As seen in the first theme, the judges that we interviewed found comfort and benefits in conducting hearings from home. For example, a SEND tribunal judge has strong views on returning to face-to-face hearings:

It's crap to be quite honest, to say that we work better in a room than on here [online]. We don't, we work better on here [online]. Why throw away all of the progress some chambers have made?' In sum, 'we are judges, we are purely here to get a child with special educational needs into the correct school. We don't need to be in a court.

[48] Creutzfeldt, N (2021) toward a digital legal consciousness? Vol. 12 No. 3 (2021): EJLT available at: https://ejlt.org/index.php/ejlt/article/view/816

There might be a future of hybrid hearings as well as the claimant choosing what type of hearing they would prefer. A housing case worker stated, when asked about online vs face-to-face hearings, that

The tribunal is looking at this, because we've realised it does work, and some people, bringing cases, they probably feel you haven't got the travel, have you? You can do it in the comfort of your own home. You haven't got to go into a tribunal building, etc., so the tribunal is looking at certain cases, I think the rent payment orders are a good example that they could easily be done remotely. I think it's going to be looked at what the parties want, and then the type of cases as well, ones that do fit well with remote and then ones that we want to do in person.

A judge stated that it is most important that the service is consistent, online or in person. They felt strongly that there need not to be a difference between online and in-person hearings.

Just from my experience of remote and face-to-face, I personally don't think it does differ. People still get the same opportunities. It's the same format. It's about the individuals on the panel to make sure that everybody's engaging with it and understanding and feeling that they're getting the opportunity to put their case forward. I think that applies whether it's remote or face-to-face.

However, when thinking about what the pandemic did to some people's confidence, it might be easier for them to join a hearing online, although, as the lawyer states below, people usually have a complex set of issues that are more likely to be teased out in a face-to-face encounter.

A lawyer at a law centre told us that they found a lot of people have become more isolated and lost social confidence they might have had. They went on to say that this is the reason they like to see people face-to-face to get a better sense of the problems and issues they face. This allows them to deal with the case more holistically and see how issues are connected. Advice providers and tribunals typically have translators and other support to help those people that need assistance with language. As another interviewer points out, if there is a person who doesn't speak English …

… you are then dependent on the tribunal to engage an independent interpreter of the particular language. That doesn't always flow, it really doesn't flow. And if the interpreter can't access the video hearing properly and then they're on telephone, it's a nightmare. Honestly, it really is difficult. So again, those types of viewings would be better listed face to face. The tribunals can be really off-putting and create a handicap to access justice.

These were a few examples of professionals' views on the benefits and drawbacks of face-to-face hearings. There are, of course, a myriad of other reasons for and against online and face-to-face hearings, a few of which we will touch upon in the remainder of the book. Now we turn to some user perspectives.

b. ***Tribunal user perspective***

One of our interviewees reported her experience with the SEND tribunal during lockdown. She has four children (one of whom has tragically passed), two of whom are currently on EHC plans and one who is being assessed.

I say half because one is in the system at the moment, and 2 have got EHC plans and during lockdown, obviously we were in lockdown, all the normal activities that my children needed to function quote on quote normally were stopped. So, their routines were totally changed, so I needed support to direct them, how to deal with their anxiety, how to deal with them and it's actually during lockdown that my youngest daughter, her mental health deteriorated because of the lack of consistency, routine, structure. I needed help from the supposed organisations that are supposed to help families like mine.

This interviewee is aware of help that is out there but not sure where to find it. She has the knowledge of the processes to help her children get EHC plans and has a clear sense that the state or organisations are there to support her. The challenge is now to do this during the pandemic for her youngest child. She reflected upon how things were before the pandemic, and the benefit of a face-to-face hearing.

4.3. Experiences of the Ombuds process during the pandemic

The pandemic had the same effect on Ombuds as it had on other institutions, the majority had to close their buildings, had to provide technology to staff, and set up the case management system remotely to access from home. The Housing Ombudsman, however, was the exception and continued to handle complaints through the pandemic from the first day of lockdown. One difference between the Tribunals and the Ombuds is that the Ombuds process is typically done online (through online portals, emails and in some cases over the phone, but very rarely in person). Therefore, we have not seen such a transformation in online hearings as for the Tribunals, however, the pandemic meant a delay to business as usual also for the Ombuds. Backlogs have been created due to services closing and LA not accepting complaints for a while during the pandemic, for example. We provide excerpts from our interviews with the Housing Ombudsman, the LGSCO, and the PHSO.

The Housing Ombudsman

The Housing Ombudsman is publicly appointed. The scheme was created by the Housing Act 1996. Richard Blakeway, the Housing Ombudsman, told us about many changes that his organisation has been going through since his appointment as the Ombudsman. The Grenfell tragedy was the main catalyst for change. Some of these changes, in response to an increasing number of complaints, are looking at systemic issues and powers the Housing Ombudsman has.

The Housing Ombudsman handled the lockdown seamlessly, continuing to operate during the pandemic. Their phone lines opened from 9am on the first day of lockdown and remained open for the duration of the pandemic so complaints could still be investigated. The office itself was closed for over half the year but software had already been created that could be used by staff from home. Complainants were encouraged not to complain via the post (although the post was collected by a member of staff). The service saw an initial reduction in complaints, but this increased by the end of the financial year. There was a dramatic increase in housing complaints, but this was seen as being partly due to the backlog in repairs over the pandemic, but the Housing Ombudsman stated that this is also due to their awareness raising campaigns and press coverage.

Probably one of the most important changes we did was around compliance. So, unlike some Ombudsman schemes, we make orders, and those orders must be complied with, otherwise they're enforceable through the courts.

We tried to provide some learning in relation to COVID. We published one of our insight reports dedicated to COVID related complaints. What we tried to do internally was, we tried to record COVID related complaints, but you have COVID related complaints which kind of just happened during that time, and the longer it went on, obviously the more everything could eventually be defined as COVID-related because of the time scale.

The latest Insight report published by the Housing Ombudsman Service[49] looks at complaints data and case studies from April to June 2020 and shows the impact of the Covid-19 lockdown on the volume and nature of complaints they received.

Four key highlights were noted in the report:

[49] Housing Ombudsman Service (2020). Third Insight report highlights Covid-19 impact on complaints. Accessed January 2023. Available at: https://www.housing-ombudsman.org.uk/2020/07/30/third-insight-report-highlights-covid-19-impact-on-complaints/

- The overall number of enquiries and complaints received between April and June at 2,212 was a significant reduction of 41% when compared to the same period in 2019.
- However, call volumes in June were 10% higher compared to 2019 and 33% above 2018 levels.
- A greater proportion of enquirers were signposted to Shelter and Citizens' Advice than usual with call handlers reporting more calls about rent arrears, universal credit and private renting.
- Complaints about tenant behaviour over this period increased to 21% of the total, compared to 12% in 2019, while repairs complaints, although still the largest category, reduced from 32% in 2019 to 27% in 2020.

The Local Government and Social Care Ombudsman (LGSCO)

The LGSCO (Mick King and Sharon Campbell) told us about their experience of running the service during the pandemic. They moved seamlessly to home-based working and had flexible arrangements for the staff and IT in place. Like tribunal judges and staff, they saved a lot of money by not having to travel to work. Before the pandemic, the LGSCO had a telephone-based service which operated out of Coventry. They have been growing an online accessibility service and deal with 25% of complaints online. They also moved from paper-based to telephone service and grew the digital pathway in the background.

The number of people that approach the LGSCO online has increased. However, it is not clear whether this is due to COVID or related to a general trend. In 2020, at the start of the pandemic, the LGSCO closed its service for new complaints for 3 months, to enable the councils and care providers to focus on their front-line delivery. As a result, lots of people asked why they wouldn't take on complaints – there was a large petition from the SEN community to open the service. The services reopened in June 2020. When they opened, there was a tidal wave of complaints and a backlog to get through. The queues and backlogs were numbers they were uncomfortable with. The council could not respond within timescales given.

In a recent report on *complaints during covid*[50] the LGSCO looked at 500 cases. The Ombudsman said in the report that

[50] LGSCO (2022). Accessed January 2023. Available at: https://www.lgo.org.uk/information-centre/news/2022/feb/ombudsman-s-covid-report-highlights-how-councils-and-care-providers-coped

we readily acknowledge that we only ever see part of the picture. People only come to us when they believe something is wrong, and possibly during the pandemic the desire to pursue complaints linked to COVID-19 was tempered by reduced expectations.

The report included principles of good administrative practice for authorities during the pandemic. These all relate to good communication and expectation management. For example, to '*inform* – being realistic with complainants about the timescale for a response to their complaint. Let them know if there is going to be a further delay; to *consider* – try to avoid blanket delays in dealing with all complaints. Consider each complaint on its merits. If you need to prioritise complaint responses, consider the impact; to *explain* – delays and deviations from processes are understandable at this time. Make sure you can explain the reason for any delay or deviation from a process to the complainant and you have documented your reasons; and to plan a return to normal in complaint handling, making sure the crisis does not turn into longer term erosion of the organisation's capacity to listen to concerns.'

The LGSCO noted that there was no mention of them and their role in the recent government SEND green paper[51] which concerned him. This is an example of the disconnect in the system and the lack of understanding and appreciation of the complaints process and who the relevant institutions are for people to turn to.

The Parliamentary and Health Service Ombudsman (PHSO)

Rob Behrens, the PHSO, told us about his service and the changes that occurred because of the pandemic. The PHSO is the last resort for complainants who are dissatisfied with decisions about parliamentary responsibilities which have not been devolved, and issues in the National Health Service which haven't been resolved to the satisfaction of the complainant. And there is only judicial review available to complainants after the end of the process.

We've had to radically adapt our way of working in order to deliver a standard of service which we think is useful. There have been important changes as a result of the pandemic which have been forced upon us, so that first of all we took a difficult decision to suspend case handling in NHS cases for a 3 month period at the beginning of the pandemic, because our contact told us that the hospital trust was simply not in the position to handle complaints, and many complaints teams had been disbanded in order to create capacity to look at bereavement, and to do other front line activity. That was a big decision for us, and several Ombudsmen services

[51] Department for Education (2022). SEND review: right support, right place, right time. Accessed January 2023). Available at: https://consult.education.gov.uk/send-review-division/send-review-2022/

didn't do that, they kept themselves open. But because of the preponderance of cases from the NHS, we felt we had no choice but to do that.

The PHSO did not stop their parliamentary cases and they kept their telephone lines open. However, the formal investigations of newer cases stopped. There remains a backlog of cases.

The PHSO created specialist COVID teams to deal with covid related issues. For example, issues of do-not-resuscitate. The PHSO has gradually been creating specialist teams dealing with continuing healthcare, recreating specialist teams dealing with parliamentary issues, a team specially devoted to women's state pensions, and the Covid teams came naturally out of that. In May 2021 the PHSO published 'The Art of the Ombudsman'[52], which is a study of 53 national and subnational schemes looking at their experiences of handling the pandemic and how they've had to change their leadership.

In sum, the Ombuds accounts show the impact the pandemic has had on their everyday business and how they dealt with it. They all seem to have managed well to transfer to working from home as they could tap into their existing online complaint management systems from a home office. They experienced delays in cases being brought to them and delays due to bodies complained about being shut and not being able to process complaints. This created a backlog that is still being dealt with.

4.4. Conclusions and recommendations

Our interview data has provided us with a window into the complex discussion about online and offline hearings. We chose to present the themes coming out of our professional data with responses from the tribunal user data. The five themes the professional dataset provided were (1) online hearings and working from home; (2) ability for young people to join (SEND); (3) ability for people to join online hearings; (4) [problems with] technology and communication; and (5) benefits of face-to-face hearings. These themes came out of our professional dataset (surveys and interviews). After showing what these meant for the judges, case workers and advisers we added some of our user data in response to the themes. This exposed some divergences in reported experiences as well as similarities.

The main similarity was that those who held the online hearings found it much more convenient and time-saving to conduct them from home. Further, users (especially for SEND

[52] PHSO (2022). The art of the Ombudsman: leadership through international crisis. Accessed January 2023. Available at: https://www.ombudsman.org.uk/publications/art-ombudsman-leadership-through-international-crisis

cases), found it helpful not to have to travel to a courtroom. Also, the fact that the young person who they were discussing was able to be part of the hearing, for a short period of time, provided a face to the story. Several judges, including the deputy-chamber president, commented how useful that experience proved for them as typically in a face-to-face hearing the young person would not be present.

There was a stark difference in abilities and capabilities when it came to the technical side of the hearings. The people we spoke to reported differing experiences with the online hearing. Interestingly, those users that we would perceive as digitally and legally savvy experienced various issues when facing the online hearing. We will discuss this some more in part eight.

In sum, our data showed that it is important to understand people's varying levels of legal and digital capabilities. Although this might not be possible all the time, there are some tools that those who conduct interactions online can be alert to. Also, it is obvious that access to the services we examined is not the same for everyone, and the systems need to adjust to reflect the needs of the population. In other words, most people can access the online system; resources and time is needed for those who cannot and need face-to-face contact and support.

***Recommendations*:**

1. Ministry of Justice (MOJ) and HM Courts and Tribunal Service (HMCTS) should ensure that GOV.UK pages on access to justice topics include signposts to online organisations (such as IPSEA for SEND, Shelter for housing and *Advicenow* for courts and tribunals generally) that can help those who are digitally capable and those supporting users who are not digitally capable. Signposting to these websites would help to manage expectations of users: explaining stages of the process, timelines, and tasks to do throughout the process.
2. Digital Assistance contracts, such as *We Are Digital*, should be linked to more advice sector organisations, who help provide digital and legal support for those who need it. We welcome the partnerships that are already in place, but this should be expanded to have a wider reach.
3. Continuing monitoring and evaluation of online court and tribunal systems to identify pain points and to identify improvement measures is important; sharing of data in the wider justice sphere and collaboration with other organizations will help to develop better strategies.

4. As HMCTS have opted for a multi-channel approach to online reform, there should be assessment of the feasibility of people's ability to use digital bundles and provision of paper bundles in appropriate cases.

5. Pathways to justice

In our first report titled 'The help-seeker journey: pathways to justice for housing and special educational needs in the Administrative Justice System (AJS)'[53] we mapped help-seekers' journeys - inspired by the Australian 'Justice Connect' map[54]- in the areas of housing and SEND. The process of putting this guide together involved assembling information from various sources, including documents (previous research, statistics and reports from government, representative organisations, charities, relevant tribunals, local authorities) and expert opinions, classifying and sorting the data into something that can be stored and used as a detailed guide accompanying the visualisation process (map and animation). Any gaps in the data/ information were filled by contacting relevant stakeholders about types of problems that the SEND tribunal, the Property Chamber, the Housing Ombudsman and the LGSCO encompass.

This mapping exercise therefore presents the 'ideal case' of pathways for people seeking help, broken down into distinct steps. In reality, the process of help-seeking is not straightforward: steps do not always happen in a clear sequence as we portray them in our map; some people do not pursue a problem; others give up, some jump steps, etc. What the map provides, however, is a starting point for us to explore what is *supposed to happen* when a person needs help with a problem relating to housing or SEND. We will use the map as a point of departure for our empirical inquiry into how the system works in reality and how it is experienced by its users and those that administer it. In sum, this first report was a contextual report that went on to frame the rest of the project. The accompanying map, booklets and animations can serve as a guide for users of the system.[55]

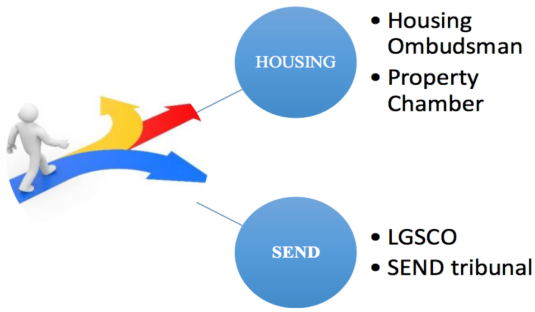
Below we provide an overview of the help-seeker journey in theory (Section 5.1). The next step of our project reveals the help-seekers journey in reality; which entailed surveying users

[53] The help-seeker journey: pathways to justice for 'housing' and 'special educational needs' in the Administrative Justice System (AJS). Accessed December 2022. Available at https://www.ucl.ac.uk/jill-dando-institute/sites/jill_dando_institute/files/final_report_1.pdf
[54] Justice Connect' map. Accessed December 2022. Available at https://joiningupjustice.org.au/
[55] They can be found here: https://www.ucl.ac.uk/jill-dando-institute/research/centre-global-city-policing/cgcp-research/cgcp-delivering-administrative-justice

and providers of the four ombuds/ tribunals; and interviewing judges, ombuds, user groups, including marginalised individuals (see Section 5.2).

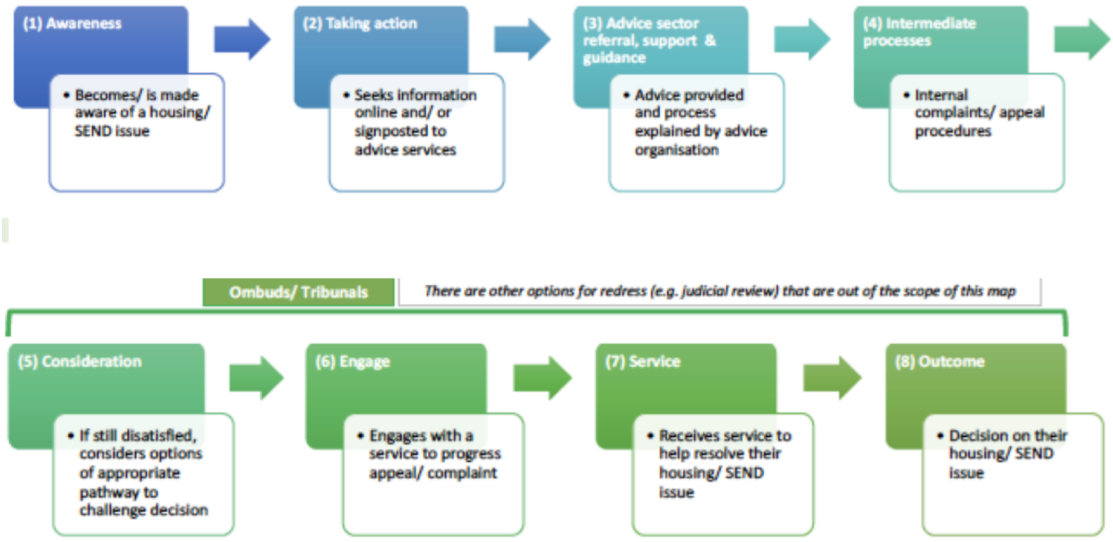
5.1. Map & the help-seekers journey in theory

For **housing** we have focused on the pathways to redress through the advice sector, Housing Ombudsman and the Property Chamber, while for **SEND** we have focused on the pathways to redress through the advice sector, LGSCO and the SEND Tribunal. We do, however, note that there are other redress mechanisms that the help-seeker can pursue, such as mediation or via other bodies such as the courts.



