Call for Evidence: Access to Justice[1]

Questions

1. How does the current state of the legal services and representation market in England and Wales, and associated operating pressures, affect access to justice for clients?

Access to justice in the UK should not depend on wealth, or 'who you know', there should be total equity of access to all parts of the judicial arena.

We focus our response on justice in the planning system, which we believe is a component of civil law. The current government is adversarial, calling communities Nimbys, Blockers and Zealots, and referring to those requesting judicial review as obstructive, suggesting that they are propagating a 'challenge culture'[2]. This is unreasonable and their attempts to accelerate growth at any cost undermines scrutiny, democracy and the rule of law.

Equity of access to justice helps to ensure decisions made by public bodies are ethical, are shaped in a way that enhances our overall environment and that there is personal accountability for the most powerful (including those who typically benefit from development).

There are several issues of inequity that should be addressed.

Firstly, within the planning system, unlike applicants, communities are not able to appeal a planning decision even when the proposals do not comply with national or local planning policies (applicants can appeal for any reason). As a consequence, the **only** access to justice for communities is to apply to take a judicial review within 6 weeks of the decision being made. Communities need to be aware of this restrictive period BEFORE the decision because, in many cases, 6 weeks is insufficient time to create a strong legal case. This means communities have to incur legal costs in advance of actually needing legal representation.

Furthermore, it is not easy for communities to identify the legal reasons for their case, because, in planning law, for many issues that communities may see as a reasonable argument against a particular scheme (destruction of an irreplaceable habitat, for example), there is a need to prove 'irrationality'. This appears to particularly apply in the case of environmental or ecological harms. Nature does not have a voice in the legal system. It is, therefore, the responsibility of communities and specialist organisations to make these cases to protect our natural capital assets for future generations.

Equity within the system would ensure that there is funding for such cases. Current rules disproportionately affect less affluent communities and vulnerable groups, which may have more difficulties raising the necessary funding than those in more affluent areas. This means that access to justice is not actually available to all.

Pro-bono work often depends on 'who you know' or at least a knowledge of how to access it. Many less affluent communities may not have the connections to be able to draw on these resources. Communities should have free access to advocates for planning advice as public bodies and developers can draw on such skills.

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[1] https://committees.parliament.uk/call-for-evidence/3721/

[2] https://www.gov.uk/government/news/prime-minister-clears-path-to-get-britain-building

Within the planning system, local authorities and other public bodies (such as National Highways) can use public money to pay for their legal fees (and any advisory needs). Corporations (such as builders) use business funds (which will form part of their overheads). Only communities have to fund their legal action from their personal pockets. With this in mind, despite the government's rhetoric which suggests otherwise, there is no such thing as a frivolous judicial review requested by communities. Communities should have access to a public fund for judicial reviews that are in the public interest, such as those which relate to environmental or ecological harms.

There have been calls to make changes to the use of Aarhus protections for communities, which, if agreed, could lead to even less access to justice for the less affluent in our society. Calls to increase the current caps are short-sighted and misinformed. Community claimants have to raise sufficient funds to pay their own legal team fees, in addition to any capped costs required. The expectation that changes such as this will lead to fewer judicial reviews may be short-lived.

This regulation provides crucial access to environmental information, participation in decision-making and justice, ensuring fixed costs in relation to disputes in planning and environmental cases. We believe that changes to Aarhus protections would result in less transparency (more 'cover ups' of environmental and ecological disasters). Any move to reduce citizen access to information that allows them to better understand environmental issues, assess potential impacts, and engage in informed discussions would be contrary to the Gunning Principles, mentioned below. In addition, changes to Aarhus could reduce public participation, particularly in environmental decision-making processes, meaning communities would no longer be able to hold polluters and public bodies to account. The resulting limitations to access to justice could mean fewer citizens were able to challenge decisions that violate environmental laws. Those championing the changes to Aarhus protections are not considering the UN General Assembly resolution (adopted in 2022) formally declaring the right to a clean, healthy, and sustainable environment as a universal human right for all people. Changes to Aarhus protections could lead to a severe and serious impact on our natural capital. Such a decision would be a complete betrayal of current and future generations.

