



Paths to Justice

A past, present and future
roadmap

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Paths to Justice: A Past, Present and Future Roadmap

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August 2013

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Report prepared under a grant from the Nuffield Foundation (AJU/39100)

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Cover image © iStockphoto 2013

Published by the UCL Centre for Empirical Legal Studies

ISBN: 978-0-9927249-0-0

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The Nuffield Foundation is an endowed charitable trust that aims to improve social well-being in the widest sense. It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research. The Nuffield Foundation has funded this project, but the views expressed are those of the authors and not necessarily those of the Foundation. More information is available at www.nuffieldfoundation.org

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Acknowledgements

We would like to thank Dr. Ab Currie (Department of Justice, Canada), Professor Gillian Hadfield (University of Southern California, United States), Dr. Kuo-Chang Huang (Academia Sinica, Taiwan), Dr. Martin Gramatikov (Tilburg University, Netherlands), Professor Masayuki Murayama (Meiji University, Japan), and Dr. Marijke ter Voert (Ministry of Security and Justice, Netherlands) for their generous assistance in providing technical details and background information on surveys undertaken in their and other jurisdictions.

We would also like to thank the members of the project advisory group – Rosemary Hunter, Bert Kritzer, Ann Lewis, Richard Moorhead, Crispin Passmore and Teresa Williams – for their many helpful comments on the development of the project and project materials, and Hazel Genn for her detailed comments on an earlier draft of the report.

We would also like to thank the many respondents to our online survey of international stakeholders to ‘legal need’ surveys and the respondents to our in-depth interviews with British policy makers working in the field of access to justice.

Finally, we thank the trustees and staff of the Nuffield foundation for making this project possible, and for enabling the creation of a resource that will hopefully inform and guide the design and development of future surveys in the *Paths to Justice* tradition.

Executive Summary

This report explores methodological issues, brings together findings, assesses the impact of, and provides guidance and resources for the future development of surveys of *justiciable* problems – problems which raise civil legal issues, whether or not this is recognised by those facing them and whether or not any action taken to deal with them involves the legal system (Genn 1999).

A tradition of surveys

Since the mid-1990s, at least 26 large-scale national surveys of the public's experience of justiciable problems have been conducted in at least 15 separate jurisdictions, reflecting widespread legal aid reform activity. Twenty-four of these surveys fall within a growing *Paths to Justice* tradition, having firm roots in, and following the structure of, Genn's landmark survey in England and Wales. This tradition recognises that law does not always provide the best context for problem solving, and sees the adoption of a neutral stance towards citizen experience and behaviour. The tradition is characterised by a focus on issues that *may* have a legal solution, but are not restricted to those familiar to lawyers or discussed in tribunals or civil courts. The aspiration is to observe the entire dispute pyramid, from everyday problems (whether or not they are understood as legal) to formal proceedings.

Similarities of approach: A world of difference

Despite being part of a single tradition, there are marked differences in the methods employed by recent surveys, concerning sample frames, sampling methods, response rates, modes of administration, data structure, units of analysis, reference periods, filtering, the justiciable problems included, framing and question formulation. Each of these differences can be expected to impact on survey findings. Only the *Paths to Justice* and *Paths to Justice Scotland* surveys were near (though not) identical in their implementation.

In the development of future surveys, the impact of design decisions should be considered carefully. Specifically:

- Efforts should be made to avoid under-coverage of the target population when adopting a sample frame, to promote generalizability.
- Stress should be placed on response rates.
- Particular heed should be paid to survey framing, and even subtleties, such as references to survey sponsors, should be considered in drawing up advance letters, survey introductions, etc..
- Unnecessary changes to tried and tested questions should be avoided.
- In relation to the 'difficult to solve' triviality filter, it is suggested that it is not used in future, owing to its conflation of problem experience and problem resolution behaviour.
- As far as possible, problem definitions and categories should be defined to allow comparison with other survey findings.
- Flexibility around the post-survey re-construction of categories is also something to consider.

- Problems should be selected for detailed follow-up on a random, or quasi-random, basis, to ensure the coherence of the sample.
- The trade-offs between longer and shorter reference periods should be properly considered in deciding on rules for problem selection.
- Increased focus should be placed on capturing the experience of groups who are typically excluded from sample frames, excluded by methodology/mode of administration or not sampled in suitable numbers to allow their experience to be examined accurately (despite their nominal inclusion).