The full version of our map can be found on our website[56]. The map illustrates an 8-step help-seeker journey consisting of: (1) Awareness – (2) Taking action – (3) Advice sector referral, support & guidance – (4) Intermediate processes – (5) Consideration – (6) Engage – (7) Service – (8) Outcome. There we also include hyperlinks to advice organisations.

[56] https://www.ucl.ac.uk/jill-dando-institute/research/centre-global-city-policing/cgcp-research/cgcp-delivering-administrative-justice



Each of these eight stages is divided into aims, challenges, and actions. The aims set out the purpose or intention of the help-seeker (in our example the individual that seeks access to the described pathways); the challenges highlight the difficulties and/ or obstacles that might come in the way of achieving that aim; and the actions outline what the help-seeker needs to do to achieve that aim (details in Appendix 2).

This map (i.e. the help-seekers journey in theory) has shown the *ideal-case* of how advice and justice can be accessed. It is not straightforward; most people do not know how to access these pathways which leaves the system [more] accessible for those who are savvy and can navigate it. It is important to look at the role of community support, the role of the advice sector, as well as overlaps in Ombuds / Tribunals because it is often unclear which service a help-seeker needs to access and how the two can work together to sign-post/cross refer to each other. The complex and siloed system leaves the help-seeker in a vulnerable position if they are not able to navigate it. This was one of the aims for the next part of our research, to explore what the overlaps between Ombuds and Tribunals are in practice and what the benefits / drawbacks (time spent, money invested, outcome received) are for each pathway. Finally, what about those people who do not access these pathways at all? Our project sought to explore, in its next phase, how those who are vulnerable might access these pathways, as well as how those people who go through the process experience it. We present our findings in section 5.2 below.

5.2. The help- seekers journey in reality

Although our representation of the help-seeker journey above is linear, it is not as straightforward in reality. The help-seeker may navigate the process differently, missing out or repeating stages, and often multiple things happen alongside each other. The help-seeker might abandon the journey and/ or get stuck along the way. The help-seeker might engage with the process actively or passively, and the help-seeker's circumstances can affect their decision making. Below we include two exemplary case studies from interviewees, one for housing and one for SEND.

Housing

Our interviewees stated the importance of support from specialist charities and intermediaries in their complaint journey. In the following we share a Tenants and Residents Association Chair's journey to, and through, the Housing Ombudsman during the pandemic to illustrate the help-seeker's journey.

Step 1 (Awareness)

The Tenants and Residents Association was formed as a response to the many problems residents faced with their landlord (a housing association), problems that only became worse when COVID19 hit:

"Well, our landlord is PA Housing, a housing association…We've had a lot of problems with service delivery, with communication, with their failure to deal with issues like handling social behaviour, problems like that. So when we formed, coming up on 3 years ago, we were in a kind of crisis situation. There was just no communication, there was massive breakdown in service delivery, and, you know, things were spiralling…So we were formed out of a lot of tensions and problems…And then when the epidemic kicked in they shut everything down, so that's really the background and where we're at."

The interviewee described his building's housing security problem as continuous, commencing a few years ago, and although dealt with intermittently over time, still persists currently:

"Well, failures of contractors, basically. We've had a contract that, up until now, it's just about to now, has been 50% security and 50% cleaning, and the company has never ever provided security, we just don't have security. And a couple of years ago we had weed dealers in the stairwells, and a couple of residents were attacked, and 1 boy was actually stabbed on the edge of the estate and ran around the whole of the estate trailing with, like, gallons of blood. Luckily, he survived. But at that point we kind of, like, went mad, and insisted that there

and then they bring in security, which they brought it in for a period of time, for a few months we had security, but then it was withdrawn again."

Step 2 (Taking action)

Initially the residents took the problem into their own hands by collectively participating in a service charge strike against the organisation involved (PA Housing):

"We actually had a service charge strike a few months ago as a protest for a few weeks, and I think there were 15 residents who got involved. Lease holders were scared, the mortgage companies, and other people are like, you know, 'We won't win, what's the point?' But I thought 15, you know, out of 116 was quite a good protest."

Step 3 (Advice sector referral, support & guidance)

The residents then contacted the Council about their problems, as well as SHAC (Social Housing Action Campaign) to seek support and guidance:

"We tried to keep the council involved, especially around issues like anti-social behaviour, because they've got a panel that sits across the borough for all landlords… So we try to talk to whoever we can, we're involved, we're affiliated to SHAC as well, you know SHAC? Social Housing Action Campaign. They've got, kind of, links into, you know, government departments and stuff, they negotiate with government departments…So they kind of keep us updated, we feed them back what's going on here, that kind of stuff."

The residents also often contact their local housing advice service:

"There's a local housing advice service who we went to when we first formed, and they recommended a solicitor to call…They're involved in the government's advisory process around the last housing bill. It's this process where you can make a claim against your landlord on the basis that you've got internal and external repairs that have not been carried out. Housing Disrepair Protocol, and you can do that as a no win, no fee, so that's why we were able to do it, because none of us have got any money. And although the landlord agreed to carry out an inspection of all properties and carry out the necessary repairs they did the inspection and then didn't carry out the repairs, so it was partially successful."

Step 4 (Intermediate Processes)

The residents complained to the organisation involved prior to reaching this stage of the process. This case therefore illustrates that the help-seeker may navigate the process differently and that the help-seeker might engage with the process actively or passively, and the help-seeker's circumstances can affect their decision making. In this case, the help-seekers

have joined forces (forming the Tenants and Residents Association), allowing them to engage with the process more actively than they would if they were acting alone.

Step 5 (Consideration)

Having failed to resolve their problems via the above routes, the residents escalated their complaint to the Ombudsman:

"and in the end we gave up…we've taken it to the ombudsman and we're still waiting for a reply from the ombudsman..."

Steps 6 and 7 (Engage and Service)

Reflecting on the complaints process undertaken by the Residents and Tenants Association (group of residents), the interviewee explained:

"I mean, one of the problems with the ombudsman is you can only complain as an individual, so I can't complain as chair of my TA, I have to complain as me, my name. And you have to have gone through your landlord's own process. They've got a 2 stage complaints process, very often the landlord will say, 'Well, I'm just not even taking your complaint, you're just wrong, we're not going to deal with it.' Or they formally state, 'We're not going to take it to the second stage,' things like that. And so formerly, officially, you're not even allowed to go to the ombudsman then but, you know, if you then complain to the ombudsman, say, 'Look, they're refusing to comply with their own procedure,' sometimes, not every time, but sometimes the ombudsman will order them to comply with their own procedure. So, then you can start again."

It is clear that the process is lengthy and frustrating for complainants:

"But it's a very frustrating process, it's very bureaucratic, it's very distant, you know… So they're not very hands on, they just rely on what you send them and what the landlord sends them. They don't give you any feedback, they don't come back to you and ask you, 'Can you explain this, and explain that?' You know? 'It looks like you're saying this but you haven't got evidence for that,' you know? There's no, like, interrogative process, which I feel there should be. You know, I'm just an individual, I'm not a housing professional. If they want to know something, you know, they should be asking me, surely."

The interviewee also expressed his frustration towards the time the Ombudsman takes to deal with complaints:

"Well, the ombudsman service is terrible anyway. It takes months and months before they even acknowledge you, and then, usually, they don't, you know-, it then takes several months, again, after they've acknowledged and they're going to start processing the complaint. It used to be you had to wait 8 weeks, I think they recently changed

that, but it was always a lot longer than 8 weeks. It can be 6-9 months before you hear back… So it's a long process, far too long, far too distant, those are the biggest problems with it."

The interviewee also felt as if the service didn't take the time to engage with him properly:

"I think, a couple of times, they do call you and say, 'Oh, I've just been assigned to this,' etc, but it's no more than that, like, an interaction, and then you don't get anything else after that."

He had a clear idea of what would make engaging with the Ombudsman a better experience:

"I've got disabilities and stuff and I get fatigued, and, you know, going through reams and reams of documents, sometimes I think I'm telling them too much, sometimes I think I'm not telling them enough. If they could say to me, you know, they're the professionals, 'Look, you've said this point, you're not explaining it, you've not given evidence for it,' or whatever. If they came back to me and had a discussion about it, you know, I'd be much more clear about what my role is, what I'm supposed to do, rather than just an angry rant. Do you know what I mean? If you could see them, you know, if we could have a meeting like this a few times during the process, and they were saying, 'Look, we've got to this point, what are you actually saying there?' That would be a much easier process, you know? And it would feel more as though it was to do with me, you know?"

Step 8 (Outcome)

The interviewee was clear about the limitations associated with what a help-seeker can achieve by going to the Ombudsman for support with their housing issue:

"Well, it's not really about trust, it's about recognising their limitations, you know? I mean, even when you win…The landlord doesn't comply, you tell them that they haven't complied, and you don't hear anything, you know? The frustration is recognising the ombudsman is distant, is not engaged, and has limited hours even when they are, you know? To me that's just not, you know, appropriate, they should be seriously condemning the ombudsman, forcing them to face action, overseeing that action, and giving serious compensation, and looking to see that they make the changes that they are telling them they should do."

Therefore, it appears from the interviewee's account that the Ombudsman does not check to confirm the outcome of the complainant's case, i.e. if what they have ordered or recommended is being implemented.

The interviewee also explained that a lot of residents are unwilling to complain to the Ombudsman due to the practicalities involved in the process that are difficult to navigate:

"It's my thing, I tell everyone to complain about everything, you know, first to the landlord, and then if they don't get a response, tell them. And a lot of people are just so frustrated with the process, they don't. I mean, around the service charge strike, we've still got a couple running out of the 15 people, and I told each one of them, 'Please make a complaint.' But people kind of get despondent and, like, you know, 'What's the point, we're not going to win.' I think that's a practical thing, you know? If they were more engaged, and you could see them more clearly, what their role was, I think more people would be willing to, you know, go through the process. But when they're so distant, and it takes so long anyway, it's kind of like, you know."

However, the interviewee noted some positive changes that have happened since, including the removal of the compulsory MP step in the process:

"I mean, they've just made these changes, where you can go to them straight away. Previously, you had to go to a dedicated person, like an MP or a councillor, to get them to deal with it before their deadlines, and they've just changed that. So that might be interesting, to see if more people then go forward, because, you know, 8 weeks is quite a long time if you've got some emergency repair going on, do you know what I mean it? The landlord's just dealing with it and they're just not complying with their own complaints process, or whatever, waiting another 8 weeks, you know, is just too long. So, people might, you know, start going there quicker, hopefully."

SEND

Our interviewees stated the importance of support from specialist charities and intermediaries in their complaint journey.[57] In the following we share a mothers' journey to, and through, the SEND tribunal during the pandemic to illustrate the help-seeker's journey.

Step 1 (Awareness)

An information leaflet that was circulated at the interviewees' daughters school set off a sequence of actions that helped her reach the tribunal for support.

"Well, I stumbled upon the services during the latter of the pandemic, an email was sent round to schools advertising the OTP systems for those who weren't coping in the pandemic. School didn't share this with me, or parents, until later on. I think it came out in April, we got it in October, and I said, 'Well, obviously my daughter has personally struggled through the pandemic, and this would have been more helpful when it was first published, really.' So, once I'd made contact with the lady, they were able to help me, and advise me where I could go."

The interviewee reached out to generic help that was offered to all children in the school to support them through the pandemic. This is a sign of being able to seek advice and ask for

[57] This is an example of a toolkit for problem-solving put together by specialist charities: http://www.lukeclements.co.uk/wp-content/uploads/2016/02/Toolkit-draft-2016-04.pdf

help. This way, the mother learns more about her and her daughters' rights and can start the process to enforce them. She is legally enabled and savvy, which includes knowing where to go for help.

Step 2 (Taking action)

The interviewee went on to explain how she accessed the justice system:

"As a result of that […] we were in the process of doing EHCP for my daughter, a parental one because the school didn't agree that she needed any SEN care, but we had the support of Kaleidoscope, which is the outreach services from the hospital in the community services, and also had a booking at XXX hospital for her. We also had intervention from Drum Beats, which is an autistic society. I also tapped into the Autism Network. So, I tapped in to everybody because she was struggling really bad, and when your child has got suicidal indications, you need support, and the school wasn't giving me that support at the time… they didn't understand her autism."

It becomes evident that the interviewee has existing contacts with hospitals and charities that can support her and her daughters' specific needs. The way she describes how she 'tapped into' networks shows a confidence in reaching out and exploring different pathways to help her get the support her daughter needs.

Step 3 (Advice sector referral, support & guidance)

She went to different places for help, including OTP systems for those who weren't coping in the pandemic:

'It [the information] went to schools, all schools in Lewisham borough. I think it was in conjunction with the local authority to help children through the pandemic… It was accessible to all children. It was every single child that was struggling. It was a global thing that should have been sent out to all children, all parents I should say.'

She also approached SENDIASS:

'I went to SENDIASS, I had only found SENDIASS through the educational psychologist, I think she put me on to SENDIASS. I never knew all these services existed, when you've got a child with special needs, you don't know these services are there to support you. This is year 6 we're talking about beforehand. Who else helped me? As I said, the Educate Autism Society, we've had a lot of TAC meetings. XXX hospital has been a very good advocate, because she has been under the hospital since birth.'

She also noted that Facebook was particularly useful:

'Can I just say for the last one, as well, Facebook also. Tapping into a lot of Facebook groups.'

She is confident in sharing her story and reaching out - she uses social media and shows digital capabilities.

Step 4 (Intermediate Processes)

She did not go to mediation:

We've been to the tribunal because when you first do an EHCP, a parental one, the majority of the time it gets refused. Then they want you to go to mediation, which we didn't go to because reading from Facebook posts, and speaking to other people now, it's very unlikely that you get anything from mediation.

Step 5 (Consideration)

She was advised – by SENDIASS and by peers on Facebook - to take her appeal to the SEND tribunal.

Steps 6-9 (Engage, Service, Outcome)

The interviewee described the process to us. Critically, the pandemic created the online-only option:

'this was another nightmare because everything is done online. You have to upload all your documents, your documents aren't there, you put them in order. You turn into a professional advocate. And it's hard because SENDIASS work part-time. You have to get meetings every two weeks, or week, you also have the emotion of family, you have a family to look after when you've got all this paperwork, all this legislation you don't really understand.'

This shows that a person who is digitally savvy can still experience the process as cumbersome and carries a large responsibility for getting it all right.

The interviewee commented on SENDIASS that helped her to go through the process:

'They did, they did help me a lot, it was a lot of nights of three o'clock in the morning, four o'clock in the morning getting that paperwork together, speaking to the hospitals, continuing my day to day life with an autistic child, going to hospital appointments, looking after my eldest daughter.'

The interviewee went on to say that she spent a lot of time trying to sort out the problem before contacting the tribunal:

'Altogether it has taken me a year, probably about a year. A very long time because you have to wait, then you have to submit, then you have to wait, then you wait for them to have the results. You can't just phone up for the results the next day. It's just a waiting game.'

When asked about her trust in the tribunal, she responded:

'You know what? With the tribunal, I had a lot of trust in the tribunal. Even though you've heard a lot of horror stories, when somebody is separate from the local authorities, well, the school, if anybody was to look at XXX case, they would see that this child is suffering. It's kind of so where we put in our paper, we had to voice on paper to say a holistic approach needs to be addressed and because we said to be holistic, that's why the tribunal listened. You know? It would be interesting to see how many cases the tribunal refuses, because the threshold, as I said, is so low. [...] Yes, I mean, their report was very good. It was a very good report, but then we had reports from Drumbeat, you know, were dealing with a kid who was suicidal indications. If a tribunal had ignored that, then I would be very concerned about the system.'

She can understand her child's rights and knows how to navigate the system and who to ask for help. She was clear about where in the process the system should have worked better:

'I think that in a school, educational psychologists, councils that deal with SEN, need to be more accountable for the care of our children because parents shouldn't have to fight for primary and then they get to secondary school and secondary school thinks, 'What is going on? Are the parents alive? We never heard anything from the primary school. They never said such things.' There has to be accountability for how children are raised in our society. They are our future. In a sense that, 'Did the pandemic help?' Maybe the pandemic helped because I would never have got that leaflet. I would never have known about an educational psychologist. So, if it wasn't for that then I wouldn't know what I know now.'

It is important to note that each participant's story that was shared with us was unique. For example, another interviewee shared her 3-year long struggle to get her daughter, who is autistic and has ADHD and dyslexia, the support that she needs.

"…we won a Tribunal case against our Local Authority about her education. After three years in crisis and barely surviving in a mainstream school, we finally have a place at a specialist autism school that caters to kinds of her profile. While this is a massively positive development, I'm left feeling hollowed and emotionally and physically exhausted. Why did it have to go this far and why is there not more support for families with special needs (SEN) children? Why did we have to battle for her needs to be recognized and met every step of the way?"

This mother described her experience as a 'battle against the system'.

"Battling to get an Education and Health Care Plan (EHCP), battling to get 1:1 support in school, battling to have her school start delayed by a year as she was half the cognitive age of her peers, battling to get any kind of therapeutic support to help us get through the days. We were at breaking point and left with nowhere else to turn. The only way forward was to go to the Tribunal."

She explained that this 'battle' included privately commissioned assessments from a psychiatrist, educational psychologist, and occupational therapist, 483 pages of evidence, sleepless nights, and hours of preparation; as well as thousands of pounds in addition to the six-figure sum for years of home schooling and other support. She deemed the process almost impossible for someone less capable or educated to navigate, should someone more vulnerable have been in her position.

"I mean, it was, even for us, being fluent in English, being educated with professional backgrounds, it was bewildering, it was massively stressful. I cannot imagine someone who doesn't have a university degree, might not be fluent in English, to be able to manoeuvre the system."

5.3. The help-seekers journey in theory vs. reality: conclusions & recommendations

Our data has shown that understanding that the help-seekers journey is not as straightforward in reality: The help-seeker may navigate the process differently, missing out or repeating stages, and often multiple things happen alongside each other. The help-seeker might abandon the journey and/ or get stuck along the way. The help-seeker might engage with the process actively or passively, and the help-seeker's circumstances can affect their decision-making. Further, the role of intermediaries – third sector organisations have an important role to play in referring people to the right services and supporting them through the process.

Overall, most interviewees told us about delays to the process, eve the duration of the individual steps to resolve their problem (or even to get heard) are very long, there is a lack of guidance as to what to expect to happen when which leaves most users very upset and exhausted with the process. There is an added element of emotional stress that the process puts upon those who undergo it.

Recommendations

1. The central resource of GOV.UK with additional signposting to specialist websites and general websites as outlined above should assist better signposting by local authorities,

schools, and housing associations on where a help-seeker can get help for their problem, setting out the process of how and where to appeal and where to get assistance.

2. Ombudsman schemes and Tribunals should continue collaboration on better understanding their remits and overlaps and communicating this simply and clearly on their websites and on other relevant public resources. Further, to share best practice with other jurisdictions to ensure a joined-up administrative justice system and a stream-lined journey for help-seekers.
3. In addition to better signposting on GOV.UK local authorities should be encouraged to provide signposting to specialist and general websites that offer comprehensive, regularly updated help on where to get legal advice to help resolve the help-seeker's problem.