There are also concerns about the recent government proposals to limit access to justice in relation to accelerating large scale, high impact, Nationally Significant Infrastructure Projects[3]. This will weaken scrutiny of the most environmentally and ecologically damaging proposals, limiting the ability of communities to participate in planning decisions that will have a huge impact on their lives and livelihoods, particularly the ability to challenge those decisions, identify and promote alternative options and hold national and local decision-makers to account. Judicial review is an essential tool for communities to help them prevent abuses of power.

In summary, access to justice is essential to ensure environmental and ecological harm is prevented or minimised. Citizens should have equal access to justice, whether they are in an affluent neighbourhood, where residents may be able to easily afford to contribute to justice, or a poor neighbourhood, where they are already choosing between eating and heating!

For the future, we support the criminalisation of Ecocide, which would ensure the protection of the environment and our natural capital assets is factored into decision-making at all levels in the public and private sectors.

[3] https://justice.org.uk/proposed-legal-reforms-risk-undermining-justice-in-infrastructure-planning/

2. What is the role of supplementary advice services in supporting access to justice?

Whilst others will be more able to respond to this question, we note that, within the planning system, the Ministry of Housing, Communities and Local Government funds the Planning Advisory Service to provide consultancy and peer support, learning events and online resources to help local authorities understand and respond to planning reform. Despite the use of public funds, no such service is available for communities, nor are they able to share this resource! This approach does not support equity of access to justice.

3. What is the impact of those acting without legal advice and / or representation having on access to justice?

As just one example of the environmental injustice that occurs for those whose access to justice is limited is the impact of air, noise, light, vibration and water pollution on less affluent communities.

As an example, a recent report from the Royal College of Physicians (RCP)[4] highlights that 30,000 people are dying annually of air pollution, costing the NHS and the economy £500m every week. This shocking statistic disproportionately impacts the less affluent in our society, as shown in the government's briefing (May 2016)[5]. This document asserted that "*it has been estimated that half of the UK's £10bn cost per annum of air pollution comes from road transport*" and that "*Disadvantaged areas also tend to have a higher density of main roads, leading to poorer air quality, higher noise levels and higher collision rates*".

The document continues that health inequalities are further exacerbated because "*residents of deprived communities tend to travel less than the better off but feel the impact of other people's travel. In short, increasing car dependency has led to increasing unfairness*".

So, whilst public and active travel initiatives favour the 'less well-off', the government continues to be focused on building new or expanded road schemes. Communities that are impacted must, therefore, have equal access to justice and the ability to challenge such decisions.

When there are reduced opportunities to influence the planning system, including limited access to the judicial system, without incurring personal costs, it is the disadvantaged in society who pay the price.

4. Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding.

Improvements in access to justice do not need to be costly. Policy changes to enable communities to appeal against planning decisions which are not aligned with development plans/policies would be a swift and inexpensive option to increase access to justice.

[4] https://www.rcp.ac.uk/news-and-media/news-and-opinion/air-pollution-linked-to-30-000-uk-deaths-in-2025-and-costs-the-economy-and-nhs-billions-warns-royal-college-of-physicians/

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523460/Working_Together_to_Promote_Active_Travel_A_briefing_for_local_authorities.pdf

The government could also mandate community involvement in updating Statements of Community Involvement (it is, indeed, an oxymoron that this is not already a requirement). This could ensure, for example, that there is more (and more in depth) community engagement at earlier stages in the planning process.

Another opportunity to reduce legal claims within the planning system would be to tighten up any 'woolly' legislation to ensure it is fit for purpose (wording should be explicit about what is and is not allowed in law). Where there are to be 'get out' clauses, these should be explicit in the wording, such as by including the term 'where not financially viable'. Limiting the possibility of policies being interpreted differently would reduce the potential for legal claims.

We also believe many legal cases could be avoided if there is more compliance with existing regulations (such as the National Planning Policy Framework[6], which, despite supposedly being mandatory, public bodies are able to cherry-pick which policies they will follow).