While legal need surveys have been found to provide a rich source of data concerning people's experience of and basic responses to justiciable problems there are limits to their utility.

The big picture

There is evidently a need for real caution when bringing together and comparing headline findings stemming from different legal need surveys. However, this does not mean that there is *no* scope for exploring similarities and differences between the experiences of justiciable problems of people in different jurisdictions from past surveys.

For example, while the absolute rates of problem prevalence cannot be compared across jurisdictions, the relative rates of prevalence of particular problem categories provide some interest where there are equivalent definitions. Here, precise numbers are of less importance. Comparative analysis of this type is particularly persuasive when set within a theoretical framework, such as that provided by participation theory, as set out by Van Velthoven and ter Voert (2005).

Eighteen of the 20 surveys for which findings are available indicated that consumer problems were among the three categories of problems that were most often reported. Similarly, problems concerning neighbours were among the three most common problem categories for all 13 surveys that included neighbours problems as a distinct category. And problems concerning money were found to be among the three most common problem categories in 15 of 18 surveys for which findings are available.

The similarity of patterns of vulnerability to problems identified by recent legal needs surveys also provides interest, although a major obstacle to reviewing findings across jurisdictions in this area is that there has been little consistency in analytical approach and, quite incredibly (given the cost of surveys), sometimes very little analysis at all.

Looking at those analyses that have been undertaken, patterns are fairly similar across jurisdictions, with few conflicts (especially among the multivariate analyses). Problems are generally associated with ill-health/disability, particularly mental ill-health/disability.

Looking at specific problems, consumer problems have been found to be associated with both high income and unemployment, employment problems with working age and unemployment, family problems with mid-life, lone parenthood and being divorced, and money problems with lone parenthood.

Comparative analysis of problem resolution behaviour is even more treacherous than analysis of patterns of problem experience, and again there is a paucity of reported findings from recent surveys. However, a reasonably consistent story emerges. Inaction is generally more common among men, becomes less common with age, less common with higher levels of education and less common

along with the value and seriousness of problems. Inaction is also associated with problems concerning anti-social neighbours, but not with family problems.

Multivariate analyses has also explored associations with advice. Again, a reasonably consistent story emerges. Women are more likely to seek help about a problem, with advice seeking rising with age and along with the value and seriousness of problems. Advice is least often obtained in relation to consumer issues and most often obtained for problems concerning family breakdown, personal injury, employment and owned housing.

Two analyses that specifically explored lawyer use found that it was associated with income, with lawyer use generally rising with income, although the most recent findings suggest a U-shaped association where legal aid is most available.

Lawyers have also been found to be most commonly used in relation to family problems, and (though less consistently) problems concerning housing and personal injury.

Common interests and emerging themes

The fact that there is limited potential for comparative analysis on the basis of past surveys is not to diminish the richness and utility of findings that have been reported from individual surveys to date. For example, there is now a significant literature that describes and seeks to explain the clustering of justiciable problems, and the clustering of justiciable problems and problems (such as morbidity/disability) more generally. The most visible clusters have consistently been seen in the context of family breakdown, but other clusters have also been identified.

There is also a significant literature exploring obstacles to advice. It is evident that many people who ‘lump’ justiciable problems are unsure about their rights, their prospects, and the availability of help, and there is mounting interest in exploring how problem resolution behaviour is influenced by people’s framing of the problems they face.

Once people are within the advice system, the importance of quick and effective referral has also repeatedly been highlighted through the uncovering and investigation of the phenomenon of referral fatigue.

And of course, the 26 recent legal need surveys combine to present a compelling picture of law being very much on the periphery of most experiences of justiciable issues, and a powerful case for developing related policy from the client, rather than the service deliverer perspective.

Lack of easy comparability does not, therefore, detract from the wealth of findings that have originated from recent legal need surveys. Nor does it detract from the importance of the emerging themes of research in the *Paths to Justice* tradition. Furthermore, the lack of easy comparability should not detract from the influence of the *Paths to Justice* tradition of surveys.

The impact of the surveys: official documents

Paths to Justice tradition survey findings have been referenced in a succession of English and Welsh government publications since the publication of *Paths to Justice*; although the 2010 consultation paper *Proposals for the Reform of Legal Aid in England and Wales* provides a notable exception (though findings were referred to in the response to the consultation and related impact assessments).