6. *Vulnerability*

The term 'vulnerability' is often used to understand the complex nature of different situations people find themselves in. But defining vulnerability is difficult, not least because vulnerability can stem from external influences, and it also depends on historical, cultural, social, environmental, political, and economic conditions of a given setting. While there are many working definitions, the one most referred to comes from the 1997 *Who Decides?* report[58]. In that report a *vulnerable adult* is defined as a person…

… who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation.

It is however important to define vulnerability in such a way that provides us with helpful insights into the everyday experience of being vulnerable, but also helps to build our theoretical framework around vulnerability. Specifically, that a vulnerability approach to the *legal subject* starts from the premise that the concept needs to be rethought and made more representative of the actual human experience:

It requires that we recognise the ways in which power and privilege are conferred through the operation of societal institutions, relationships and the creation of social identities, sometimes inequitably. Because law should

[58] Lord Chancellor's Department (1997), *Who Decides? Making decisions on behalf of mentally incapacitated adults* [Online]. Accessed December 2022. Available at http://webarchive.nationalarchives.gov.uk/+/http:/www.dca.gov.uk/menincap/meninfr.htm.

recognise, respond to, and, perhaps, redirect unjustified inequality, the critical issue must be whether the balance of power struck by law was warranted.[59]

McDowell[60] takes vulnerability theory and focuses on the justice space, in particular, on access to justice. She suggests that:

utilising these insights, and taking relative privilege, privacy, and autonomy into account, interventions into poor people's courts should seek not merely to provide access to existing legal systems, but also to mitigate the harm caused to low-income people using those systems, foster accountability, and develop meaningful alternatives. This requires a broad approach to providing access, including the provision of opportunities for people to develop the assets necessary for social, legal, and political resilience and change. Attention to functional as well as problematic fragmentations in the state is one way to engage this project ['Reimagining access to justice in the poor people's courts'*] and create space for justice as well as access.*

It is important to recognise situational vulnerability in this context, e.g. anyone can be vulnerable depending on the given situation.[61] This section of the report explores how the pandemic has affected access to advice and redress for marginalised groups. Already marginalised communities are likely to be affected the most by the pandemic. Yet, we know relatively little about how members of these groups are accessing the justice system, and what can be done during and after the pandemic to improve their capacity to obtain advice, support, and redress. In addressing these questions, the project builds upon, and seeks to extend, existing work about marginalised groups that are alienated by the justice system[62] and whose relationships to authority are characterised by a context of structural disempowerment.[63] Additionally, it is critical to understand people's inaction when faced with a legal problem. In addition to users' unwillingness to complain to the Ombuds or apply to the tribunal due to the complex practicalities involved in the process and the length of time it takes, people might struggle to take their complaint forward due to circumstances that deem them vulnerable such as age, physical or learning disability, physical or mental illness, low literacy,

[59] Fineman, M.A(2008; p142). The Vulnerable Subject: Anchoring Equality in the Human Condition. Yale Journal of Law & Feminism, Vol. 20, No. 1, Emory Public Law Research Paper No. 8-40, Available at SSRN: https://ssrn.com/abstract=1131407

[60] McDowell, M. G. (2018). Insurgent safety: Theorizing alternatives to state protection. *Theoretical Criminology*, *23*(1), 43 59. https://doi.org/10.1177/1362480617713984

[61] Dunn, M., Clare, I., Holland, A. (2008). To empower or to protect? Constructing the 'vulnerable adult' in English law and public policy. Legal Studies, 28 (2): 234-253.

[62] Halliday, S. and Morgan, B. (2013) 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' 66 Current Legal Problems pp. 1--32 (published online 3rd May, 2013) UNSW Law Research Paper No. 2013-85; Gill, C., & Creutzfeldt, N. (2018). The 'Ombuds Watchers': Collective Dissent and Legal Protest Among Users of Public Services Ombuds. *Social & Legal Studies*, *27*(3), 367–388. https://doi.org/10.1177/0964663917721313

[63] Kyprianides, A., Stott, C., Bradford, B. (2020). 'Playing the game': Power, authority and procedural justice in interactions between police and homeless people in London. British Journal of Criminology, 61: 670- 689.

communications difficulties, or changes in circumstances such as homelessness. Indeed, existing research based on legal needs surveys has demonstrated that those experiencing the greatest social and economic disadvantage and marginalisation are often the least likely to take any action in response to a rights-based problem[64]; in particular, those people who do nothing in response to a problem experienced, which is relatively common in both housing and SEND contexts.

Below we draw on the in-depth interviews conducted with six parents of SEND children and seven homeless people engaging with The Connection, a charity that helps people experiencing homelessness (see section 4 for a description of the interview questions).

6.1 Housing

Perhaps unsurprisingly, none of the participants recruited via 'The Connect' had contacted a tribunal or ombuds and so were not asked any additional questions regarding the processes associated with accessing, engaging with, and receiving service from, these institutions. Consequently, this section will focus on the themes that are important to them, and particularly on the importance of intermediaries and charities. In the following we present some responses from those participants that we deemed vulnerable (as outlined above) sorted into 5 categories that emerged from the interview data: (1) marginalisation and stigmatisation, (2) The Connect: referral, support & guidance, (3) taking action, (4) the impact of the pandemic, (5) (lack of) knowledge of tribunals/ ombuds.

1. **Structural disempowerment: marginalisation and stigmatisation**

All participants reported being homeless for long periods of time, living on the streets and sleeping in tents. They had each spent different amounts of time living like this. A harsh psychological and material reality was evidenced by participants' stories about their housing issues.

[64] Pleasence, P., Balmer, N., Sandefur, R. (2013). Paths to justice: A past, present and future roadmap. Accessed December 2022. Available at https://www.nuffieldfoundation.org/sites/default/files/files/PTJ%20Roadmap%20NUFFIELD%20Published.pdf; Henn, H (1999) Pathways to Justice, Hart; Mulqueen, T et al (2022) https://www.advicenow.org.uk/sites/default/files/Local%20Legal%20Need%20Project%20-%20Briefing%20November%202022%20%281%29%20%282%29.pdf

For example, one participant has been on and off homeless for about 8 or 9 years and in and out of hostels during this time. He experienced London's free hostels for the homeless as instigators for drugs and drink and so he left and had nowhere to go.

The hostel life is pretty bad, drugs and drink. I don't want any of that anymore so they put me in a place where there's going to be drinkers you're going to follow. You're just going to follow it because it happens all of the time. You think it won't happen to you but your mate next door gets a bit of money and then it all happens again. So I walked out…I had to go.

And another respondent is currently living in a tent following the damages in her flat that forced her to leave.

My flat everything broke in it basically. The shower was leaking, the toilet pipe broke off, the floor was sinking in, the kitchen sink was broken, the lights were broken, the electrics were broken. Basically, it got condemned and I couldn't get another flat. So, I moved here. Just living in a tent. I've lost a lot of my stuff as well. Just waiting to get help at the moment.

Moreover, this group of participants appeared to struggle with physical and mental health conditions. For example, one of the researchers handed an interviewee the participant information sheet to read; the participant appeared embarrassed and quickly put it away without attempting to read it. This relates to the wider issue of literacy in accessing justice for this group. As we will come to see below, this is illustrative of the ways in which this vulnerable group is treated, people just do not 'clock' things that are significant to this group (e.g. that they might not be able to read).

2. **The Connect: referral, support & guidance**

Their way of 'taking action' was coming for help to The Connect, to seek support in resolving their housing issues. Participants found out about The Connect via word of mouth (friends mostly). All participants spoke very positively about The Connect. They explained that The Connect offers them food, temporary shelter, and a shower. The Connect also advises their clients to seek help from the Council to get temporary accommodation. One interviewee said:

This place makes sense. I like this place. They've saved me a few times when I really did need them. These people opened the door, fed me, shower. I've got a lot of good things to say about Connections, they're good people… they are helpful. They put me in touch with St Mungo's and the outreach and they keep ringing us. We've been in touch with Camden council and said we're looking for temporary accommodation.

3. **'Taking action'**

3/7 participants had engaged with the council, following advice from The Connect key workers. They described their experiences to us.

One man tried to get support from the Council, but they were not helpful. He felt discriminated against due to his housing status, age and socio-economic status. This man also struggles with literacy skills so engaging with the council was difficult:

The council just gave me a couple of letters and said, 'That might help you. Can you read? I said, 'Not really'. At the time I couldn't read that well so I didn't understand the sheets of paper she was giving me anyway… So I've been down that route and I've been in and out of the council places, numerous times. It just doesn't make sense to sit there. It's all expensive, no one can afford it. Or they tell you to 'Take that to the job centre' and because of your age, you are a lot younger than what you are now, they go, 'Oh priority, priority.' 'How old are you?' You tell them you're 17, they love you. 'I'll make a couple of phone calls.'

A female interviewee was advised to seek help from the Council via St Mungos outreach to get temporary accommodation for herself and her partner. Although she explained that she feels that things are moving and that she is being informed about what is happening St Mungos/ the Council have not told her how long the process will take to get her the support she needs. Another male client, who is currently residing illegally in the UK without a visa was put in touch with immigration services by The Connect to get him the support that he needs. Again, he was unsure about how long the process will take.

4. **Impact of the pandemic**

Participants described how the pandemic negatively impacted on their housing issues and mental health:

Mental health as well. It puts you in a place where you don't know where to go if this place is shut and they're scared to touch you or scared to come within this thing. It was worse for us because we're stuck out here and then people don't want to be near people outside. I had all of my vaccinations, kept my little thing 'I've had mine mate, don't muck about'.

Although the pandemic resulted in homeless people being housed in temporary accommodation, one man explained that the pandemic worsened his housing issues as it disrupted access to homeless services:

Pandemic, they were offering people in hostels temporary Travelodge, and other ones-, you know them yourself Miss-, and there were other places. That's all well and good sticking someone there temporarily but they're going to think, 'I can get quite used to this,' then all of a sudden you're going to chuck them back outside. It was hard. The government, whoever it was, was closing the toilets and that… I'm not going to lie to you, the only thing you weren't getting is your full breakfast on the table because you're all close to each other so they put a stop to that too.

5. **(lack of) Knowledge of Tribunal/ Ombudsman**

Most participants had not even heard about a tribunal or ombudsman, and where participants had heard of a tribunal or ombudsman, they struggled to understand what they do:

I've heard it yes but understanding what they do there is new to me. I wouldn't know where to start. Tribunal sounds like a council's worst nightmare. That's what it sounds like to me. Is that what it is? I've got a pain in my chest just saying that.

Reflections from the Connect staff

Indeed, according to the Connect Resource Manager and the key worker we spoke with, seeking temporary accommodation is the most common issue they deal with in relation to housing, closely followed by immigration and benefits (needing help to claim Universal Credit), and clients are advised to engage with The Department for Work and Pensions (DWP)/ the council, Citizens Advice, legal advice services or the police to resolve these housing issues. The Resource Manager and the key worker explained the process clients at The Connect undergo to engage with the council to help them resolve their housing issues. The Resource Manager reported that this route through the council for their clients to find temporary accommodation proves difficult for them for the various reasons we outline below. A DWP worker therefore attends The Connect once a week to support clients with aspects of the process such as the paperwork involved.

The Resource Manager and the key worker explained why support routes are inaccessible to their clients, highlighting certain obstacles/ challenges their clients face when trying to secure temporary accommodation. As noted by clients themselves, obstacles/ challenges included marginalisation/ stigmatisation including mental/physical health impairments and wider issues amongst this group such as literacy. However, the biggest issues relate to council prioritisation processes, clients not having a local connection to Westminster, and the limited housing options available.

Clients often do not have a local connection to Westminster which complicates this process:

So, the main issue that we have is a lot of clients don't have a local connection to Westminster or to any borough pretty much a lot of the time. So, a local connection is where you've been living out of 3 of the last 5 years …where you have a local connection it means there will be services who you'll be eligible to be helped by. So, finding out where someone's local connection is vital if they'll be eligible for certain types of support. Often, people may have a local connection somewhere else but they're inclined to go or access things in various areas, for reasons, and then it narrows down the options for them. So, if my local connection is Islington but I'm refusing to go there, then I'm left with private rented accommodation. You can't just go to any council you want and be assessed for housing, because you have to have a local connection to the borough. So, you have people, say, from Liverpool come to London, 'I want to work and live here,' and can't approach any council in London because your local connection is Liverpool. So, your options are pretty much limited. (key worker)

Moreover, the council prioritises certain clients over others:

Everybody has different circumstances, the council obviously put some people on priorities and the other ones put them at the bottom of the list, I guess. That depends on what the situation really is, we can do nothing about that and their priorities…I guess the problems could be if they're entitled to get help or not, some people that are here are especially vulnerable but sometimes they cannot get help. I mean we have certain resources and we utilise them in the best possible way really, but then after that it's about eligibility from the rules, the government I guess, the council…you can do up to a certain point, help up to a certain point, then it's not up to us anymore. (Resource Manager)

The key worker explained that being homeless alone is not categorised as a complex need. Instead, having psychological, mental, or physical health problems on top of experiencing homelessness would deem someone 'vulnerable enough' to be prioritised.

Those with less complex needs, not prioritised by the council, are left with few and expensive housing options, due to the lack of available housing:

But then the issue with that also is if you don't have any real complex needs you may not be deemed as a priority by the council to be placed into immediate accommodation, and then we have to then start looking at the private rented route as well, because there is just a lack of housing in general. (key worker)

Landlords also frequently refuse tenants that are on Universal Credit and/ or housing benefits, further toughening the process. Moreover, in order to be able to afford private rented accommodation, then, clients usually have to go through a process of securing employment in the first instance and sleeping rough until they receive their first pay check:

Yes, the lack of accommodation in general, finding employment and sleeping rough whilst trying to work, finding suitable accommodation for a decent price. Private rented accommodation is often very expensive, as well, so just the cost of living… Yes, because it's inner London as well, primarily for finding people who are working a minimum wage job, and you're in zones 1 to 4, privately rented, it is just very expensive, and it's very hard for them. So, finding suitable accommodation, being able to travel, being able to sustain themselves, is very difficult for people to do. (key worker)

It was clear what would help their clients access the system: more available housing. Both the key worker and the Resource Manager reported that affordable accommodation, including hubs and shelters, would assist vulnerable people out on the street to move into accommodation willingly.

The Resource Manager and the key worker also reflected on the impact of the pandemic at the Connect. During the peak of the pandemic the Connect was closed, and everybody was temporarily housed in hotels. However, the Connect played a role in this process, housing people in hotels/ hostels and providing services. A key change following the Covid-19 related lockdown was that the Connect changed from being a 24/h service to being a day centre only. Council applications also became available as an online process as a result of the pandemic:

So homeless applications made by the council, primarily done online but can be done face-to-face once you get an appointment with-, different councils vary in their process, especially after COVID as well. It used to be a process where you'd turn up at your local council housing options and you would be there for quite a few hours, wait to be seen, and do the application with a housing officer. They would then look at the application, see whether you're priority needs or not, or whether you will be eligible for temporary accommodation, and then they would be able to, kind of, go forward with that… It is all now done online. They are still face-to-face, but now it, kind of, balances out, it's not all one way. (key worker)

The extreme marginalisation of our homeless participants illustrated that this is a vulnerable group with little to no access to justice, even limited access to the Council. We next look at SEND tribunal user s - another vulnerable group, albeit experiencing different vulnerability to homeless people, but for whom access to justice is still difficult.

6.2. SEND

Participants in the SEND context had contacted a tribunal or ombuds and so were asked additional questions regarding the processes associated with accessing, engaging with, and receiving service from, these institutions. Consequently, this section will focus on the themes that are important to them, particularly on their experience of engaging with, and receiving

service from various advice organisations, including the importance of intermediaries and charities. In the following we present responses from those participants that we deemed vulnerable (in line with the theme of this chapter) sorted into four categories: (1) vulnerability and helplessness, (2) excessive time spent trying to resolve complex problems before seeking help, (3) negatively perceived services: school and local authority & associated access to justice issues, (4) positively perceived services: advice organisations and SEND tribunal.

1. **Vulnerability and helplessness**

Participants/ parents indicated feelings of helplessness, especially during the pandemic:

So, I have 3 and a half children with special education needs. I say half because 1 is in the system at the moment, and 2 have got EHC plans and during lockdown, obviously we were in lockdown, all the normal activities that my children needed to function quote on quote normally were stopped. So, their routines were totally changed, so I needed support to direct them, how to deal with their anxiety, how to deal with them and it's actually during lockdown that my youngest daughter, her mental health deteriorated because of the lack of consistency, routine, structure. I needed help from the supposed organisations that are supposed to help families like mine.

Often these feelings of helplessness can lead to depression among parents:

To be honest at the time my mental health was through the roof anyway. Only surface level because of how I was struggling myself personally, and then obviously trying to keep as calm a ship as possible in my household. … Today or tomorrow if I was having an issue, I would but obviously in the height of the pandemic, 4 children with autism at home, home-schooling them. My mind couldn't-,I'm neurodiverse myself so my thought process was just do what I can do to get through today.

Participants, overall, did not feel that 'the system' is there to support vulnerable families like their own:

I have to make myself vulnerable for them to listen to me. I struggle with mental health myself personally, I have an ADHD diagnosis, but it's not something I like to use as, 'Well I'm depressed,' just to get help. I shouldn't have to use my mental health or my neurodiversity to get the help that is technically there. I actually got told last September that I should be grateful that I'm getting transport for my 2 sons, and I tell you, I literally hit the roof. I lost my mind, and I'm not an aggressive or an angry person, but I just had a go at him, and I said, 'Do you think I chose for my children to all be autistic? Do you think it's what I chose for my life to be? How dare you tell me I should be grateful. No, if you want to use that, you should be grateful that you're in the job that you're in because it's my children why you're in the job that you're in,' and I don't think, and one thing I said from day one, is a lot of these people are in these jobs that, at 5 o'clock, they finish their job and they go home. My life

doesn't stop, it's 24/7, and my children are just a file on their desk. They don't have to take me or my family seriously.

And feeling like future efforts are unlikely to work to support them and their children with SEND issues:

I think, personally, the government. Not local government, national government. I really do feel there are not enough people in the actual government who understand what parents of children with additional needs go through on a daily basis. I don't think there's enough emphasis on our lives. Yes, we've got the Paddy McGuiness' and we've got Katie Price but, with all due respect, they have money, so everything they need they can get at the click of a finger whereas, like myself, my daughter, after 4 times, has now gone through assessment. We would've had to privately get her assessed if we couldn't go through the local authority.