There is a similar lack of compliance with the Gunning Principles[7]. A clear example of this is the recent Greater Manchester Spatial Plan. Communities were not widely consulted when the proposals for the release of 2,400 hectares of Green Belt were at the formative stage (rule 1). In fact, despite the New Carrington allocation (which will significantly harm, or completely destroy, a 335 hectare peat moss, irreplaceable and restorable according to Natural England), initially proposing to build 16,000 homes and 7,000,000 m2 warehousing, local communities were not aware until one of the local developers installed signage on public rights of way that stated 'Trespassers will be prosecuted' (a clear example that they assumed the development was a 'done deal'). During the consultation phases of the plan, communities were required to review over 150 documents (14,000 pages). Despite this, there was no information on the environmental or ecological implications of the allocations, including a lack of detailed data about the consequential carbon emissions and no mapping of ecological sites in accordance with the NPPF (non-compliant with rule 2). Given the size and scale of this plan, a minimum of twelve weeks for consultation should have been allowed. This was not the case (rule 3). Finally, 27,000 residents objected to the release of Green Belt and the environmental/ ecological damage to be caused by the plan. We do not believe there was conscientious consideration of citizen inputs and the advice of government agencies, such as Natural England, which objected to the allocation of land that incorporated irreplaceable habitats, was ignored. Despite there being sufficient brownfield land to meet government targets, 2,400 hectares of environmentally and ecologically rich Green Belt was released when the plan was adopted. Communities should continue to have the opportunity to challenge such decisions.

Furthermore, we believe the legal framework relating to the Green Claims Code[8] should apply to the public sector. This code requires businesses to comply with a set of legal principles to minimise the potential for customers to be misled by environmental claims.

The principles are:

- claims must be truthful and accurate
- claims must be clear and unambiguous
- claims must not omit or hide important relevant information
- comparisons must be fair and meaningful

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6 https://assets.publishing.service.gov.uk/media/67aafe8f3b41f783cca46251/NPPF_December_2024.pdf

7 https://www.local.gov.uk/sites/default/files/documents/The%20Gunning%20Principles.pdf

8 https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services

- claims must consider the full life cycle of the product or service
- claims must be substantiated

If such protections were in place in relation to environmental claims made by public bodies or developers within the planning system, there would be fewer legal cases. It is inequitable that this law exists to protect consumers from misleading products but is not in place to protect citizens from the much more damaging and expensive consequences of misleading environmental and ecological claims within planning related documents.

5. If limited funds were available, what would be the priority areas for spending?

We believe the most important priority in relation to planning law would be to provide an advice and support service for communities. This could potentially signpost pro-bono opportunities for more vulnerable, less affluent communities as well as provide basic legal advice.

6. How are the legal services regulators responding to their obligation to improve access to justice under the Legal Services Act 2007?

Others will be more able to respond to this question

7. How is pro bono work and free legal advice being used to support access to justice and what reliance is placed on it?

Whilst others will be more able to respond to this question, pro-bono services should be made available equally, not on the basis of 'who you know'.

8. How can advice, legal support or non-court dispute resolution, such as mediation and restorative justice, help the early resolution of disputes?

Whilst others will be more able to respond to this question, as mentioned above, it should be a priority to provide communities with the right to appeal against a planning decision if the planning application does not comply with national or local planning policies.

9. What role is there for digital innovation and data collection in supporting access to justice?

Taking advantage of new technologies, such as AI could bring benefits to the legal system. Careful implementation would be needed but it is not beyond the bounds of possibilities for documents to be reviewed for compliance with current environmental or other legislation, for example.

10. How could the current system of legal aid be improved to provide a cost-efficient and cost-controlled service, with suitably remunerated legal practice across civil, criminal and family law?

Others will be more able to respond to this question

11. What has been the impact of the Legal Aid Agency cyber-attack, revealed in April 2025, on recipients and providers of legal aid work, and how have the Legal Aid Agency and Ministry of Justice responded?

Others will be more able to respond to this question

About the Community Planning Alliance

The Community Planning Alliance is a national umbrella group for over 700 communities, all are campaigning against inappropriate development in their areas, and all disagree that decisions are being made in the 'public interest'. We have extensive knowledge and experience of the planning system, and our aims include seeking increased community participation, better environmental protections and the right homes and infrastructure in the right places.