Findings from *Paths to Justice* and the CSJS have also been commonly referred to in select committee deliberations and reports. However, while findings

were originally introduced by government to support policy change, they are now introduced primarily from other quarters to support criticism of policy change.

Elsewhere, the CSJS has been formally integrated into government performance management, and has been seen by the Legal Services Commission as central to discharging its statutory duty under Section 4(6) of the Access to Justice Act 1999.

The impact of the surveys: The views of UK stakeholders

To assess the impact of *Paths to Justice* tradition surveys in the UK, interviews were conducted with legal aid and legal services policy stakeholders.

Four themes emerged. First, *Paths to Justice* tradition research is well-known across the legal aid and advice field. Second, *Paths to Justice* tradition research has transformed thinking about legal aid and advice. Third, stakeholders' assessment of the usefulness of particular bodies of empirical research, including *Paths to Justice* tradition research, was shaped by their particular research needs at the time of the interviews. In this case, the interviews occurred during a time of historic economic, political, and regulatory change affecting the legal aid and advice field. Fourth, *Paths to Justice* tradition research is generally well received. Critiques are disparate, reflecting respondents' specific perspectives and research needs rather than broadly shared concerns.

Respondents spoke of a number of survey findings, such as the existence of problem clusters, as common knowledge throughout the field. They also attributed the policy response of "joined-up services" to assist the public with the research discovery of "joined-up" problems.

Overall, *Paths to Justice* tradition research was seen as persuasive and influential, and as having transformed understanding of public justice needs, of not-for-profit service provision, and of market service provision.

However, as already indicated, the utility of any specific piece of research is shaped by a number of factors outside the research itself, and use of the surveys' findings has changed since the onset of the global financial crisis. Respondents' discussion of empirical research and its usefulness showed the powerful influence of government fiscal austerity in response to a deep global recession; of regulatory changes in the legal services market; and, of shifting political ideologies linked to the change in national government.

Respondents felt that research evidence had become more important for understanding the impact of policy changes and less important for guiding policy changes themselves. However, in contrast with England and Wales, Scottish respondents described an ideology that included a continuing commitment to legal aid, which had to be put into practice under new conditions of austerity.

For some respondents, the changed political and economic context meant that *Paths to Justice* research was useful in new ways. For example, respondents described turning to the research to learn about the dynamics of legal services markets, or to identify ways that people could pursue resolutions to problems without the need for (particularly legal aid) lawyers.

There was no broad-based critique of *Paths to Justice* tradition research. Rather, critiques and desiderata were disparate. Some indicated a need for more *Paths to Justice* style research and some indicated a need for additional approaches to supplement the evidence base.

A number of areas were identified for further investigation, such as ways to maintain (or expand) access to services in a changed regulatory and fiscal context, the impact of regulatory changes on legal services markets, and the economic and

whole-system impact of legal aid. There was also a call for qualitative research to supplement Paths-style work, to provide more explanation of survey findings.

When asked about those who were doubtful or suspicious of *Paths to Justice* tradition research, most respondents said stakeholders held generally favourable views of such research.

The impact of the surveys: an international perspective

To explore recognition and use of surveys by policy makers internationally an online survey of 21 governmental stakeholders in 6 English-speaking jurisdictions was conducted.

Eleven of the 21 survey respondents reported having personally made use of the findings of at least one *Paths to Justice* tradition survey, with 16 reporting that use was made of the surveys in their area of responsibility, and 18 reporting that they were at least ‘quite familiar’ with findings.

All respondents felt that it was at least ‘quite important’ that legal need surveys were conducted regularly, and the great majority felt that survey findings were at least ‘quite important’ to their work.

When asked about how legal need survey findings were used, responses focussed primarily on policy development and designing legal service programmes. The idea of “public and stakeholder persuasion” was also aired, as was the idea of understanding change.

Sixteen respondents were able to set out specific policies that survey findings had influenced.

Policies influenced by legal need surveys fell into three broad, though interrelated groups; policies designed to argue for and prioritise spending, policies aimed at redesigning existing services and policies dictating the direction or development of new services. Beyond these three broad groups, other responses focussed on supporting the direction of policy travel.

It was indicated that only a minority of the policy changes mentioned would have been the same in the absence of *Paths to Justice* style evidence.

In general, respondents agreed with how survey findings had been used, and there were no respondents who clearly disagreed, though this might be a function of the governmental roles of the respondents.