2. Time spent trying to resolve complex problems before seeking help

Parents shared their children's SEND issues with us, highlighting the complexity of these issues. For example:

Well, it was generalised and specific. So, no 1 particular problem. It was just generally. My children, like I say, 2 of my kids have got EHC plans. They should have been in school, but I was made aware that, no, they can't be in school. It was only at a crisis point for myself when I nearly had a breakdown, when somebody-, I literally cried down the phone to someone and then they were like, 'Well, actually, your children who have got an EHC plan should be at school.' And suddenly they're in school. So, a crisis has to happen before anybody picks up a baton and does what they need to do. I think very much in the borough that I live in, Lewisham, that's what it is generally. A crisis has to happen before anybody takes action. So, they wait until blood is drawn and legs are broken before they actually pick up, and say, 'Actually, yes, maybe.' But before you're at that point I'm screaming and shouting, and screaming and shouting, and nobody hears me. I have to cut my arm and expose my bone before you say, 'Oh, actually. Yes, I can help you.' That's the general consensus of my life in the last 13 years of having numerous children with special needs.

Due to the complexity of their SEND problems, parents reported spending a lot of time trying to resolve the problem before seeking help. For example:

A long time. The whole first lockdown. I would say about 6, 7 months before I actually stepped up and tried to start getting professionals in. Yes.

Reflecting on the organisations they have gone on to seek help from, participants perceived the school and local authority negatively, but certain advice organisations and the SEND tribunal positively.

3. **Negatively perceived services: school and local authority & access to justice issues**

The local authority and their children's school posed significant access issues for parents during the pandemic.

Talking about her experience trying to get help from the local authority, one participant explained that even accessing the local authority was difficult:

Well, I was a trustee for Luton Parent Carer Forum, and then obviously through them trying to get the relevant departments within the local authority to support, and as a trustee it was my role as well to support other parents, but obviously if I couldn't get support for myself, there's no way I could have got support for the families…Well, ironically, I used to actually be a trustee for an organisation that was supposed to help, but even being a trustee of that organisation we weren't being contacted, or we weren't being supported by the local authority who were supposed to support us, to support families anyway. But yes, we couldn't get hold of anybody, everybody was obviously working from home, but the phone numbers that we had were their office numbers, and it wasn't being diverted and nobody actually could actually help in the way that the help was needed. So we were left on deaf ears, basically.

Talking about her experience trying to get help from her child's school, one participant said:

Well, I did try to go through my children's schools. Again, it was quite difficult because one of my children's schools is an independent specialist school, so they don't have the local authority on tap because they're independent, and the other school although they do have links with the LA, they had the same issues that I had. Not being able to get a hold of or contact the relevant departments to let us know what the situations are… Yes, the school was supportive, but again, they could only do what they could do with the remit that they had.

Post-pandemic, accessing the local authority did not become any easier:

Not really with the local authority and I stepped down as a trustee, because even the trustee itself was corrupt and no good. So no. Not really. I'm lucky that I don't have a paid job and my husband is very supportive, and I can talk and I can speak, and I can shout loud. There are so many families that can't, who are just being missed or ignored, or hoping that LA whether it be the SEN team, whether it be the social worker for the children, whether it be. They're banking on the naivety of the parents who don't know. So, they gaslight them to make them believe that they aren't entitled to A, B, C, D and E, or they're not entitled to it or they don't get told what they are entitled to. So, the local authorities bank on people, families and parents, not knowing.

In fact, participants described negative encounters with the local authority:

To be honest, it's tiring. As I said, it's correcting people on doing their job in the appropriate way, it's simple, basic communication. For example, on the 27th of July, which was my 44th birthday, I had an email from the Transport Team basically saying, 'Because you didn't reapply when we sent you a letter on the 7th of April, transport for your 2 oldest children,[……], has been stopped.'…Like I said, about 10 years ago, I made my first formal complaint and, every 3 or 4 months since then, I make complaints with the local authority, it goes on deaf ears, nobody actually cares or it just slips through nets. All I get is an apology…

Not communicating, the case worker who has my child's EHC plan, not communicating, they put more of the onus on the school, say, 'Oh, the school should have it, the school should have it.' They don't update the parents. For instance, my son who's just left primary school, he got diagnosed at 2, he had a little bit of intervention when he was in reception, and nothing... So when he got into year 5 I requested for him to have an updated speech and language assessment. The local authority requested that...it got turned down. And I pushed, I pushed, but on their behalf they've tried as much as they possibly can, but with their resources, there's not much that schools can do, and now with my daughter, who is, like I said, getting a diagnosis, and again, she's in school, she's learning, but she doesn't function in unstructured time. So my next battle, and it will be a battle, is to get my daughter an EHC plan, which I know will be a battle.

4. **Positively perceived services: advice organisations and SEND tribunal**

However, there were several services where participants reported positive experiences, including three advice organisations, and the SEND tribunal.

The first is IPSEA:

I had to give up my job to look after my daughter as she was out of school so thus was a challenge but also an opportunity as with the help of IPSEA advice I was targeted and strategic in my approach. My criticisms were that CHAMS, LA and Social care were not working together to progress a reasonable plan. I made sure I got very good evidence to support the school placement. I rang professionals and challenged them from an evidence base. (survey data)

The second advice organisation is the Drumbeat outreach team, who attend schools to support parents by providing a range of courses for parents, as well as reports for the schools on how to support the children of interest. The third is Lewisham Autism Support, an organisation that supports families with children suffering from ASD, ADHD, and other neurological disabilities.

A few participants reported negative experiences at the SEND tribunal. One participant said (survey data):

the tribunal never read the full case, they were clearly biased and never took the critical mental health state into consideration. They were rude, disrespectful, and even my solicitor said the panel decisions were heartless and unfair with their conduct.

This section of the report explored how marginalised groups – specifically homeless people and disadvantaged parents of SEND children – struggle to access the justice system to get support for their housing, or children's SEND, issues. We also explored how the pandemic has affected access to advice and redress for these marginalised groups and reflected on their perceptions of what could have been done during and what could be done after the pandemic to improve their capacity to obtain advice, support, and redress. Additionally, we provided first-hand accounts to contribute to understanding people's inaction when faced with a legal problem.

6.3. Conclusions and recommendations

Our data has shown that detecting vulnerabilities early on is important as these will impact on how a person navigates through the system and how they will experience it. Further, it is important to highlight that sometimes vulnerabilities can develop during the process.

Recommendations

1. HMCTS to evaluate the help-seekers' journey through the appeal process and identify where help-seekers drop-off the system.
2. MOJ/HMCTS to identify trusted intermediaries such as those in the NHS (social prescribing linkworkers) and local authorities and develop work to increase their awareness of vulnerability and how it can connect to HMCTS support.

7. Trust in justice: the importance of procedural justice and legitimacy

The ability to command popular legitimacy is central to both the effective functioning of legal institutions and their ability to provide appropriate services and outcomes to the people they engage with. The extent to which people see legal authorities as legitimate, and the ways in which legitimacy is affected by interactions with those institutions, are vitally important for understanding why people are willing to engage with services, willing to cooperate in legal and other procedures, and willing to accept the outcomes delivered.

Procedural justice theory (PJT) is central to most current accounts of legitimacy. The core argument of PJT is that people who interact with legal and other authorities care about the processes through which decisions are reached, perhaps even more than the instrumental features of those decisions, such as their favourability to the individual concerned[65]. In many different settings, people who encounter an authority (for example, the courts, tribunals, or the police) pay close attention to how they are treated by its representatives (e.g. judges, officials, or police officers). This treatment is experienced and assessed independently from the outcome they receive, and people who experience fair treatment during interactions with authorities are more likely to recognise the legitimacy of those authorities, both contextually - during the interaction itself – and in a broader, less bounded sense. Crucially for crime-control policy, legitimacy then motivates a greater willingness to accept and comply with its decisions, and a greater propensity to cooperate with the authority in the future.[66]

The question of legitimacy has confronted the police and criminal courts for many years, producing a rich vein of academic research on the foundations, predictors and outcomes of legitimacy and 'trust in justice'[67] that is increasingly being applied in administrative justice and ADR settings.[68] Studies on procedural justice have focused on how courts, tribunals, police, and other authorities treat people[69], and the 'downstream' implications of the experience of procedural justice and the trust and legitimacy it generates.[70] This research indicates that people's attitudes and behaviours are shaped by the fairness of the processes

[65] Tyler, T. R. and Blader, S. L. (2003), 'The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior', *Personality and Social Psychology Review*, 7: 349–61.
[66] Tyler, T. R. (2006). Psychological perspectives on legitimacy and legitimation. *Annual Review of Psychology*, *57*(1), 375-400. https://doi.org/10.1146/annurev.psych.57.102904.190038
[67] Hough, M. (2020). Good Policing: Trust, Legitimacy and Authority (Bristol, 2020; online edn, Policy Press Scholarship Online, 20 May 2021), https://doi.org/10.1332/policypress/9781447355076.001.0001, accessed Dec. 2022; Tyler, T. R. (2006). Psychological perspectives on legitimacy and legitimation. *Annual Review of Psychology*, *57*(1), 375-400. https://doi.org/10.1146/annurev.psych.57.102904.190038; Tyler, T. R., & Huo, Y. J. (2002). Trust in the law: Encouraging public cooperation with the police and courts. New York: Russell Sage Foundation.
[68] Creutzfeldt N and Bradford B (2016) Dispute resolution outside of courts: procedural justice and decision acceptance among users of ombuds services in the UK. Law and Society Review 50(4): 985–1016; Bradford, B., Creutzfeldt, N., & Steffek, F. (2022). Thinking Holistically About Procedural Justice in Alternative Dispute Resolution: A Case Study of the German Federal Ombudsman Scheme. Law & Social Inquiry, 1-32. doi:10.1017/lsi.2022.55
[69] Mazerolle, L., Bennett, S., Davis, J., Sargeant, E., & Manning, M. (2013). Procedural justice and police legitimacy: A systematic review of the research evidence. *Journal of Experimental Criminology*, *9*(3), 245-274. https://doi.org/10.1007/s11292-013-9175-2; President's Task Force on 21st Century Policing (2015). Accessed December 2022. Available at https://cops.usdoj.gov/RIC/Publications/cops-p341-pub.pdf
[70] Tyler, T. R., & Huo, Y. J. (2002). Trust in the law: Encouraging public cooperation with the police and courts. New York: Russell Sage Foundation; Tyler, T. R. (2006). Psychological perspectives on legitimacy and legitimation. *Annual Review of Psychology*, *57*(1), 375-400. https://doi.org/10.1146/annurev.psych.57.102904.190038; Jackson J., Bradford B., Stanko B., Hohl K. (2013). *Just authority? Trust in the police in England and Wales*. New York, NY: Routledge; Murphy, K., Bradford, B., & Jackson, J. (2016). Motivating Compliance Behavior Among Offenders: Procedural Justice or Deterrence? *Criminal Justice and Behavior*, *43*(1), 102–118. https://doi.org/10.1177/0093854815611166

that authorities offer them, and while it has been suggested that improving upon the objective performance of legal authorities may not enhance perceptions of fairness and legitimacy[71], there is strong evidence that the *subjective* impression of a process influences how people perceive an institution and how they act in relation to it.[72]

What, then, is procedural justice? Four key elements of procedural justice have been identified: offering participation or voice, behaving neutrality, treating people with dignity and respect, and displaying trustworthy motives[73]. These are sometimes corralled under the broad headings of 'quality of decision-making' and the 'quality of treatment'[74]. Quality of decision-making refers primarily to openness, consistency, neutrality, and a lack of bias (and therefore, in general, the ability to make the right decision), while quality of interaction relates primarily to issues of respect, dignity, voice and trustworthiness. A further distinction is drawn between formal and informal levels (i.e. those relating to formal rules and those relating to the behaviour of individual office holders[75]).

Procedural justice, and the legitimacy it engenders, may be particularly important during times of turbulence and change. One of the reasons for the importance people place on procedural justice is that it acts as an uncertainty reduction mechanism, offering reassurance that an unfamiliar or subjectively unusual procedure is being conducted appropriately (and is

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[71] Nagin, D. S. and Telep, C. W. (2017), 'Procedural Justice and Legal Compliance', *Annual Review of Law and Social Science*, 13, 5–28; Nagin, D.S., & Telep, C.W. (2020). Procedural justice and legal compliance: A revisionist perspective. *Criminology & Public Policy.* 19(3), 761-786. https://doi.org/10.1111/1745-9133.12499

[72] Tyler, T. (2017). Procedural Justice and Policing: A Rush to Judgment? Annual Review of Law and Social Science, 13:29-53. https://doi.org/10.1146/annurev-lawsocsci-110316-113318; Tyler, T. R. (2003). Procedural Justice, Legitimacy, and the Effective Rule of Law. *Crime and Justice*, *30*, 283–357. http://www.jstor.org/stable/1147701; Bolger, P. C., & Walters, G. D. (2019). The relationship between police procedural justice, police legitimacy, and people's willingness to cooperate with law enforcement: A meta-analysis. *Journal of Criminal Justice*, *60*, 93–99. https://doi.org/10.1016/j.jcrimjus.2019.01.001; Walters, G. D. and Bolger, P. C. (2019), 'Procedural Justice Perceptions, Legitimacy Beliefs, and Compliance With the Law: A Meta-Analysis. *Journal of Experimental Criminology*, 15: 341–72.

[73] Tyler, T. R., & Blader, S. L. (2000). *Cooperation in groups: Procedural justice, social identity, and behavioral engagement*. Psychology Press; Tyler, T. R. and Fagan, J. (2008), 'Legitimacy and Cooperation: Why do People Help the Police Fight Crime in their Communities?', *Ohio State Journal of Criminal Law*, 6: 231–75. Mazerolle, M., Régner, I., Morisset, P., Rigalleau, F., & Huguet, P. (2012). Stereotype Threat Strengthens Automatic Recall and Undermines Controlled Processes in Older Adults. *Psychological Science*, *23*(7), 723–727. https://doi.org/10.1177/0956797612437607; Jonathan-Zamir, T., Mastrofski, S.D. and Moyal, S. (2015), 'Measuring Procedural Justice in Police-Citizen Encounters', *Justice Quarterly*, 32, 845–71.

[74] Tyler, T. R., & Blader, S. L. (2000). *Cooperation in groups: Procedural justice, social identity, and behavioral engagement*. Psychology Press; Tyler, T. R., & Huo, Y. J. (2002). *Trust in the law: Encouraging public cooperation with the police and courts*. Russell Sage Foundation; Reisig, M. D., Bratton, J., & Gertz, M. G. (2007). The Construct Validity and Refinement of Process-Based Policing Measures. *Criminal Justice and Behavior*, *34*(8), 1005–1028. https://doi.org/10.1177/0093854807301275

[75] Tyler, T. R., & Blader, S. L. (2003). The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior. *Personality and Social Psychology Review*, *7*(4), 349–361. https://doi.org/10.1207/S15327957PSPR0704_07; Tyler, T. R., & Blader, S. L. (2003). The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior. *Personality and Social Psychology Review*, *7*(4), 349–361. https://doi.org/10.1207/S15327957PSPR0704_07

likely to reach appropriate outcomes).[76] Procedural justice is also important for the relational signals of belonging and inclusion it sends to people.[77] When people are uncertain, unclear or simply unfamiliar with a process or situation, they look for information that their status and right to be in that situation, at least, is affirmed by the authorities they are dealing with. This, coupled with the weight of research identifying procedural justice effects across multiple justice settings, implies that within the overall context of the current report we might expect procedural justice to be central to the judgements people make of on-line tribunals and ombuds hearings. These situations are, after all, novel in their use of digitally mediated interactions, and relatively unusual from the perspective of most users, who are unfamiliar with civil justice and ADR.

Yet, due to the dearth of UK-based research on how people use and think about tribunals and ombuds services, open empirical questions remain, particularly in the new era of mediated interaction. While Creutzfeldt and Bradford[78] identified a 'procedural justice effect' in their UK data, drawn from recent users of ombuds services, their findings related to traditional telephone, written and to an extent face-to-face interactions. Procedural justice may be less important in the context of the financial and usually very outcome focussed nature of these interactions, where most service users are clear what they want, and what 'success' looks like to them (indeed, having easily identifiable and quantifiable outcomes such as renegotiating a rent increase may mean that process concerns are suppressed, precisely because the outcome is so easy to grasp).

We address these questions empirically via an experiment that tests the effects of manipulating the fairness of the process (fair/ unfair), the location of the process (online/ offline) and the authority figure (judge/ tribunal).

7.1 Experimental study

Given the problems we encountered collecting the survey data, we fielded an online experiment to explore some of the underlying issues. Research participants were presented with a vignette depicting a Tribunal or Ombuds scenario involving Marta that was either

[76] van den Bos, K., & Lind, E. A. (2002). Uncertainty management by means of fairness judgments. In M. P. Zanna (Ed.), *Advances in experimental social psychology*, Vol. 34, pp. 1–60). Academic Press. https://doi.org/10.1016/S0065-2601(02)80003-X

[77] Tyler and Blader 2000, 2003 Op. cit.

[78] Creutzfeldt N and Bradford B (2016) Dispute resolution outside of courts: procedural justice and decision acceptance among users of ombuds services in the UK. Law and Society Review 50(4): 985–1016.

online or offline, and either embodied procedurally just or procedurally unjust principles of interpersonal fairness and decision-making. We provide an example scenario in Appendix 3.

Respondents were drawn from the 'Prolific' on-line panel of research participants, who self-selected into the study and were paid for their time (see part 4 above). The sample was a quota convenience sample, matching the UK's profile along the lines of age, gender, and ethnicity/race.

In terms of age, 11% were 18-24, 20% were 25-34, 20% were 35-44, 15% were 45-54, 20% were 55-64, 13% were 65-74, and 2% were 75 years or older. With respect to self-identified gender, 51% were female, 48% were male, and 1% preferred not to say. In terms of ethnicity/race, 78% were White British, 8% were any other White background, 3% were Indian, 1% were Black African, 1% were Black Caribbean, 1% were Pakistani, 1% were Bangladeshi, 1% were Chinese, 1% were mixed White and Asian 1% were 'other' Asian background, 1% were 'other' mixed background (aside from mixed White and Black African and mixed White and Asian), and the rest were either mixed White and Black African, some other ethnic group, or preferred not to say.

When it came to employment status, 51% were employed, 18% were retired, 11% were self-employed, 6% were 'homemaking', 5% were studying, 4% were out of work or looking for work, 3% were unable to work, and 2% were out of work and not currently looking. With respect to education, 15% had GCSEs (or equivalent) only, 15% had two or more A-levels (or equivalent), 35% had a Bachelor degree (or equivalent), 19% had a Master degree (or equivalent), and the rest had some other qualification. Some 71% had no long-standing illness, disability or infirmity, 24% had at least one, and 5% said 'maybe'.

Research participants were asked whether they had ever tried to access institutions to help solve their problems. A total of 79% said yes (21% said no). Research participants were also asked whether they had been involved in a civil or criminal court case in the past three years. A total of 96% said no (4% said yes).

Sixty research participants were randomly assigned to read one of eight vignettes drawn from a 2x2x2 factorial design:

1. The first dimension was tribunal or ombuds;
2. The second dimension was online or offline; and,

3. The third dimension was procedurally just or procedurally unjust treatment and decision-making.

Outcome variables included perceptions of the fairness of the process and outcome of the hypothetical case, as well as broader perceptions of legitimacy of judges and courts (in the case of Tribunals) and ombuds (in the case of Ombuds). We used scales to measure most key outcomes. We found that they worked well, using a statistical technique called confirmatory factor analysis.

