

## **Enabling Access to Justice project: context and overview**

### **Vision**

A justice system that contributes positively to a flourishing Scotland, helping to create an inclusive and respectful society in which all people and communities live in safety and security, individual and collective rights are supported and disputes are resolved fairly and swiftly.

### **National outcomes**

Strong, resilient and supportive communities

Public services are high quality, continually improving, efficient and responsive to local people's needs

### **Justice outcomes**

Our people and communities support and respect each other, exercising both their rights and responsibilities

We have high levels of confidence in justice institutions and processes

Our public services are fair and accessible

### **Priorities**

Widening access to justice and advancing law reform

Transforming civil and administrative justice

Strengthening community engagement and resilience

### **Approach**

Making justice work

### **Making justice work programme**

The **Making Justice Work Programme** (MJW) has been established by the Scottish Government to provide an outcome-focussed programme of work to advance the wider interests of the justice system and system users, through partnership working between each of the key justice operational delivery partners.

The **Enabling Access to Justice project** is part of the MJW programme, focussing on civil law. It is **Project 3** in the programme.

### **Project 3 purpose**

To develop a sustainable system for access to justice focused on early intervention which will support and empower people to avoid or resolve informally disputes and problems wherever possible and enable access to appropriate and proportionate assistance and to a range of methods of dispute resolution, including courts, tribunals and appropriate alternatives.

### **Project 3 objectives**

1. Develop a co-ordinated, high quality and sustainable system of access to justice focussed on early intervention where public resources are transparently prioritised to maximise the delivery of the programme benefits.
2. To review and, where necessary, improve, develop or put in place arrangements for indirect assistance that support and empower people to avoid disputes/problems without the need for direct assistance
3. To review and, where necessary, improve, develop or put in place arrangements for indirect assistance that support and empower people to resolve disputes/problems early and informally without the need for direct assistance
4. To review and, where necessary, improve, develop or put in place arrangements that enable people to access direct assistance with a view to achieving early, informal resolution of problems, where possible, and avoiding future problems
5. To review and, where necessary, improve, develop or put in place arrangements that support and empower people to use a range of formal dispute resolution mechanisms, with direct or indirect assistance where appropriate and proportionate
6. To enable access to alternative forms of dispute resolution where appropriate and proportionate.

### **Project 3 approach**

Is a continuous improvement project that takes a whole system approach to improve access, based on the research evidence which shows that the area of law is the significant factor in whether and how people seek to resolve their problems or disputes, whilst demographic factors influence who experiences these problems.

### **Sub-projects and cross-cutting work**

- MJW 3.1 Strategic planning and co-ordination of publicly funded legal assistance (PFLA)
- MJW 3.2 Legal capability
- MJW 3.3 Review of costs and funding of litigation
- MJW 3.4 Development of Alternative Dispute Resolution

## MJW 3.5 Family Justice – cross cutting work

**Strategic planning and co-ordination of PFLA – key products and plans:**

- Completed review of public funding of legal assistance – who is funding which services; delivered grant funding programme that co-ordinates funding from Scottish Government, Money Advice Service
- Plan to deliver guidance to public funders of advice in collaboration with Scottish Government and local government; aim to develop measures and models for evaluating impact and outcomes of advice; continue monitoring of access to legal services in line with statutory function

**Legal capability – key products and plans:**

- Consumer Focus Scotland report “Facing up to legal problems” published and seminar held to discuss insights and recommendations around helping people to resolve or avoid problems without direct assistance.
- Plan to develop public facing internet platform to assist people to resolve their justiciable problems, as part of the Justice Digital Strategy.

**Review of costs and funding of litigation – key products and plans:**

- Taylor Review published; initial consideration of recommendations by Scottish Government has identified to which bodies they fall and whether primary legislation may be required.
- Next steps are to develop longer term implementation plan, including for Ministers to take decisions on the response to the report of the Taylor Review.

**Development of alternative dispute resolution (ADR) – key products and plans:**

- Desk-based overview of ADR operating in Scotland and international literature review of family mediation undertaken.
- Plan to undertake research into court-based ADR and related advice services, along with further work to understand publicly funded family mediation in Scotland.

**Family justice work – plans:**

- This is an emerging area of work, which would look at how the family justice system operates (including PFLA, legal capability, ADR and courts / tribunals) and how it interacts with other, non-justice, services and sectors. The aim would be to understand the significant areas for improvement in terms of how

family justice arrangements help or hinder the achievement of the Scottish Government's stated outcomes for children.

### Project 3 definitions

- **The system of access to civil justice** is defined in this context as being the arrangements (including both assistance and methods of dispute resolution) that are in place to enable resolution or avoidance of civil problems and disputes.
- **Civil problems and disputes** are defined as problems or disputes for which a civil legal remedy is available, whether or not that remedy is used.
- **User**: anyone who experiences a civil problem or dispute, whether or not a service is used or remedy sought. It therefore includes potential users, as well as actual users.
- **Early intervention** means the taking of steps to avoid or allow early resolution of civil problems and disputes.
- **Formal methods of dispute resolution** are defined as courts and tribunals.
- **Informal methods of dispute resolution** are defined as any way of resolving problems outwith the formal justice system of courts and tribunals, including by negotiation between parties or using alternative dispute resolution
- **Alternative dispute resolution** is defined as a method of resolving a dispute including the use of mediation, conciliation, adjudication, ombudsmen or arbitration.
- **Appropriate** reflects strategic policy decisions relating to the effectiveness of particular methods of dispute resolution or forms of assistance in helping people either avoid or resolve problems as early and informally as possible.
- **Proportionate** is defined as 'appropriate' above and includes the additional factor of the impact of any method of dispute resolution or form of assistance on the public purse.
- **Indirect assistance** refers to the provision of information that is not specifically tailored to a person's situation, or only to a limited extent, for example interactive internet programmes.
- **Direct assistance** is where a degree of interactivity occurs between the individual seeking assistance and the person or organisation providing assistance or where the service provider takes steps on behalf of the individual seeking assistance. For example, telephone discussions, email exchanges, face to face meetings, negotiation or representation. This includes Type I, Type II and Type III activity, as defined in the Scottish National Standards for Information and Advice Providers
- **Publicly funded legal assistance** refers to direct assistance as defined in the Scottish National Standards for Information and Advice Providers. This includes Type I, Type II and Type III activity, where it is funded by any public funder, including local government, national (UK or Scottish) government and the Board.
- **Methods of delivery** refer to different modes by which direct or indirect assistance is provided. For example, assistance could be provided via telephone or face-to-face or online.