Respondents were asked to describe the most important findings to come from surveys of legal need. Respondents most frequently highlighted problem clustering, along with findings that certain groups were disproportionately exposed to a higher problem incidence by virtue of their demographic characteristics. More generally, responses referred the fact that surveys presented the “client perspective.”

Turning to evidence gaps, a number of respondents pointed to the need to more effectively measure the impact of advice and the cost/benefit of services (although it is doubtful whether surveys are able to deliver conclusive findings to this end). Others reported a need for more evaluative information on ‘what works’ in respect of policy responses in the field of civil justice and how legal need could better be addressed through policy interventions. Others felt more specific information relating to the problem-solving behaviour of individuals would be useful, or referred to how information could be effectively communicated to those with civil justice problems.

As regards the limitations of *Paths to Justice* tradition surveys, responses were often specific to the particular form of survey conducted in the respondent’s jurisdiction. Nevertheless, respondents identified a number of general limitations, particularly with respect to the extent to which sample frames excluded

disadvantaged groups, limitations in the granularity of data collected, and common delays in reporting. It was also observed that “legal needs surveys ... are very expensive,” and “they lead to more questions.”

There was some suggestion, on the part of a small minority of respondents, that surveys now had less utility and alternative approaches to broadening the evidence base should be explored.

Finally, on the dissemination of survey findings, two respondents referred to the need to make reports more accessible.

Looking to the Future

In England and Wales, economic constraints and major policy shifts (such as the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012) are creating a very different policy context for the use and application of *Paths to Justice* tradition survey findings. Those key findings describing problem clustering, documenting and quantifying referral fatigue and pointing to the potential benefits of holistic/integrated services have lost influence in domestic legal aid policy, but remain important pillars of access to justice debate and are finding greater relevance in the context of the major market changes following on from the Legal Services Act 2007. Also, *Paths to Justice* tradition research is likely to remain a standard method used to document the public experience of the law more generally. It may, however, require some reinvention (in focus or audience) to maintain policy relevance, and is likely to be less of a focus in the access to justice field, now that the implications have become well understood, with evaluation of policy and practice change taking a more centre stage.

It is also possible that economic constraints will reduce investment in *Paths to Justice* tradition research in countries such as the UK, leading to reliance on more economical survey methods and/or increased use of administrative data. Any efforts to retain the *Path to Justice* approach using revised methodologies should, though, recognise the implications of methodological change as set out in this report. Also, where increased reliance is placed on administrative data, what is missed should be acknowledged; the base of the dispute pyramid, perhaps the major strength of the *Paths to Justice* approach.

In conclusion

Overall, it is evident that findings from *Paths to Justice* tradition surveys have been profoundly influential on legal aid, legal services and access to justice policy and thinking. It is also clear that the surveys have collectively built up a substantial evidence base around the ‘client perspective’ of justiciable problem experience, which continues to be incrementally built upon.

However, comparative analysis of justiciable problem experience across jurisdictions is hampered by many differences in survey design and implementation. Some of these are unavoidable – relating to language, system, cultural and budgetary differences. But others are more a product of individual discretion. To promote greater opportunity for comparative research, and also to continue to improve the quality of *Paths to Justice* style surveys, we urge that survey designers heed the lessons of the past. There is vast experience now existing in the field that can be drawn from. In supporting this aim, it is also important that technical survey details are transparent, reports using survey data accessible and where possible, survey data made publicly available.

We restate the words of Cantril (1996, p.7), who said, after the completion of the *Comprehensive Legal Needs Study*, that people should draw on the experience

gained “to improve the methodology of legal needs surveys and identify important topics for further study.” With 26 national surveys undertaken over the past two decades, regard to this sentiment is all the more critical.

1 Introduction

This report explores methodological issues, brings together findings, assesses the impact of, and provides guidance and resources for the future development of surveys of *justiciable* problems – problems which raise civil legal issues, whether or not this is recognised by those facing them and whether or not any action taken to deal with them involves the legal system (Genn 1999, p.12). The report has a particular focus on surveys following in the footsteps of the *Nuffield Foundation* funded *Paths to Justice* surveys (Genn 1999, Genn and Paterson 2001).

The report is comprised of 3 main chapters, and 4 appendices. Chapter 2 provides an overview of the origins of surveys of justiciable problems and goes on to set out and comment on the technical details of those national surveys conducted since the 1990s. While the methods employed by most of the surveys have been superficially similar, significant differences in sampling, construction and delivery are also evident. The implications of these differences are explored. The chapter concludes by making recommendations as to best practice.