Note that the experimental design means that when assessing the results of the study, the statistical analysis is simple; statistically significant group differences (tested via ANOVA or linear modelling) in mean levels of key outcome variables can be interpreted as the causal effects of manipulations.

Before we summarise the findings, it is important to note that participants were not recent users of Tribunals or Ombuds. Because they were drawn from the general public, specifically by Prolific to help form their research panel, the experiment provides something of a baseline. How do people *in general* think about the procedural fairness of on- and off-line procedures in a regulatory context that is unfamiliar to them (only 19 of 480 participants had been involved in a civil or criminal court case in the last three years, for example)? Do they attend to questions of procedural justice in this context? Does it matter whether the procedure is on- or off-line?

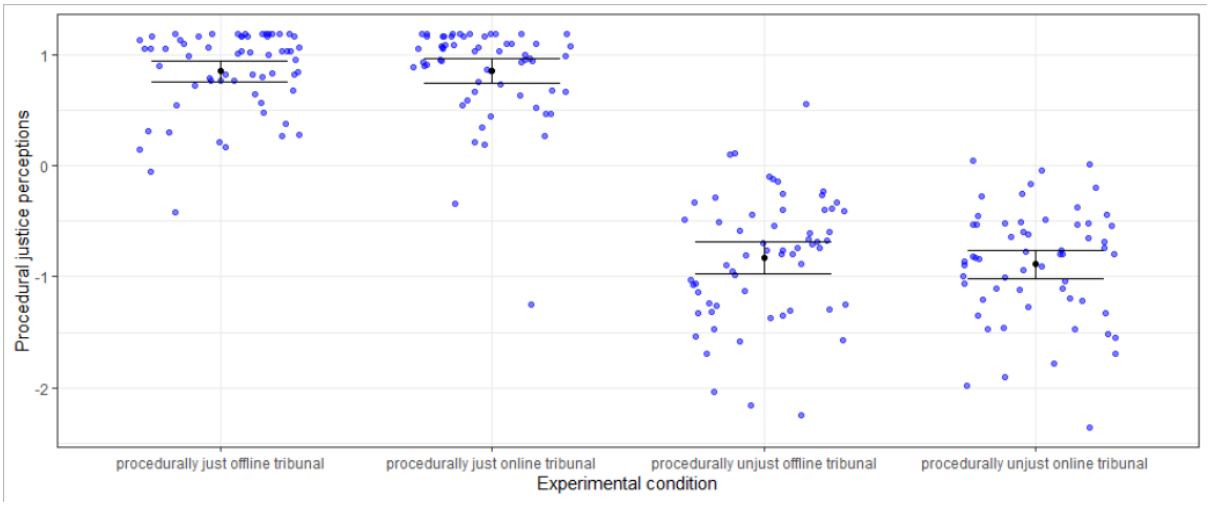
Tribunals

We first found that the manipulation of procedural justice 'worked', i.e. there were large differences in process fairness perceptions comparing the procedurally fair and procedurally unfair conditions. The Likert (agree/disagree) scale of perceptions of procedural fairness had the following indicators–'To what extent did the people that Marta dealt with: "Always did what they said they would"; "Understood Marta's problem"; "Treated Marta with respect and dignity"; "Were unhelpful"; "Were easy to get in touch with"; "Tried as hard to help Marta as they would anyone else"; "Were impartial"; "Gave Marta the opportunity to express their views before decisions were made"; "Listened to Marta before making decisions"; and "Made decisions based on facts, not their personal biases or opinions"'.

People who read a vignette that described Marta experiencing respectful treatment, voice, and unbiased and transparent decision-making thought that the process was fairer, on average, than people who read a vignette that described Marta experiencing procedurally

unjust interpersonal interactions and decision-making. This statistically significant comparison was the case whether the tribunal was offline or online, as can be further seen in the below visualisation. Figure 1 summarises the raw data, the means (black dots), and the 95% confidence intervals around the means (black vertical lines above and below the black dot mean). Note that the comparisons between unfair and fair conditions are statistically significant (the 95% confidence intervals do not overlap) and the effect sizes are relatively (and unsurprisingly) strong: on a scale running from -2.4 to 1.2 (mean of 0), the means for the procedurally just conditions were 0.85 (online) and 0.85 (offline) and the means for the procedurally unjust conditions were -0.89 (online) and -0.83 (offline).

Figure 1. Raw data, means and 95% confidence intervals for process fairness perceptions

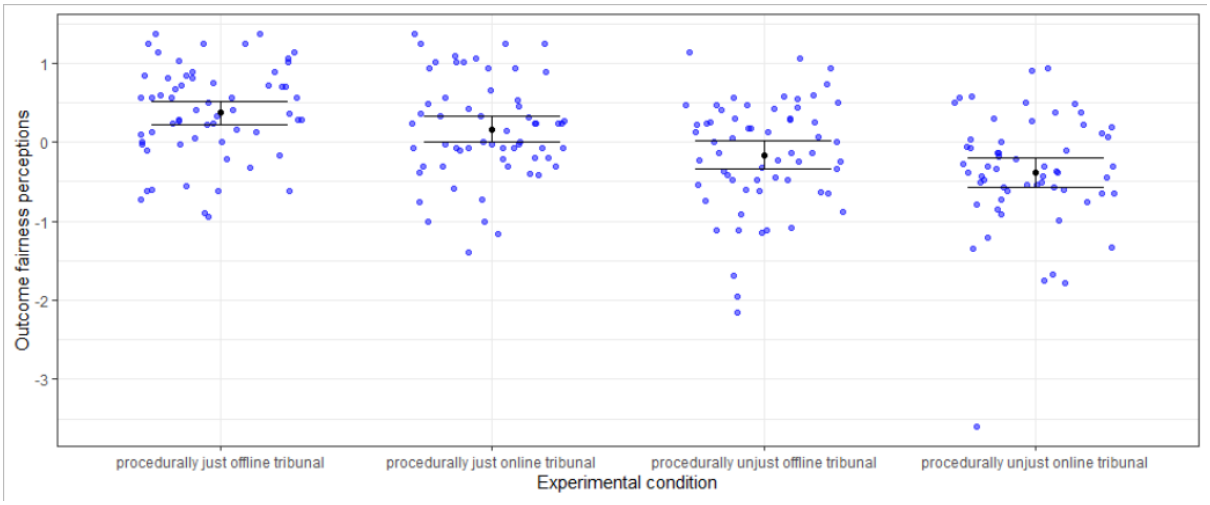


We found a similar pattern for perceptions of outcome fairness. The outcome fairness scale had the following Likert (agree/disagree) items: "Marta got the outcome she deserved", "The outcome of the case was explained clearly", "Marta received an outcome similar to that obtained by others in their situation", and "The length of time it took to deal with the case felt appropriate".

Even though the outcome was always the same 'good outcome' for Marta, people who read a procedurally just vignette thought that the outcome was fairer, compared to people who read a procedurally unjust vignette. The findings were understandably not as strong as for fair process perceptions, since process fairness was manipulated, and outcome was not. This can be seen in Figure 2 below. On a scale running from -3.6 to 1.4 (with a mean of 0), the means for the procedurally just conditions were 0.16 (online) and 0.37 (offline) and the means for the procedurally unjust conditions were -0.38 (online) and -0.16 (offline). Again

however, the comparisons between unfair and fair conditions are statistically significant (the 95% confidence intervals do not overlap).

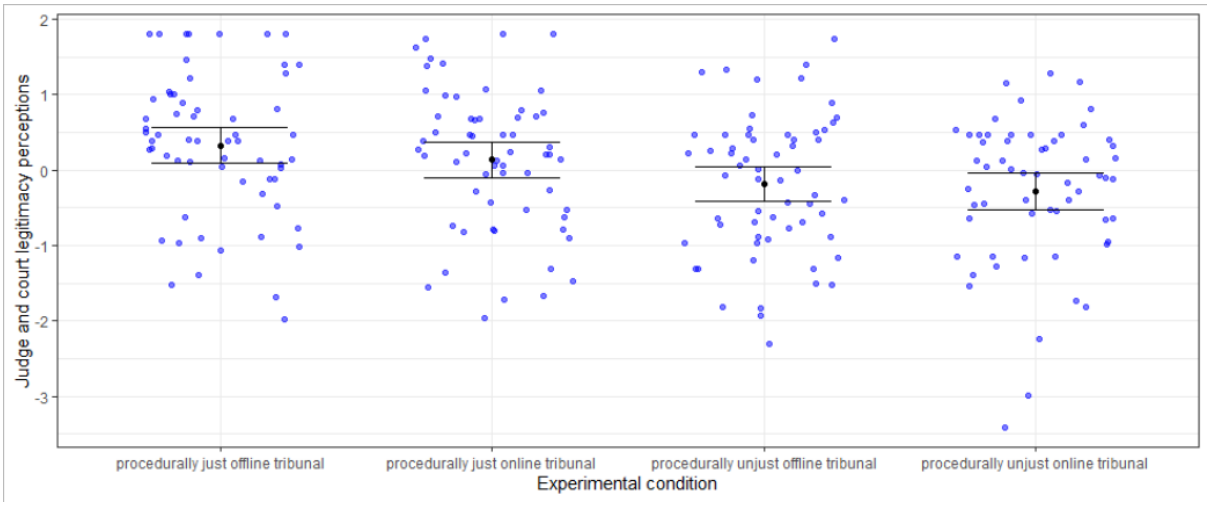
Figure 2. Raw data, means and 95% confidence intervals for outcome fairness perceptions



Findings were less strong when considering perceptions of the legitimacy of judges and the courts. Legitimacy was measured using the following Likert (agree/disagree) indicators: "We have a moral duty to back the decisions made by Judges because Judges are legitimate authorities", "We have a moral duty to support the decisions of Judges, even if we disagree with them", "We have a moral duty to do what Judges tell us even if we don't understand or agree with the reasons", "Judges act in ways that are consistent with our own ideas about what is right and wrong", "We support how Judges usually act", "Judges stand up for moral values that are important for people like us", "Judges can be trusted to make the right decisions", "I believe that Judges can be trusted to act in ways that take into account the interests of citizens", and "Judges have the right to make decisions that affect people's lives".

Perceptions of legitimacy were higher in procedurally just online tribunals than in procedurally unjust online tribunals. In offline tribunals, however, the comparison between procedurally just and procedurally unjust conditions was not statistically significant. The effect sizes can be seen in the Figure 3. On a scale running from -3.4 to 1.8 (mean of 0), the means for the procedurally just conditions were 0.14 (online) and 0.32 (offline) and the means for the procedurally unjust conditions were -0.28 (online) and -0.19 (offline). The confidence intervals underline the point that the only comparison that was statistically significant was that between procedurally just offline and procedurally unjust offline (the confidence intervals for the two online conditions overlap slightly).

Figure 3. Raw data, means and 95% confidence intervals for court/judge legitimacy perceptions



We asked: "If you were in Marta's position, do you think you would have been satisfied with how the tribunal dealt with this case or not? Would you have been … 'very unsatisfied', 'somewhat unsatisfied', 'neither unsatisfied nor satisfied', 'somewhat satisfied' or 'very satisfied'?" The association between experimental condition and satisfaction was statistically significant (see Table 1 below). The percentages of people who agreed that they would be 'very satisfied' or 'somewhat satisfied' (so combining two rows in the table below) were 98% (online) and 98% (offline) in the procedurally just conditions, compared to 58% (online) and 71% (offline).

Table 1. The association between experimental condition and satisfaction with tribunal proceedings

If you were in Marta's position, do you think you would have been satisfied with how the tribunal dealt with this case or not?

Condition	Very unsatisfied	Somewhat unsatisfied	Neither	Somewhat satisfied	Very satisfied	Total (=100%) (numbers)
Fair, online	0%	2%	0%	11%	87%	60
Unfair, online	5%	25%	12%	46%	12%	59
Fair, offline	0%	0%	2%	7%	92%	61
Unfair, offline	2%	23%	5%	54%	16%	61

Total	2%	12%	5%	30%	52%	241

χ^2=144.517; df=12; Cramer's V=0.447; Fisher's p=0.000

We also asked: "In the future, if someone you know says they have a similar problem to Marta, would you recommend they appeal to the tribunal? Yes, Maybe or No?" The association between experimental condition and satisfaction was not statistically significant (see Table 2 below). Note that nobody said 'no'. The percentages of people who said 'maybe' (rather than 'yes') were 15% (online) and 10% (offline) in the procedurally just conditions, compared to 19% (online) and 25% (offline).

Table 2. The association between experimental condition and the possibility of recommending people appeal to the tribunal

Experimental condition	In the future, if someone you know says they have a similar problem to Marta, would you recommend they appeal to the tribunal?		Total
	Yes	Maybe	
Procedurally just online	85 %	15 %	100 %
Procedurally unjust online	81 %	19 %	100 %
Procedurally just offline	90.2 %	9.8 %	100 %
Procedurally unjust offline	75.4 %	24.6 %	100 %
Total	199	41	240
	82.9 %	17.1 %	100 %

χ^2=5.018 · df=3 · Cramer's V=0.145 · p=0.171

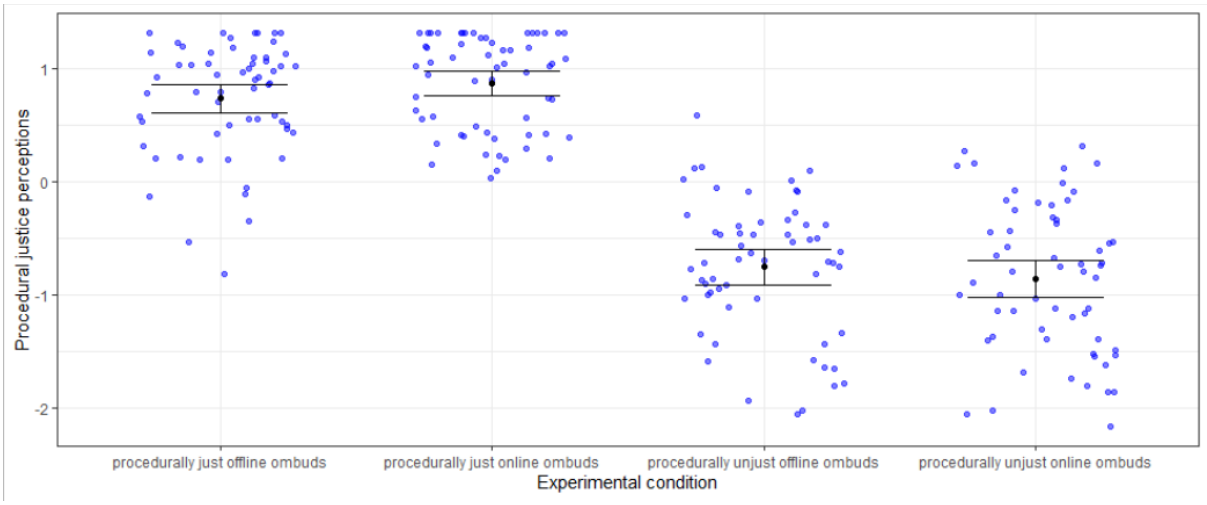
Ombuds

As with tribunals, we found that the manipulation of procedural justice 'worked'. As per the tribunals, the Likert (agree/disagree) scale of perceptions of procedural fairness in the vignette had the following indicators–'To what extent did the people that Marta dealt with:

"Always do what they said they would"; "Understood Marta's problem"; "Treated Marta with respect and dignity"; "Were unhelpful"; "Were easy to get in touch with"; "Tried as hard to help Marta as they would anyone else"; "Were impartial"; "Gave Marta the opportunity to express their views before decisions were made"; "Listened to Marta before making decisions"; and "Made decisions based on facts, not their personal biases or opinions".

People who read a vignette that described respectful treatment, voice, and unbiased and transparent decision-making thought that the process was fairer, on average, than people who read a vignette that described disrespectful treatment, a lack of voice given to Marta the protagonist, and biased decision-making that lacked transparency. Again, this statistically significant comparison was the case whether the tribunal was offline or online, as can be seen in Figure 4's visualisation of the raw data, the means (black dots), and the 95% confidence intervals around the means. Note that the comparisons between unfair and fair conditions are statistically significant (the 95% confidence intervals do not overlap) and the effect sizes are once again relatively strong: the means for the procedurally just conditions were 0.69 (online) and 0.58 (offline) and the means for the procedurally unjust conditions were -0.74 (online) and -0.53 (offline), with the scale running from -2.2 to 1.3 (with a mean of 0).

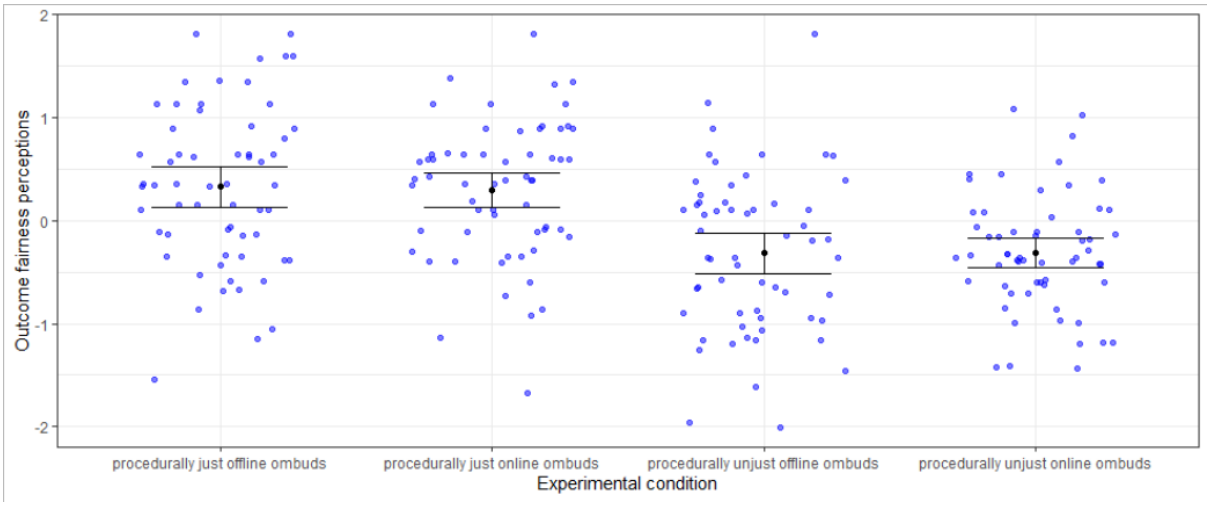
Figure 4. Raw data, means and 95% confidence intervals for process fairness perceptions across the four experimental conditions



Compared to tribunals, we found a similar pattern for outcome fairness perceptions. The outcome fairness scale again had the following Likert (agree/disagree) items: "Marta got the outcome she deserved", "The outcome of the case was explained clearly", "Marta received an outcome similar to that obtained by others in their situation", and "The length of time it took to deal with the case felt appropriate".