Chapter 3 looks to compare the findings of recent surveys, identify the principal research themes that have emerged and points to areas that could usefully be subjected to further investigation. The chapter out standardised findings regarding problem experience and advice seeking behaviour from across all the recent surveys, though warns against simple comparison.

Chapter 4 explores the impact of the surveys through an analysis of the content of English and Welsh policy documentation in the access to justice field, a series of interviews with British policy makers, and an online survey of international stakeholders.

In England and Wales – where the *Paths to Justice* survey has been followed by 5 iterations of the similarly structured *Civil and Social Justice* survey (CSJS) (including two waves of the *Civil and Social Justice Panel Survey* (CSJPS)) – the surveys have been credited by government policy makers as providing the broad evidence base that underlie current efforts to remodel civil legal aid, away from largely ad hoc and reactive services towards strategically and jointly commissioned “seamless and integrated” consumer focused services (Legal Services Commission 2006, p.7). In the past, the surveys were also formally integrated into government performance management, with the CSJS having been adopted to measure progress against government Public Service Agreement (PSA) targets around access to legal services, and, more recently, to measure “equal protection and support for individuals with civil justice problems” within the Equality Measurement Framework (Alkire et al 2009), and to discharge the Legal Services Commission’s statutory duty to “inform itself about the need for, and the provision of Community Legal Service services,” under Section 4(6) of the Access to Justice Act 1999. Elsewhere also, policy makers have credited *Paths to Justice* type surveys as underlying changes in access to justice policy direction (e.g. Attorney-General’s Department 2009). However, aside from Balmer, Patel and Pleasence’s (2010) recent short online survey of English policymakers, the degree and manner in which these surveys have been integrated into

the policy development process, and whether and how they have brought change to the access to justice agenda have not been subjected to investigation. Chapter 4 delivers the findings of such an investigation.

The first appendix to the report details core elements of the questionnaires used to date, and in so doing provides a resource, along with the commentary in Chapter 2, for the designers of future surveys.

The second appendix sets out the findings of content analysis of official publications stemming from the English and Welsh Lord Chancellor's Department, Department for Constitutional Affairs, Ministry of Justice, Legal Services Commission and Parliamentary Select Committees with responsibility in the access to justice field. These show the extent to which research, and particularly research in the *Paths to Justice* tradition, has been referenced in official publications.

The third appendix contains an annotated bibliography of research papers stemming from recent legal need surveys.

The fourth appendix sets out the topic guide and survey questions used in the original research detailed in Chapter 4.

2 A Tradition of Surveys

Surveys of Justiciable Problems: Origins

Since the mid-1990s, at least 26 large-scale national surveys¹ of the public's experience of justiciable problems have been conducted in at least 15 separate jurisdictions: Australia, Bulgaria, Canada, England and Wales, Hong Kong, Japan, Moldova, the Netherlands, New Zealand, Northern Ireland, Scotland, Slovakia, Taiwan, Ukraine and the United States (Table 1).² Extensive sub-national surveys have also been conducted in China (Michelson 2008) and Russia,³ along with many other sub-national surveys across the jurisdictions just listed.⁴

These surveys have their ultimate origins in Clark and Corstvet's (1938) landmark study of "how the needs of the community for legal service were being met" in Connecticut during the 1930s recession at the United States' Bar. However, although Clark and Corstvet anticipated that similar surveys would become commonplace,⁵ few further surveys were conducted in the decades that followed. Only in the 1990s did such research "gain considerable momentum" (Coumarelos et al 2012, p.1) following the conduct of high profile national surveys in, first, the United States (Reese and Eldred 1994), then England and Wales (Genn 1999), New Zealand (Maxwell et al 1999) and Scotland (Genn and Paterson 2001).⁶ Momentum has been fuelled by widespread legal aid reform activity across the globe, with the introduction of civil legal aid in countries such as Bulgaria and Moldova,⁷ the expansion of civil legal aid in countries such as Taiwan,⁸ and substantial (and on-going) reform of established civil legal aid schemes, such as that in England and Wales (Lord Chancellor's Department 1998, Legal Services Commission 2006, Ministry of Justice 2010).

¹ The figure would be 29 if the civil justice modules of the 2008/9, 2009/10 and 2010/11 *Scottish Crime and Justice Surveys* were included. The modules have not been included among the 26 surveys studied in detail in this report as they form only small sections of larger, differently focused, surveys. Also, findings from the modules have only been reported on in outline.