The outcome was always the same 'good outcome' for Marta, yet we again found that people who read a procedurally just vignette thought that the outcome was fairer than people who read a procedurally unjust vignette (Figure 5). Reflecting the fact that the outcome was not varied across experimental conditions, the findings were not as strong as for fair process perceptions. Note that the comparisons between unfair and fair conditions are statistically significant (the 95% confidence intervals do not overlap). On a scale running from -2.0 to 1.8 (mean of 0), the means for the procedurally just conditions were 0.30 (online) and 0.33 (offline) and the means for the procedurally unjust conditions were -0.31 (online) and -0.32 (offline).

Figure 5. Raw data, means and 95% confidence intervals for process fairness perceptions across the four experimental conditions

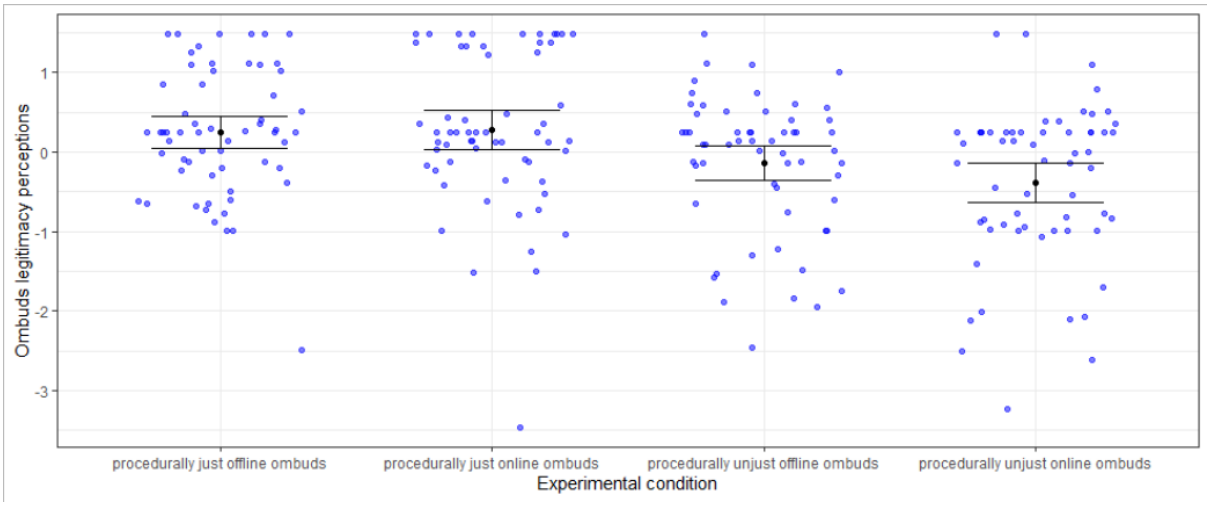


This time, legitimacy was measured using the following Likert (agree/disagree) indicators: "We have a moral duty to back the decisions made by Ombudsmen because Ombudsmen are legitimate authorities", "We have a moral duty to support the decisions of Ombudsmen, "even if we disagree with them", "We have a moral duty to do what Ombudsmen tell us even if we don't understand or agree with the reasons", "Ombudsmen act in ways that are consistent with our own ideas about what is right and wrong", "We support how Ombudsmen usually act", "Ombudsmen stand up for moral values that are important for people like us", "Ombudsmen can be trusted to make the right decisions", "I believe that Ombudsmen can be trusted to act in ways that take into account the interests of citizens", and "Ombudsmen have the right to make decisions that affect people's lives".

The findings for legitimacy were, like tribunals, less strong than for process and outcome fairness. In the reverse of tribunals, however, perceptions of legitimacy were stronger when comparing procedurally just and procedurally unjust *online* tribunals, but the comparison

between procedurally just and procedurally unjust offline tribunals was not statistically significant (with tribunals, it was *offline* that was significant not online). The effect sizes can be seen in Figure 6. On a scale running from -3.4 to 1.5 (mean of 0), the means for the procedurally just conditions were 0.28 (online) and 0.24 (offline) and the means for the procedurally unjust conditions were -0.39 (online) and -0.14 (offline). Again, the confidence intervals show that the only comparison that is statistically significant is that between procedurally just online and procedurally unjust online (the confidence intervals for the two offline conditions overlap slightly).

Figure 6. Raw data, means and 95% confidence intervals for legitimacy (Ombuds) perceptions



We asked: "If you were in Marta's position, do you think you would have been satisfied with how the ombuds dealt with this case or not? Would you have been … 'very unsatisfied', 'somewhat unsatisfied', 'neither unsatisfied nor satisfied', 'somewhat satisfied' or 'very satisfied'?" As with tribunals, the association between experimental condition and satisfaction was statistically significant (Table 3). The percentages of people who agreed that they would be 'very satisfied' or 'somewhat satisfied' were 97% (online) and 95% (offline) in the procedurally just conditions, compared to 37% (online) and 51% (offline).

Table 3. The association between experimental condition and satisfaction with ombuds proceedings

If you were in Marta's position, do you think you would have been satisfied with how the ombuds dealt with this case or not?

Condition	Very unsatisfied	Somewhat unsatisfied	Neither	Somewhat satisfied	Very satisfied	Total (=100%) (numbers)
Fair, online	0%	1.70%	1.70%	15%	81.70%	60
Unfair, online	10%	31.70%	21.70%	31.70%	5%	60
Fair, offline	0%	0%	5%	21.70%	73.30%	60
Unfair, offline	11.90%	28.80%	8.50%	40.70%	10.20%	59
Total	5.40%	15.50%	9.20%	27.20%	42.70%	239

χ^2=139.416 · df=12 · Cramer's V=0.441 · Fisher's p=0.000

We also asked: "In the future, if someone you know says they have a similar problem to Marta, would you recommend they appeal to the ombudsman? Yes, Maybe or No?" The association between experimental condition and satisfaction was this time (compared to tribunals) statistically significant (see Table 4 below). Note that once more, nobody said 'no'. Compared to tribunals, the findings were stronger: the percentages of people who said 'maybe' (rather than 'yes') were 10% (online) and 22% (offline) in the procedurally just conditions, compared to 42% (online) and 44% (offline).

Table 4. The association between experimental condition and the possibility of recommending people appeal to the Ombuds

In the future, if someone you know says they have a similar problem to Marta, would you recommend they appeal to the ombudsman?

Condition	Yes	Maybe	Total (=100%)
Fair, online	89.8 %	10.2 %	59
Unfair, online	58.2 %	41.8 %	55
Fair, offline	78 %	22 %	59
Unfair, offline	56.1 %	43.9 %	57
Total	70.9 %	29.1 %	230

χ^2=21.993 · df=3 · Cramer's V=0.309 · p=0.000

Overall, a few key findings emerged. First, the procedural (in)justice manipulations worked well for tribunals and ombudsmen. Second, despite the outcome always being a relatively 'good one', research participants said that the outcome was fairer when Marta was treated according to principles of procedural justice. Third, legitimacy was lower in procedurally unjust conditions compared to procedurally just conditions among offline tribunals (but not online tribunals) and online ombudsmen (but not offline ombudsmen). Fourth, levels of satisfaction "if research participants were to be in the same position as Marta" were higher in procedurally just tribunals compared to procedurally unjust tribunals (again, despite the identical positive outcome) and even higher in procedurally just ombudsmen compared to procedurally unjust ombudsmen (despite the same positive outcome); and, when asked "In the future, if someone you know says they have a similar problem to Marta, would you recommend they appeal…?", people in procedurally just ombudsmen cases were more likely to say 'yes' than people in procedurally unjust ombudsmen cases, but there were no significant effects for tribunal cases.

7.3. Conclusions and recommendations

Our experimental data suggests that in the current context, as in many other justice-related arenas, procedural justice is important in interactions between the users of ombuds services and tribunals and the authority figures involved. It is therefore important that authority figures in these contexts - judges, caseworkers and so on – are convinced and given the tools to behave in procedurally fair ways (that is, there may be a need for both generating awareness and delivering appropriate training). Indeed, procedural justice may be particularly important here given (a) people's general unfamiliarity with the processes involved and (b) an increasingly on-line format. Under such conditions people may look especially for the reassurance that process fairness provides; at the very least, our data shows that in online scenarios people pay just as much attention to cues of procedural justice as they do in face-to-face scenarios.

A further focus may be needed on the interplay between the interpersonal skills of service providers and whether they are operating in structures that allow procedurally just interactions to take place (Tribunals and Ombuds differ). Perhaps most obviously, as the move on-line gathers pace there may be a temptation to use this to increase efficiency by reducing the time allocated to a particular hearing or procedure. Yet, our experimental vignettes demonstrated making a process fair, from the perspective of those involved or viewing it, may take a little time, for example because explaining what is going to happen in ways that services users can understand takes time. Structurally elements of the process may therefore hinder, or enhance, the potential for procedurally just interactions. Those overseeing the structural context need to pay as much attention to the quality of the process, and how their actions affect this, as the individual agents involved. Both need to take responsibility for change.

We also find some evidence that procedural (in)justice was more salient in the online conditions. The difference in overall satisfaction between the fair and unfair ombuds conditions was bigger in the online compared with the offline conditions (Table 3); similarly, the gap between willingness to recommend using an ombuds service in the fair and unfair conditions was greater in the online compared with the offline conditions (Table 4). Both findings indicate that procedural justice may be more salient or important to people when they are thinking about an online process.

Recommendations

1. The concept of procedural justice needs to be made real in the everyday world of users by showing respect, clear explanations of what is going to happen and what has happened in their process. Especially, in remote hearings an expressed recognition of the difficulties that they are encountering needs to be made clear.
2. Awareness raising of the importance of user-perceptions of interpersonal process and to ensure basic criteria are met (being heard, being treated respectfully, having a voice, expressing genuine intentions, or demonstrating reliable behaviour).

8. Conclusions and further areas of research

We conclude by bringing together the themes that we covered in this report: pathways to justice (also across Ombuds and Tribunals), digital delivery, trust in justice (perceptions of fairness) and vulnerability. These themes are connected through the lens of capabilities. Our project starts from the premise that the digitalisation of the justice system requires a help-seeker to have a certain degree of digital and legal capability[79] to be able to engage with it alone or be provided with the necessary support to do so if they lack these capabilities. As we have seen from our research, a lot of people appear to be able to access online systems, seem reasonably comfortable with navigating the process, and enjoy the benefits. There have also, however, been several accounts in our data of difficulties with understanding the process, getting access to online hearings, and just being overwhelmed with the *online* aspect of it all.

There are many different nuances to vulnerability, and we are yet to see a usable categorisation or typology that can be translated into justice systems to help identify from the outset the different needs people might have. One of the challenges with vulnerability is that it comes in different forms, manifestations and can develop suddenly. This makes it very hard to *programme* into a digital process.[80] Those who administer the systems have to be able to detect forms of vulnerability and then determine the adequate extra support needed for

[79] Denvir, Catrina; Sutherland, Carolyn; Selvarajah, Amanda Darshini; Balmer, Nigel; and Pleasence, Pascoe, Access to Online Courts: Exploring the Relationship between Legal and Digital Capability (May 2, 2021). Available at SSRN: https://ssrn.com/abstract=3838153or http://dx.doi.org/10.2139/ssrn.3838153; Creutzfeldt, N (2021) Towards a digital legal consciousness?

[80] It also makes it difficult to design into physical services e.g. physical barriers (travel, distance, costs); and having to wait for hearings (which is also inefficient for the practitioners).

help-seekers. An initial consideration might be to define a *baseline vulnerability* to flag it and then assess at each step of a process if and how the person needs further support.

A strong narrative emerged from the data about emotional responses during, and because of, online hearings. These emotions, as reported by our interviewees, were not tied to those who might be less capable (digitally / legally) of navigating the process but came from a range of respondents. Those interviewees who otherwise had no problems with understanding and navigating an online hearing, developed unexpected emotional reactions to technology not working, with the result that they be heard or seen. For example, one interviewee recalled that the video was not working for them and that therefore the judge did not pick up on how upset they were about a matter which led to misunderstandings and a delay in the process. This would have been picked up more easily in an in-person hearing. Technology misses some of the interpersonal cues that can are crucial in resolution processes. Strategies could be developed to ensure participants in an online hearing have the chance to follow-up or to clarify positions to avoid digitally induced misunderstandings.

The emotional responses that were reported in relation to digital procedures and their technological challenges need to be taken seriously. These are an added layer of capabilities to be embedded within a help-seeker's journey. These emotional responses feed directly into people's perceptions of the process and cloud it. Here, procedural justice plays an important role when designing a digital process. When designing and conducting an online process, more attention must be paid to emotional cues to be able to pick up on them and respond to them appropriately. Compared to a face-to-face procedure, there are many nuances to an online procedure that are specific to it and tools need to be developed to provide help-seekers with a fair experience. We explore the idea of digital and legal capabilities and linked emotional factors in more detail in our forthcoming book.[81]

Our data suggest similarities in the help-seeker journeys through both SEND and housing pathways. Of course, it depends on the individual and their capabilities to what extent they can navigate the justice system. Our data showed that the processes are difficult to understand for help-seekers in general. Therefore, it would be beneficial to make available on the Ombuds and Tribunals websites (with links to generalist and specialist support organisations) what help-seekers can expect from the process, how long it might take and what the various stages

[81] Creutzfeldt et al. (*forthcoming* 2023), *Digitalisation, vulnerability and access to justice*, Bristol University Press.

demand in documentation and other paperwork. This can take different forms (e.g. infographic, flow-chart, report), appropriate for the public to access.

During the pandemic, there has been some collaboration between the Property Chamber and the Property Ombudsman. The Property Chamber identified a person in each region who Property Ombudsman caseworkers can contact if they consider a case that spans the divide between Ombuds and tribunal cases. Two Tribunal judges that are focussing on these cases and to date there have been a small number. In these cases, a leaseholder meets with a judge from the Tribunal and a case worker from the Property Ombudsman, and between them they decide which is the best way to resolve the case. A report about this collaboration has been sent by the Property Chamber president to the Housing Ombudsman, to encourage a similar arrangement.

The Housing Ombudsman has a connection with the First-tier tribunal. They are negotiating how this might develop in the future. The main touchpoint will be service charges, as this is an area of overlap in jurisdictions. Service charges can fall into the discretionary part of the Housing Ombudsman jurisdiction. Currently, the plan is for the Housing Ombudsman jurisdiction to look at the process around service charge, rather than the level itself. In other words, the Housing Ombudsman will signpost people to the tribunal who do not want to pay the amount. If, however, the dispute is about the process (not consulted properly or lack of transparency about the costs and charges) then it is a matter for the Housing Ombudsman.

Richard Blakeway (Housing Ombudsman): We have done work, we've talked to the tribunal potentially about doing a lot more to develop the relationship, we've done some training with our caseworkers, Siobhan's come along and spoken to caseworkers. We want to do more of that going forward. We want to think a lot more about signposting, being easier and effective. We've done some thematic reports as an ombudsman, looking at systemic issues around some of these things, and obviously we've shared those with the tribunal as well.

There is much potential to develop these partnerships, to make the help-seeker journey easier, and to bridge the siloes in the system to build a better-connected administrative justice system.

Overall, our report has found areas that work well within the digital delivery of housing and SEND access to redress. It has also identified groups of the population for whom access remains a challenge. Those people who would not easily access the justice system in an offline

setting are faced with greater, in cases unsurmountable, difficulties online. Further, the online delivery of advice, Ombuds and Tribunals processes has created a new challenge, that of digital capabilities. With Ombuds and Tribunal processes being conducted online, it is essential that everyone involved has the necessary digital skills and equipment to participate effectively. This includes the judges, lawyers, claimants, and witnesses. Without adequate digital capabilities, participants may experience difficulties accessing the platform, submitting evidence, or participating in the hearing. This can result in delays, procedural errors, and a lack of fairness in the outcome of the case. Therefore, it is crucial to ensure that all parties involved in Ombuds and Tribunal processes have the necessary support and resources to navigate the digital landscape effectively.

8.1. Lessons learned

(1) to better understand the effect of rapid digitalization on advice system, redress systems and users

- ➔ The pandemic has dramatically influenced how people interact with the administrative justice system (AJS); specifically, how Tribunals, Ombuds, advice providers and NGOs are able to provide access to justice.
- ➔ The pandemic created a fertile ground for understanding better how online hearings and online communication with users worked and where the challenges lie.
- ➔ Digitalisation of complaints pathways has brought with it many benefits but also exposed flaws and weaknesses.

Benefits

- ➔ *Professionals*: no time wasted travelling to hearings and the ability to attend hearings in different parts of the country from a home office.
- ➔ *Users:* no time and money wasted to travel to hearing; ability to join a hearing from the comfort of a home rather than a potentially intimidating courtroom.

Weaknesses

- ➔ *Professionals*: having to learn and navigate the online space and moving away from a paper-based system.
- ➔ *Users:* a challenging online process that might be difficult to navigate, understand and feel heard.

(2) to identify the effects on access for marginalised groups / vulnerability

- ➔ There exist different levels of access, different levels of capabilities, and different levels of abilities, that allow people to access or prevent people from access.
- ➔ The pandemic has affected access to advice and redress for marginalised groups. Already marginalised communities are likely to be affected the most by the pandemic. Yet, we know relatively little about how members of these groups are accessing the justice system, and what can be done during and after the pandemic to improve their capacity to obtain advice, support, and redress.
- ➔ Our data showed that the experiences of Tribunal users, with varying levels of legal and digital capabilities, did not always match the narratives about the benefits the professionals expressed.
- ➔ People often do not know where to turn when experiencing problems which leaves most inactive.
- ➔ Networks for support and signposting to organisations for support that can act as trusted intermediaries are important.
- ➔ Even if people are digitally savvy they can be vulnerable (e.g. mental/physical health impairments).
- ➔ Vulnerabilities can develop during the process (e.g. digital interactions and possible emotional consequences).
- ➔ The system is very difficult to understand and a challenge to access - a lot of people give up.

Themes in housing:

- ➔ Structural disempowerment: marginalisation and stigmatisation. A harsh psychological and material reality is often evidenced in people's stories about their housing issues. Moreover, homeless people often struggle with physical and mental health conditions.
- ➔ Referral, support, and guidance from charities is crucial to help people navigate the system despite their marginalisation and sense of disempowerment.
- ➔ Taking action is not easy.
- ➔ People often have a lack of knowledge of Tribunal/ Ombudsman.

Themes in SEND:

- ➔ Vulnerability and helplessness; parents often feel helpless, something that was especially salient during the pandemic. Often these feelings of helplessness can lead to depression among parents.

- ➔ Due to the complexity of children's SEND problems a lot of time is spent trying to resolve complex problems before seeking help.
- ➔ Schools and local authorities tend to be negatively perceived services and are characterised by access to justice issues.
- ➔ Advice organisations and the SEND tribunal tend to be positively perceived services.
- ➔ Schools and the local authority posed significant access issues for parents during the pandemic.
- ➔ Post-pandemic, accessing the local authority did not become any easier. In fact, participants described negative encounters with local authorities.
- ➔ A lack of information about the Tribunal process, when documents must be submitted, and what to expect.

(3) to explore how trust can be built and sustained in a justice system affected by the pandemic

- ➔ The extent to which people trust institutions, and how their trust is affected by and during interactions with those institutions, is vitally important for their willingness to engage, to cooperate with the institution, and to accept the outcomes delivered.
- ➔ People's attitudes and behaviours are shaped by the fairness of the processes that authorities offer them.
- ➔ Those who lack trust, or whose trust is undermined by bad experiences, are less likely to engage with services, less likely to voluntarily cooperate in legal or other procedures, and more likely to challenge or simply ignore outcomes that are not in their favour.
- ➔ It therefore appears that the strong 'procedural justice effect' identified for users of administrative justice services relating to traditional telephone, written and to an extent face-to-face interactions, holds true for online interactions as well.
- ➔ The ability to command widespread public trust therefore becomes central to both the effective functioning of these institutions and their ability to provide appropriate services and outcomes to the people that engage with them; especially in a justice system affected by the pandemic.

Appendix 1. SEND and Housing contexts

SEND

The wider context: the challenges in the system

The system to support children and young people with Special Educational Needs and Disability (SEND) has been fraught with challenges over the years. This has been compounded by a complicated redress system that leaves parents and carers unclear of where to go to resolve their dispute with the local authority.

A child or young person who has special educational needs and disabilities is entitled to special education provision to be made available to them. According to the Special Educational Needs and Disability Code of Practice (2015), a child or young person (aged 0-25) can be categorised as having SEND, if they:

have a significantly greater difficulty in learning than the majority of others of the same age; or has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.[82]

A child/young person with SEND should qualify for extra support to enable them to participate in mainstream education either within a mainstream or special school, depending on the severity of their needs.

In 2021, 1.4 million school pupils were identified with Special Educational Needs making up 15.8% of all school children. Of those identified with SEND, those requiring SEND support made up 12.2% of all school pupils (an increase from 11.6% in 2016). The most common type of need in primary school in 2021 was Speech, Language and Communication Needs and in secondary schools was Social, Emotional and Mental Health.[83] To access extra support, over and above provision normally available in mainstream schools[84], a child/young person with SEND requires to receive an education, health and care (EHC) plan from their

[82] Special educational needs and disability code of practice 2014 : 0 to 25 years, xiv. p16. Accessed December 2022. Available at https://www.gov.uk/government/publications/send-code-of-practice-0-to-25

[83] The SEND Review (2002; p7)). Right Support, right place, right time. Accessed December 2022. Available at:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063620/SEND_review_right_support_right_place_right_time_accessible.pdf

[84] Most pupils with SEND are on school-based SEN Support and receive extra support through that from schools and colleges. A smaller proportion of pupils with SEND require an EHCP, and their additional support is set out in that.

local authority to identify their educational, health and social needs and to set out what additional support is required to meet those needs. The majority of children/young people with needs are supported via SEND support in schools. A relatively small number (comparatively) have EHC Plans. An EHC plan is a legal document which:

- identifies a child's special educational needs;
- the additional or specialist provision (support, therapy etc) required to meet their needs;
- the outcomes (capabilities, achievements) the provision should help them to achieve; and
- the placement (the school or college they should attend).

The Children and Families' Act 2014 Code of Practice 2015 provides guidance to local authorities about how they should: assess children and young people for an EHC plan; decide whether to issue a plan; decide on the content of the plan; and implement, monitor or cease a plan.[85] Then, after applying, the applicant's local authority (LA) has 16 weeks to decide whether an EHC plan will be provided for the child; and 20 weeks from initial application to create the final plan. Should a plan be offered by the LA, a draft plan will be created and sent to the applicant who is able to comment on the contents including whether a request for their child to attend a particular school[86] has been granted; then the final plan is created.

However, while this process seems straightforward, in practice, there have been significant challenges in children/young people being granted SEND support by their LA. For example, by having their application for an initial assessment rejected; or, even if an assessment has taken place, the decision can be made that a plan is not required. Despite 93,302 plans being requested in 2020, only 62,180 were granted.[87] This has caused growing frustration of parents/carers whose children have been left without the support they need to thrive in school.[88]

[85] LGSCO (2019; p3). Not going to plan? – Education, Health and Care plans two years on. Accessed December 2022. Available at file:///Users/arabellakyprianides/Downloads/EHCP%202019%20vfC%20-%20EMB.pdf

[86] Might not be a special school: could be independent or just the school of parental preference which is different to that named by the LA.

[87] GovUK (2002). Education, health and care plans, Reporting Year 2022 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk). Accessed December 2022. Available at https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans#dataBlock-324a7b1c-4388-4a54-a1b2-b4b1b5125a3b-charts

[88] Not all requests are agreed to, but this doesn't necessarily mean that pupils are left without the support they need. There are many drivers for requests for assessments and not all are because the need to be met can't be fulfilled at school level through SEN Support.

Another challenge is the length of time it takes to process an EHC plan. As mentioned above, the LA should take 20 weeks to deliver the plan but in reality, this takes much longer – only 59.9% were issued within 20 weeks in 2021, leaving families waiting for long periods without the additional support for their child.

Further areas of contention are around a young persons' needs when it means they cannot receive education in a mainstream setting. Parents/carers can specify in the plan which school they would like their child to attend, but they are not always given the school they requested, let alone a place in the specialist school. If a parent/carer doesn't agree with the local authority's decision regarding the contents of an EHC plan, or special school place, they can appeal to the First-Tier Tribunal (Special Educational Needs and Disability).[89]

Numerous reports have highlighted this discontent from parents and carers. For example, the National Audit Office published a report in September 2019 'Support for pupils with special educational needs and disabilities in England'.[90] They concluded that while some pupils with SEND are receiving high-quality support, other pupils are not being supported effectively, particularly if they haven't been granted EHC plans. Further, the Children's Commissioner's report [91] highlighted that children with special educational needs or disabilities are a broad and diverse group and that the SEND system should work for *all* children. The Commissioner also emphasised the challenges many children have to secure their support packages and the importance that the support promised is delivered seamlessly.

While there are considerable challenges on the special educational provision to children and young people who need additional support, the pressure and restraints on LAs should not be ignored; needs have outstripped funding making the system financially unsustainable. Two thirds of local authorities are left with growing deficits; the national deficit was over £1 billion by the of 2020/21. Financial sustainability is impacted by increased demand for special school places, the increased use of independent schools and the reductions in per-pupil funding. In addition, there is a lack of consistency in the costs of different types of specialist

[89] Appeal rights go beyond refusal to issue a Plan or the choice of school place.

[90] National Audit Office (2019). Support for pupils with special educational needs and disabilities in England. Accessed December 2022. Available at https://www.nao.org.uk/reports/support-for-pupils-with-special-educational-needs-and-disabilities

[91] Children's Commissioner (2022; p5). Beyond the Labels: A SEND system which works for every child, every time. Accessed December 2022. Available at https://www.childrenscommissioner.gov.uk/report/a-send-system-which-works-for-every-child-every-time/

provision for children and young people with SEND, costing more than double in an independent (special)[92] school compared to an academy special school.[93]

This lack of provision has led to a huge increase to the appeal rate to the First-tier Special Educational Needs and Disability Tribunal which has increased year on year since 2015. In 2020/21, 8600 SEN appeals were registered, an increase of 8% from the previous year. More significantly, 95% of cases at the Tribunal were overturned (on at least some parts of the appeal).[94] This was an increase of 2% from the previous year. Similarly, the Local Government and Social Care Ombudsman reported increases of 45% from 2016-17 to 2018-19 and they upheld nearly 9 out of 10 investigations in 2018.[95] This increase coupled with the high success rate for parents/carers, could demonstrate the need for improvement to the decisions made by local authorities on special educational provision.

Having a successful outcome at the Tribunal or Ombuds, however, comes at a cost to both the appellant and the Tribunal/Ombuds. Challenging a decision can have a huge emotional impact on the parents/carers and is subject to further delays. In the case of appeals, the burden to make the correct decision on a child/young person's special educational provision rests with the Tribunal who, in addition, covers the costs of running the hearings. However, having an effective and seamless appeals process is vital in helping families to obtain the specialist support required. From the families' perspective the experience of the SEND system is too bureaucratic and adversarial (Children and Families Act, 2014). There are too many difficulties and delays in securing support for children/young people causing frustration to their parents and carers. Overall, navigating the SEND system is complex, requiring families to engage with multiple services, assessments and the appeals process causes further delay, frustration and confusion about where to go for help.

In the Children Commissioner's investigation into the SEND system in 2022, she reported: "Parents told me about the challenge of accessing the right help, quickly, for their

[92] Some independent schools are not 'special'.

[93] Department for Education (2021). LA and school expenditure. Accessed January 2023. Available at: https://explore-education-statistics.service.gov.uk/find-statistics/la-and-school-expenditure/2020-21; Department for Education (2021). Schools, pupils and their characteristics. Accessed January 2023. Available at: https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics

[94] https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-july-to-september-2020/tribunal-statistics-quarterly-july-to-september-2020

[95] LGSCO (2019; P3). Not going to plan? – Education, Health and Care plans two years on. Accessed December 2022. Available at file:///Users/arabellakyprianides/Downloads/EHCP%202019%20vfC%20-%20EMB.pdf

children; having to navigate a complicated system that is too often adversarial. But they also told me how access to the right help has transformed their lives and their outlook."[96]

Policy developments

In September 2014, significant reforms were undertaken in the SEND system under the Children and Families Act 2014. The aims of the reforms were for: children's needs to be identified earlier; families to be more involved in decisions affecting them; education, health and social care services to be better integrated; and support to remain in place (where appropriate) for children and young people from 0 to 25 years. EHC plans were introduced as a replacement for the Statement of Special Educational Needs. Co-production, joint working and a 0-25 child-centred approach were introduced as part of the reforms.

While the reforms themselves were widely welcomed, their ambitions are yet to be seen, with a SEND system that is still not operating effectively and "too many children and young people not fulfilling their potential, parental confidence in decline and further pressure on a system already under strain".[97]

Under part 3 of the Act, the policy for children and young people with special educational needs was set out. It included provisions for LAs to keep under review the education, training and social care training provisions for children and young people aged 0-25 years, who have a special educational need or disability. In relation to provision, the Act states that "The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection 7, the authority is of the opinion that

"(a) the child or young person has or may have special educational needs, and

(b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan."[98]

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[96] Children's Commissioner (2022; p5). Beyond the Labels: A SEND system which works for every child, every time. Accessed December 2022. Available at https://www.childrenscommissioner.gov.uk/report/a-send-system-which-works-for-every-child-every-time/

[97] Department of Health and Social Care (2022; p8). The SEND Review Right Support Right Place Right Time. Accessed December 2022. Available at https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time

[98] Children and Families Act 2014. Accessed December 2022. Available at: https://www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga_20140006_en.pdf

In response to the increasing issues with the system, the Education Select Committee published a report on special educational needs and disabilities in 2019. In the report they stated that the ambitions in the reforms remain to be realised.[99]

"Let down by failures of implementation, the 2014 reforms have resulted in confusion and at times unlawful practice, bureaucratic nightmares, buck-passing and a lack of accountability, strained resources and adversarial experiences, and ultimately dashed the hopes of many".[100]

This followed some additional improvements made by the government in 2018. In November 2018, the DfE published successful applications from trusts to local authorities to run special free schools; and in March 2019, there was an announcement of 37 further successful local authority bids for special schools. In addition, in December 2018, £350 million was allocated for high needs funding which included money to increase the number of educational psychologists. In March 2019, an additional £31.6 million was announced for the operating costs of training providers.[101]

However, these improvements might not have been sufficient and in 2019, after the realisation that the 2014 reforms had not been completely successful, the SEND Review[102] was launched jointly by the Department for Education and the Department for Health and Social Care. This was amid the growing concerns about the challenges facing the SEND system in England. The SEND Review focussed on how the system evolved since 2014 and looked at ways that it could be improved to ensure it could be more effective; and that resources would be sustainable.

A green paper (2022)[103] identified three key challenges facing the SEND system: 1) Outcomes for children and young people with SEN or in alternative provision are poor; 2) navigating the SEND system and alternative provision is not a positive experience for

[99] The Education Select Committee also called for an urgent extension of LGSCO jurisdiction to allow for greater accountability in schools. (LGSCO also requested this in their Triennial Review).

[100] House of Commons Education Committee Special educational needs and disabilities (2019; p3). First Report of Session. Accessed December 2022. Available at https://publications.parliament.uk/pa/cm201919/cmselect/cmeduc/20/20.pdf

[101] House of Commons Education Committee Special educational needs and disabilities (2019; p9). First Report of Session. Accessed December 2022. Available at https://publications.parliament.uk/pa/cm201919/cmselect/cmeduc/20/20.pdf

[102] Department of Health and Social Care (2022). The SEND Review Right Support Right Place Right Time. Accessed December 2022. Available at https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time

[103] Department for Education (2022). SEND and AP green paper: responding to the consultation. Accessed December 2022. Available at: https://www.gov.uk/government/publications/send-and-ap-green-paper-responding-to-the-consultation

children young people and their families; and 3) despite unprecedented investment, the system in not delivering value for children, young people and families.[104] The proposals set out in the Green Paper to mitigate these challenges were for: a single national SEND and alternative provision system; provision from early years to adulthood (including an increase to the schools budget by £7 billion by 2024-25); a reformed and integrated role of alternative provision; system roles and accountabilities and funding reform; and delivering change for children and families.

The Green Paper ran the consultation until July 2022 - a national SEND delivery plan will be published in 2023 setting out how the changes will be implemented. Since the publication of the Green Paper, there have been several criticisms raised by stakeholders on the proposals. For instance, on 21 November 2022, a group of 34 lawyers representing children and young people, wrote to the Secretary of State for Education expressing the concern that the Green Paper risked diluting children and young people's rights to provision and the support that meets their individual needs. Concerns were expressed that children and young people are not currently receiving the support they need. The letter referred to what they considered as unlawful decision-making by local authorities. It was felt that the implementation of the 2014 reforms had been inadequate and that local authorities had failed to fulfil their legal duties as set out in the legislation and regulations. They also criticised the reduction of the choice of an education setting and for families to participate in mandatory mediation.[105]

Despite the criticism, the DfE has acknowledged that the SEND system requires significant improvement, and it is hoped that the White Paper will have a positive impact on the provision of SEND to those who need it. The quality of decision-making across local authorities has been acknowledged by both the DfE and the Ministry of Justice, who sit (as observers) on the Administrative Justice Council's[106] working group 'Improving first instance decision-making by local authorities', which seeks to understand the high overturn rate in

[104] Department of Health and Social Care (2022). The SEND Review Right Support Right Place Right Time. Accessed December 2022. Available at https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time

[105] Letter to Secretary of State for Education from lawyers who represent children & young people with special educational needs & disabilities (SEND). Accessed December 2022. Available at Download.ashx (ipsea.org.uk); The Green Paper made no mention of the role of the LGSCO.

[106] The Administrative Justice Council is the oversight body to the administrative justice system across the UK: www.ajc-justice.co.uk

Tribunals and to provide practical solutions to improve decisions made by local authorities. The working group will publish its report in March 2023.

Effects of the pandemic

The Ofsted report (2021)[107] finds that existing weaknesses in the SEND system have been exacerbated by the pandemic, as children are more likely to have been 'out of sight' of services. These are, for example, weaknesses in universal education, health and care services, resulting in children and young people not learning essential skills and knowledge, and mistakenly being identified as having SEND. The significant inconsistencies in how SEND is identified, a lack of joined-up commissioning and joint working across education, health and care became ever more apparent. Further, the lack of clarity between organisations about who is responsible and accountable within local area SEND systems. Which means delays in decisions and children not being able to receive the support they need.

The report makes several recommendations for improvement in the SEND system:

- more accessible universal services for children and their families, delivered by practitioners with a strong understanding of how to meet the needs of children and young people with SEND
- more accurate identification when children need targeted or specialist support and higher aspirations for children and young people with SEND
- a greater sense of joint responsibility between partners in a local area, clearer accountability for different organisations within local systems, and greater coordination of universal, target and specialist local services so children get the right support at the right time.

As mentioned earlier, if parents / carers need to challenge a school or LA's decisions there are different pathways available. We look at those through the Tribunal and the Ombuds.

[107] Ofsted (2021). Children and young people with SEND disproportionately affected by pandemic. Accessed December 2022. Available at: https://www.gov.uk/government/publications/send-old-issues-new-issues-next-steps/send-old-issues-new-issues-next-steps

Housing

The wider context: The housing crisis and the impact of the pandemic

Housing in the UK—particularly in London and the southeast of England—is some of the most expensive and cramped in the world. Housing costs in the UK are not only high in absolute terms but also relative to incomes, and UK house prices are not only extraordinarily high but also exceptionally volatile. The current housing affordability crisis has been developing slowly over the last 40 years.[108]

A report published in 2018 by the housing and homelessness charity Shelter[109] showed in vivid detail the housing crisis as it exists in England. It is a crisis principally of those who rent, not through choice, but because of the unaffordability of housing for would-be homeowners. This has left millions in insecure and expensive rented accommodation. The report found that most private renters on low incomes struggle to afford their rent, with private renters afforded little legal protection from eviction. In addition, private renters often face threats to health and safety, having to tackle problems with their homes that include electrical hazards, damp, and pest infestation. If private renters make a formal complaint about their housing issue, research suggests there's a 50:50 chance they will be handed an eviction notice within six months. Moreover, the report explained how stigma and discrimination are linked to housing in a number of ways. Stigma can make social renters feel powerless to influence decisions about their homes; and in the private market, refusing to rent homes to those receiving benefits is widespread. A further report published by Shelter in December 2021 demonstrated that in the context of this housing emergency, in the UK, 17.5 million people are denied the right to a safe home and women are disproportionately affected.

The roots of the housing crisis track back to the decline of social housing over the last 40 years, coupled with the trends of rising prices, falling ownership and an expanding – but increasingly unfit – private rented sector, paid for by a rapidly rising housing benefit bill.[110] At the sharpest end of the crisis, more and more people are being left homeless. An alarming 282,000 single people, couples and families were judged as homeless or threatened with homelessness by local authorities in 2020/21 in England (Crisis, 2022).

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[108] Hilber, Christian A. L. and Schöni, Olivier (2016) *Housing policies in the United Kingdom, Switzerland, and the United States: lessons learned.* Cityscape, 18 (3). pp. 291-332.