² Reese and Eldred (1994), Genn (1999), Maxwell et al (1999), Genn and Paterson (2001), Pleasence et al (2004a), Currie (2005), GfK Slovakia (2004), Van Velthoven and ter Voert (2004), Currie (2006), Dignan (2006), Ignite Research (2006), Pleasence (2006), Murayama (2007), Sato et al (2007), Asia Consulting Group Limited and Policy 21 Limited (2008), Currie (2009), Tamaki, T. (2009), Pleasence et al (2010), Van Velthoven and Haarhuis (2010), Pleasence et al (2011), Chen et al (2012), Coumearalos et al (2012), Pleasence et al. (2013). Details of the Bulgarian and Moldovan surveys kindly provided by Martin Gramatikov.

³ Details of the Russian survey kindly provided by Martin Gramatikov.

⁴ For example, over the past two decades, surveys have been conducted in at least 16 of the 50 US states, as well as in other jurisdictions such as Australia (Coumarelos et al 2006) and Canada (Baxter et al 2012).

⁵ Clark and Corstvet (1938, p. 1273) hoped that "a substantial number of local surveys" would be carried out which, together, would "afford a picture fairly representative of conditions across [the United States]."

⁶ Themselves influenced by an earlier wave of surveys including, most notably, the Civil Litigation Research Project is evident (Trubek et al 1983), which also led to efforts of replication (e.g. Bogart and Vidmar 1990).

⁷ Legal Aid Act 2005 (Bulgaria); Legal Aid Act 2007 (Moldova)

⁸ Legal Aid Act 2004

Reflecting concerns about the preclusion of problems that “may not be seen” by respondents to raise legal issues (Maxwell et al 1999, p.17), most recent surveys have adopted the practice of presenting justiciable problems as simple sets of circumstances, “without labelling them as legal needs or susceptible to legal intervention” (Reese and Eldred 1994, p.9). This practice also links to developments in thinking around the contested notion of ‘legal need’. In particular, it links to general recognition that legal mechanisms do not always provide the most appropriate route to solving problems that raise legal issues (e.g. Lewis 1973, Blacksell et al 1991). It was once widely assumed that identifying experience of problems which raised legal issues but did not lead to the instruction of lawyers was equivalent to the uncovering of “factual [unmet] ‘need’” for legal services (Pleasence et al 2001, p.11). However, criticisms of this approach – articulated by commentators such as Lewis (1973), Marks (1976) and Griffiths (1980), who pointed to the range of potential responses to such problems and highlighted the importance of recognising the costs, advantages and disadvantages of each – led to efforts to remove value judgements from investigations and discussions of problem experience (e.g. Curran 1980). Attempts to define legal need have therefore come to place emphasis on understanding of options and preferences (e.g. Hughes 1980, Ignite Research 2006, Coumarelos et al 2012). The surveys listed in Table 1 have, likewise, adopted a more neutral stance towards citizen behaviour and what constitutes (the equally contested notion of) access to justice.

Table 1. National Legal Need Surveys (Last 20 Years)

| Country | Study | Date | Size |
|------------------------------|---|--------|-------|
| Australia | Law Australia Wide Survey | 2008 | 20716 |
| Bulgaria | Access to Justice and Legal Needs Bulgaria | 2007 | 2730 |
| Canada | National Survey of Civil Justice Problems | 2004 | 4501 |
| | | 2006 | 6665 |
| | | 2008 | 7002 |
| England and Wales | Paths to Justice | 1997 | 4125 |
| | Civil & Social Justice Survey (CSJS) | 2001 | 5611 |
| | | 2004 | 5015 |
| | | 2006-9 | 10537 |
| | Civil & Social Justice Panel Survey (CSJPS) | 2010 | 3806 |
| | | 2012 | 3911 |
| Hong Kong | Demand & Supply of Legal & Related Services | 2006 | 10385 |
| Japan | National Survey of Everyday Life & the Law | 2005 | 12408 |
| | Access to Legal Advice: National Survey | 2006 | 5330 |
| | Everyday Life and Law | 2007 | 5500 |
| Moldova | Met and Unmet Legal Needs in Moldova | 2011 | 2489 |
| Netherlands | Paths to Justice in the Netherlands | 2003 | 3516 |
| | | 2009 | 5166 |
| New Zealand | Legal Advice & Assistance Survey | 1997 | 5431 |
| | Unmet Legal Needs & Access to Services | 2006 | 7200 |
| N. Ireland | Northern Ireland Legal Needs Survey | 2005 | 3361 |
| Scotland ⁹ | Paths to Justice Scotland | 1998 | 2684 |
| Slovakia | Legal Needs in Slovakia | 2004 | 1085 |
| Taiwan | Legal Dispute Settlement Behaviour | 2011 | 5601 |
| Ukraine | Legal Capacity of the Ukrainian Population | 2010 | 2463 |
| United States | Comprehensive Legal Needs Study | 1993 | 3087 |

⁹ Not included in this list are the *Scottish Crime and Justice Surveys*, which have been conducted annually on a continuous basis (April to March) since 2008/9. The civil justice module for the 2008/9 survey had 7,971 respondents (half of the total survey sample), while the civil justice modules for the 2009/10 and 2010/11 surveys each had 3,984 respondents. In the phrasing of questions, the modules could be said to follow the *Paths to Justice* approach to identifying justiciable problems (although utilising different wording). However, the inclusion of only 5 main questions in 2008/9 and 8 questions in the 2009/10 and 2010/11 surveys entails that they are different in nature to the 26 surveys reported on in detail in this report.

Similarities of Approach: A World of Difference

The great majority of the 26 national surveys listed in Table 1 have adopted the approach and questionnaire structure of Genn's (1999) landmark *Paths to Justice* surveys, conducted in England and Wales in 1997 and Scotland in 1998. The *Paths to Justice* surveys focused on individual experience of justiciable problems, and sought to do so from the perspective of the individual, rather than that of legal practitioners or the justice system more generally. To ascertain whether individuals had experienced justiciable problems the surveys presented respondents with categorised sets of problematic circumstances that raise justiciable issues. If respondents reported having faced problematic circumstances, they were asked about how they had responded, though with no assumptions that law, lawyers or legal process would have, or should have, been utilised. Demographic and other data was also collected to explore patterns of experience and behaviour and provide the basis for explanations of difference.

Of the 26 surveys detailed in Table 1, only the household based United States *Comprehensive Legal Needs Study* (Reese and Eldred 1994) and New Zealand *Legal Advice and Assistance Survey* (Maxwell et al 1999) fell fully outside of the *Paths to Justice* sphere of influence.

The proliferation of national 'legal needs' studies sharing a methodological root has raised the prospect of wide ranging comparative analysis. As Murayama and Cominelli (2011, p.1) have suggested, "We now have fantastic opportunities for comparative studies of civil disputes and dispute handling behaviour among countries with different socio-legal backgrounds." Accordingly, much discussion has focused on differences in justiciable problem prevalence (i.e. the percentage of people experiencing one or more problems during a defined period) and the frequency of distinct responses to such problems reported in different jurisdictions. For example, Van Velthoven and ter Voert (2005, p.21) have drawn attention to the "remarkable differences between the results of the Dutch research and those of the UK studies," in terms of Dutch respondents experiencing problems "more often" and seeking advice "less often". Similarly, Sato et al (2007) have pointed to the low level of advice seeking in Japan, a finding that ter Voert and Niemeijer (2007) argue reflects low levels of individualism in Japan, as reflected in Hofstede's (2001) cultural indices.

There are considerable ranges of estimates of justiciable problem prevalence and frequency of specific problem resolution behaviours among the 26 surveys listed in Table 2. Reported problem prevalence ranges from just 19%, in the case of the 2005 Japanese survey, to 67% in the 2003 Dutch survey (both in relation to 5 year survey reference periods). The reported use of lawyers to help resolve problems ranges from 4% in the cases of the 2006 Japanese and 2011 Moldovan surveys to 29% in the 1998 Scottish survey.

However, as Van Velthoven and ter Voert (2005, p.21) and Sato et al (2007) also cautioned, "dissimilarities may ... be caused by methodological differences" as well as cultural or situational differences. For example, Van Velthoven and ter Voert pointed out that their Dutch respondents constituted "a sample of people with access to the Internet," rather than a random sample of the population. This might have contributed to the high rate of Dutch problem prevalence. As Van Velthoven and ter Voert argued, people with access to the Internet "could be more socially active, and accordingly ... in line with participation theory ... have a higher risk of disputes" (p.22). Similarly, Sato et al pointed out that their survey did not employ a 'triviality' filter of the type made popular by the *Paths to Justice* surveys to prevent surveys

being overwhelmed by the quantity of problems reported. Their sample therefore included a greater number of less troublesome problems, which would not have been so likely to prompt advice seeking.