[109] Shelter (2018). Building for our future: A vision for social housing. Accessed December 2022. Available at https://www.ceci.org.uk/building-for-our-future-a-vision-for-social-housing/

[110] Shelter (2018). Building for our future: A vision for social housing. Accessed December 2022. Available at https://www.ceci.org.uk/building-for-our-future-a-vision-for-social-housing/

The COVID-19 pandemic has severely disrupted construction, made it difficult for many households to pay for shelter, and seriously hurt the housing sector (OECD, 2020[111]; also see ONS 2022[112] for most recent property prices, private rent and household statistics). In 2022, Crisis[113] conducted a longitudinal study on homelessness impacts of recent economic and policy developments in England. Several key findings are relevant here. Progress against the government's target of ending rough sleeping by 2024, supported by substantially increased investment, including via the Rough Sleeping Initiative, has been radically accelerated by responses to the pandemic. Total temporary accommodation placements continued to increase (up by 4% in 2020/21), and Bed and Breakfast hotel placements rose significantly (by 37%). Some of this increase reflects actions under the *Everyone In* programme (with clear reductions in rough sleeping (down 33%) and sofa surfing (down 11%)), though temporary accommodation placements were already on an upward trajectory before the pandemic. Related to this, most local authority survey respondents (78%) also reported that access to private rented sector accommodation became more difficult during 2020/21, with 57% identifying access to the social rented sector as becoming more challenging also.

COVID-19 inflicted considerable damage on the economy during 2020. Uncertain economic prospects and the deepening living cost crisis has led to mounting concerns there may be a surge in homelessness in 2022/23. It is predicted that the aftermath of the COVID-19 pandemic risks a substantial rise in core homelessness, with overall levels expected to sit one-third higher than 2019 levels on current trends. Levels of rough sleeping are also predicted to rise, despite the Government's target of ending this form of homelessness by 2024.[114]

[111] OECD (2020). Housing prices. Accessed December 2022. Available at https://data.oecd.org/price/housing-prices.htm.

[112] ONS (2022). Index of Private Housing Rental Prices, UK: September 2022. Accessed December 2022. Available at https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/indexofprivatehousingrentalprices/september2022

[113] Crisis, 2022. The Homelessness Monitor: England 2022. Accessed December 2022. Available at https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/england/the-homelessness-monitor-england-2022/

[114] Crisis, 2022. The Homelessness Monitor: England 2022. Accessed December 2022. Available at https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/homelessness-monitor/england/the-homelessness-monitor-england-2022/

Considering the above, experts in the field argue that neither the government nor any opposition party has had any effective policy to tackle the housing crisis in the UK.[115] We next look at major housing reforms and Acts.

Policy developments

Housing is one of the government's key priorities. As discussed above, for many people, the availability and affordability of housing has become increasingly difficult in recent years. Major housing reforms and Acts have been introduced to try to support people through the housing crisis faced by those residing in England. It is to these that we now turn.

Government involvement in housing encompasses a diverse array of organisations, individuals, and activities: departments – housing policy is led by the Department for Levelling Up Housing and Communities but a range of other departments are involved (e.g. Department for Work and Pensions); various organisations and individuals, including housing developers, building contractors, mortgage lenders, local authorities, housing associations, landlords, owner-occupiers, private renters and those in the social rented sector; and interventions, including regulation (e.g. planning), grant funding (e.g. for new homes), and loans (e.g. Help to Buy Equity Loans).[116]

The key housing policies that were adopted in the past and, especially those that were implemented in more recent years, not surprisingly, reflect the fact that housing affordability has been the key concern of voters and politicians.

Hilber and Schoni[117] discuss the UK's key policies that had been implemented up until 2016 with the intent to address the affordability crisis in detail, discussing their objectives, as well as their merits and demerits. At the threshold, these concern (a) social housing, (b) right-to-buy, (c) help-to-buy, and (d) housing-related tax policies. The provision of social housing has certainly helped the lowest-income households and the most vulnerable people to obtain more adequate housing than they could have in the absence of such intervention. However, policies related to social housing, such as the so-called "Section 106 agreements", which require private-sector developers to offer "affordable housing" as a condition of obtaining planning permission, have adverse effects on social housing because the demand for such

[115] LSE (2019). The UK's housing crisis: what should the next government do? Accessed December 2022. Available at https://blogs.lse.ac.uk/politicsandpolicy/housing-crisis-what-should-the-next-government-do/

[116] National Audit Office (2017). Housing in England: overview. Accessed December 2022. Available at https://www.nao.org.uk/reports/housing-in-england-overview/

[117] Hilber, Christian A. L. and Schöni, Olivier (2016) *Housing policies in the United Kingdom, Switzerland, and the United States: lessons learned.* Cityscape, 18 (3). pp. 291-332.

subsidised housing far outstrips supply. The downturn of social housing began in 1980, when Margaret Thatcher introduced "Right-to-Buy". In brief, the policy allows social tenants to purchase their homes at a significantly subsidised price, with the effect that some of the best social housing stock moved from socially-rented to privately-owned. Right-to-Buy is a crucial factor helping to explain the significant rise in homeownership from 1980 until 2002. The so-called "Help-to-Buy" policy was introduced in 2013. The aim of the scheme had been to stimulate housing demand. The Help-to-Buy scheme consists of four instruments: equity loans, mortgage guarantees, shared ownership, and a "new buy" scheme that allows buyers to purchase a newly-built home with a deposit of only 5% of the purchase price. The promoters of the policy hoped that the increase in demand would translate into new housing being supplied and higher homeownership attainment. Finally, the key housing-related taxes in the UK include central government grants to local authorities and the council tax, within which most local expenditures in the UK are financed via central government grants, not via local taxes.

The Grenfell Tower fire in June 2017 exposed a range of issues with social housing and provided an impetus for change. In August 2018, following extensive engagement and consultation with social housing residents across the country, the Government published a social housing green paper – A new deal for social housing[118] – which aimed to "rebalance the relationship between residents and landlords". Alongside the green paper, the Government published a Call for evidence: Review of social housing regulation[119] which sought views on how well the regulatory regime was operating. The consultation ran from 14 August to 6 November 2018 and received over 1,000 responses. After a gap of two years, on 17 November 2020 the Government published a social housing white paper –The Charter for Social Housing Residents. [120] The Charter sets out measures designed to deliver on the Government's commitment to the Grenfell community that "never again would the voices of residents go unheard" and on its 2019 manifesto pledge, to empower residents, provide greater redress, better regulation and improve the quality of social housing. The white paper is intended to deliver "transformational change" for social housing residents. It sets out

[118] Ministry of Housing, Communities & Local Government (2018). A new deal for social housing. Accessed December 2022. Available at https://www.gov.uk/government/consultations/a-new-deal-for-social-housing

[119] Ministry of Housing, Communities & Local Government (2018). Review of social housing regulation: call for evidence. Accessed December 2022. Available at https://www.gov.uk/government/consultations/review-of-social-housing-regulation-call-for-evidence

[120] Ministry of Housing, Communities & Local Government (2020). The Charter for Social Housing Residents. Accessed December 2022. Available at https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper

measures to, amongst other things, ensure social housing is safe and of good quality, ensure swift and effective complaint resolution, and empower residents to support them in engaging with and holding their landlords to account - which entails changes to the Housing and Planning Act 2016, which contains the main housing laws and legislations in the UK.[121]

Although the white paper has been well received by tenants, social landlords and the housing sector, concerns have been expressed about the slow pace of social housing reform, the failure to address issues around the supply of homes for social rent, the lack of clarity about who and what social housing is for, the failure to fully address the issue of stigma, exacerbated by the Government's strong focus on home ownership, the lack of a national platform or representative body to represent tenants' interests, and potential challenges for social landlords in resourcing all the new requirements. Furthermore, there is no timetable attached to delivering the measures set out in the social housing white paper.[122]

Landlords, tenants, and other court users in housing cases have raised issues and concerns about current court and tribunal processes. Currently tenants, landlords and property agents can bring a range of housing issues to the courts or the Property Tribunal to enforce their rights. Users have raised concerns that processes do not always work as effectively and as efficiently as they could. Tenants and landlords experience difficulties in navigating the process of bringing a case to a court of law and have found that the length of time the process takes can be costly and demanding. In October 2017, the government committed to consult with the judiciary on whether a new, specialist housing court could help to address these concerns. Having considered the responses to the 2018 call for evidence, and associated stakeholder engagement, the conclusion in 2022 is that the costs of introducing a new housing court would outweigh the benefits, and that there are more effective and efficient ways to address the issues experienced by court and tribunal users in housing cases. Therefore, the government is implementing a package of wide-ranging reforms instead.

In June 2022, the government published its Social Housing Regulation Bill – a direct result of the Grenfell Tower fire-, putting into law a host of reforms to the regulation of the sector. Key changes included: the Regulator of Social Housing (RSH) will be required to set up an advisory panel, made up of representatives of social housing tenants, social landlords and their lenders, councils, the Greater London Authority (GLA), Homes England and the

[121] House of Commons (2022). Implementation of the Housing and Planning Act 2016. Accessed December 2022. Available at https://commonslibrary.parliament.uk/research-briefings/cbp-8229/

[122] House of Commons (2022). Implementation of the Housing and Planning Act 2016. Accessed December 2022. Available at https://commonslibrary.parliament.uk/research-briefings/cbp-8229/

housing secretary; underperforming social landlords will be subject to inspections; the regulator is granted powers to issue social landlords with 'performance improvement plan notices' if they fail to meet standards, if there is a risk they will fail to meet standards and if it fails to provide documents or information the RSH has asked for; the regulator has the power to carry out emergency works on properties, for which the social landlord will have pay for; mandatory checks on electrical installations at least every five years for rented and leasehold properties, and mandatory portable appliance testing (PAT) on all electrical appliances that are provided by social landlords; every registered provider will have to appoint a health and safety lead; Housing associations will now be subject to a Freedom of Information-style information-sharing process; the 'serious detriment' test has been removed, which blocks the RSH from intervening over consumer standards unless it suspects tenants are at risk of serious harm; the regulator can now ask social landlords to collect and publish information relating to their compliance performance; and finally, critical to the purposes of this book the bill proposes an improved Housing Ombudsman scheme.

The Housing Ombudsman was granted new powers – which included the ability to refer more cases to the regulator and to issue complaint-handling orders against poorly performing landlords – in September 2020. The purpose of a complaint-handling failure order is to ensure that a landlord's complaint-handling process is accessible and consistent, and that it enables the timely progression of complaints for residents, as set out in the Housing Ombudsman's complaint-handling code. The bill puts into law the code of practice. It also legally allows the watchdog to order a landlord to review its policies on specific issues. Added to this, the ombudsman and the RSH must by law prepare and maintain a memorandum describing how they intend to work together as they perform their duties.

Other key housing policies have focused on homelessness amid concerns of the rising levels of homelessness in the UK. For example, the Homelessness Reduction Bill was introduced in the House of Commons on 29 June 2016. The ambition of the Homeless Reduction Act is to shift the culture of homelessness services towards prevention and provide assistance to all eligible people in need of it, removing barriers for service users.[123]

The Leasehold Reform (Ground Rent) Act 2022 also came into force in June 2022. The new legislation is the first step in the government reform package that aims to create a fairer

[123] Ministry of Housing, Communities & Local Government (2020). Homelessness Reduction Act 2017: government response to the call for evidence. Accessed December 2022. Available at https://www.gov.uk/government/consultations/homelessness-reduction-act-2017-call-for-evidence/outcome/homelessness-reduction-act-2017-government-response-to-the-call-for-evidence

housing system and levelling up opportunities for more people. The Act means that any ground rent demanded as part of a new regulated residential long lease where a premium is paid may not exceed more than one peppercorn per year. Most new leaseholders will not be faced with financial demands for ground rent. The Act also bans landlords from charging administration fees for collecting a peppercorn rent. If a landlord charges ground rent in contravention of the Act, they are liable to receive a financial penalty between £500 to £30,000.[124]

[124] Leasehold Reform (Ground Rent) Act 2022: Guidance for leaseholders, landlords and managing agents. Accessed January 2023. Available at: https://www.gov.uk/government/publications/the-leasehold-reform-ground-rent-act-user-guidance/leasehold-reform-ground-rent-act-2022-guidance-for-leaseholders-landlords-and-managing-agents

Appendix 2: The help-seeker journey in theory

1. **Awareness:** When the help-seeker becomes aware of/ is made aware of a housing/ SEND issue, they are:

Aims: Trying to understand and clarify the nature of the housing/ SEND issue.

Challenges: Understanding that there is a problem; Not knowing how to stop the problem from happening.

Actions: Talking to friends, family, community networks, GPs, health and social workers & searching online using a range of search terms in their own vernacular.

2. **Taking action:** When the help-seeker seeks information online and/ or signposted to advice services, they are:

Aims: Working out how to look for services and finding out what services are available to them

Challenges: Difficulties knowing how and where to look for help, and knowing which service is the most appropriate

Actions: Gaining knowledge of where to go for help & confidence in being able to do that

3. **Advice sector referral, support & guidance:** When advice is provided and processes explained by the advice organisation, the help-seeker is:

Aims: Trying to become empowered with language to describe the housing/ SEND issue; Finding out what the relevant institution options available are to help them with their housing/ SEND issue

Challenges: Difficulties in identifying legal dimension of a problem and knowing, or engaging with, the relevant terminology

Actions: Engaging with advice services

4. **Intermediate processes: making a complaint:** When the help-seeker completes the internal complaints/ appeal procedures, with or without support from the advice sector organisation, they are:

Aims: Trying to understand the intermediate complaint process. Making a complaint to the local authority or decision-making body.

Challenges: Finding it difficult to proceed without appropriate support.

Actions: Completing the intermediate complaint process with support.

5. **Consideration of alternative pathways:** If the help-seeker is still dissatisfied with the outcome of the intermediate processes (i.e. if the complaint is not resolved), he/she considers options of appropriate pathway to challenge the decision. The help-seeker is then:

Aims: Understanding the relevant institution options available and the differences between the options and their limits; Choosing an institution to engage with

Challenges: Information about housing / SEND issues is often not specific enough for the help-seeker's situation, or information about housing / SEND issues may not be user-friendly nor accessible or up to date; Institutions might use inconsistent language and terminology making it difficult to compare institutions; institutions might also not have their eligibility criteria available online, making it difficult to assess which service is most appropriate for the help-seeker's situation

Actions: Understanding and evaluating avenues for progressing the housing / SEND issues; Comparing and evaluating available institutions within those avenues

6. **Engage:** When the help-seeker engages with a redress mechanism to progress an appeal/ complaint, the help- seeker is:

Aims: Finding the contact details of the redress mechanism or AIMS appealing/engaging through the advice sector organisation; Engaging with the right entry point or application process easily; Finding out quickly if eligible and getting guidance on where else to look for help.

Challenges: Inconsistent information about service eligibility, or no information about eligibility guidelines; Help-seekers must wait for intake assessments to take place to be advised of whether they can be assisted, and for some, they will be told they are ineligible after spending significant time on the intake process; Online application forms can be lengthy and difficult to understand or complete (for those who are less digitally literate).

Actions: Understanding the institution's complaint's process; Completing the application online or offline.

7. **Service:** When the help-seeker receives service to help resolve their housing/ SEND issue, they are:

Aims: Understanding how institution/ redress mechanisms will progress the issue and what next steps to take.

Challenges: Redress mechanisms/ institutions are slow, and many cannot assist with urgent requests.

Actions: Receiving direct assistance.

8. **Outcome:** When the help-seeker receives a decision on their housing/ SEND issue, the help-seeker is:

Aims: Resolving issue with best possible outcome.

Challenges: The outcome did not meet help-seeker's expectations or improve the help-seeker's situation. Help-seeker does not understand the outcome.

Actions: Receiving the outcome from the organisation.

The above aims, challenges and actions apply to the help-seekers journey in the areas of both housing and SEND. However, the steps to redress differ by area. In our first report[125] we describe the pathway through both housing and SEND avenues separately. In the report, we outline the varied and complex housing/ SEND issues that the Housing Ombudsman and the Property Chamber/ the LGSCO and SEND Tribunal deal with respectively; as well as the complaints/ appeal process for all institutions. We also provide two case studies: one of the housing pathway from step 1 (awareness) to step 8 (outcome); and one of the SEND pathway from step 1 (awareness) to step 8 (outcome).

[125] The help-seeker journey: pathways to justice for 'housing' and 'special educational needs' in the Administrative Justice System (AJS). Accessed December 2022. Available at https://www.ucl.ac.uk/jill-dando-institute/sites/jill_dando_institute/files/final_report_1.pdf

Appendix 3. Vignette example: a fair online Tribunal process



Marta is 40 years old, a single mother of two living in social housing, who has been struggling to pay her housing costs since Covid-19 hit. She has experienced difficulties with paying her rent since Covid 19 hit, which caused her to lose her job. She was able to continue with most of her regular payments. She has now found a part-time job and been able to clear some of her arrears; and pay the ongoing rent. However, her landlord has now given notice that the rent is to be increased and Marta cannot afford it. The advice organisation Marta contacts helps her figure out what to do next. She can take her problem to the Property Chamber which is a Tribunal. The Property Chamber handle applications, appeals and references relating to disputes over property and land. Residential property disputes that they handle include rent increases for 'fair' or 'market' rates.



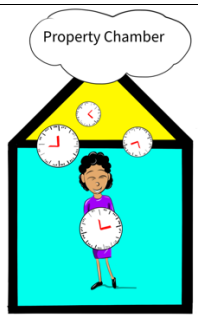
Marta appeals to the Property Chamber for a decision about the proposed rent increase. Marta needs to fill in a form to make the appeal. She downloads the form from the "HM Courts & Tribunals Service" website. She fills it in and posts it. Usually there is a fee of £100 to pay, but there is a "fee waiver" available for those who need it. The advice organisation help Marta get the fee waiver, so she does not have to pay the £100.



Marta waits to hear back from the Property Chamber. The Property Chamber checks Marta's form and the extra attachments she sent with it. It then gets back to Marta with a timetable for her case, the date of her hearing, and some extra information about the hearing. They also provide Marta with a leaflet about her legal rights, their procedures and advises that she can read more on their website *[PJ: understanding legal rights & procedures]*. The hearing is arranged to take place by video *[online hearing]*. Marta is confident with computers, so she is happy with this. She is told that she can go to the tribunal in person if she would prefer.



Marta attends the hearing at the tribunal online. The people who are in charge of the hearing and who will decide the case are there. They are called the "panel", and are made up of one judge and two other people who know about housing issues. A local authority representative is also at the hearing. The judge commences the hearing, addressing Marta directly: "Good morning. Thank you for being here today and presenting your side of the story. I apologise for the wait time this morning. Each case is important to me, and we will work together to get through today's calendar as quickly as possible, while giving each case the time it needs. Let's get started." *[PJ: respect]*. The judge recites the basic rules and format of the court proceedings and written procedures are also posted in the chat function to reinforce understanding. As part of this, the judge tells everybody present to put their phones on silent to ensure the hearing runs smoothly *[PJ: feeling like the process is transparent and applied the same way for all]*. Then the judge tells Marta, "Having looked through the documentation for this case, I understand your frustration. Please explain to me what happened and I will try to help." *[PJ: voice]* Marta expresses her viewpoint that she feels the rent asked of her is unfair and that she cannot afford it. The judge engages with Marta and tells her that he will take on board everything said today before he makes his decision. Marta is assured by the judge that she will receive the decision in writing in due course.



The Property Chamber write to Marta to tell her their decision and send a copy of their decision to the landlord. The Property Chamber decides that the increased rent is more than it would be for similar properties and that the increase would be unreasonable. It decides her current rent is accurate and Marta therefore does not need to pay the increased rent.