So, to what extent do differences in survey methods affect findings and restrict our ability to compare and contrast the findings of the growing number of national legal need surveys being undertaken around the globe?

In the following sections we make clear the methodological differences between the 26 national legal needs surveys undertaken over the past two decades. We also explain and illustrate their potential effect on survey findings and our ability to compare findings across surveys and jurisdictions.

Finally, we note the limits of survey research in addressing the types of issues that have been explored by legal needs surveys to date.

Technical Details of Recent National Legal Need Surveys

As can be seen from Table 2, those recent national legal need surveys that have adopted the *Paths to Justice* surveys' approach and structure are methodologically quite distinct, even in relation to core design elements. There are marked differences in sample frames, sampling methods, response rates, modes of administration, data structure, units of analysis, reference periods, filtering, the justiciable problems included, framing and question formulation. Each of these differences can be expected to impact on survey findings. Only the *Paths to Justice* and *Paths to Justice Scotland* surveys were near (though not) identical in their implementation.

Sample frames, coverage and response rates

While most of the surveys in Table 2 have investigated the experience of the general adult population (albeit with varying thresholds for adulthood, from 15 years old in, for example, the 2006 New Zealand survey to 18 years old in, for example, the original *Paths to Justice* surveys), some have been concerned with only a section of the population. Evidently, this will impact on findings.

To take an extreme example, alongside the 2001 CSJS an identical questionnaire was used to collect data from a sample of people living in temporary accommodation. While 36% of respondents to the general population survey reported one or more justiciable problems, the figure was 84% for those living in temporary accommodation. Those in temporary accommodation were also much more likely to have done nothing to resolve problems or, at the other end of the behaviour spectrum, obtained independent advice (Plesence et al 2004a).

Less extreme than this, the 2004 Canadian survey was concerned only with those on low incomes. As demographic characteristics have been shown to be associated with both justiciable problem experience and advice seeking behaviour (e.g. Genn 1999, Plesence et al 2004a, Plesence and Balmer 2012), including in Canada (Currie 2007), the narrower 2004 Canadian survey's target population will have been reflected in its findings.

This is not necessarily problematic as regards comparison with later Canadian survey findings, as it is still possible to identify the sub-sample of respondents within the broader 2006 sample that match those in the 2004 sample. Analyses of the 2006 survey data, aimed at identifying demographic predictors of aspects of problem experience (Currie 2007), also provide a basis for understanding how modifications in sample frame scope may have impacted on findings. International comparison is more difficult, though even here equivalent populations may be identifiable.

Table 2. Technical Details of Recent Legal Needs Surveys

| Country | Study | Date | Sample | Sample structure | Mode | Reference period (Years) | Response rate (%) | Problem framing: "Problems ..." | Number of problems included | 'Difficult to solve' triviality filter |
|-------------------|---|--------|--------------------|------------------------|--------------|--------------------------|-------------------|---|-----------------------------|--|
| Australia | Law Australia Wide Survey | 2008 | General population | Individual | Phone | 1 | 60 | ... that may raise legal issues | 129 | No |
| Bulgaria | Access to Justice and Legal Needs Bulgaria | 2007 | General population | Individual | Face-to-face | 3.5 | 51 | ... you might have experienced | 70 | No |
| Canada | National Survey of Civil Justice Problems | 2004 | Low income | Individual & partner | Phone | 3 | 17 | ... that people sometimes experience* | 79 | Yes |
| | | 2006 | General population | | | | 23 | 81 | | |
| | | 2008 | | | | | 21 | 86 | | |
| England and Wales | Paths to Justice | 1997 | General population | Household / Individual | Face-to-face | 5.5 | 64 | ... in daily life* | 58 | Yes |
| | Civil and Social Justice Survey | 2001 | General population | Household / Individual | Face-to-face | 3.5 | 52 | ... in daily life* | 83 | Yes |
| | | 2004 | | | | 3.5 | 57 | ... you might have had* | 104 | |
| | | 2006-9 | | | | 3 | 58 | 106 | | |
| | Civil and Social Justice Panel Survey | 2010 | General population | Household / Individual | Face-to-face | 1.5 | 54 | ... you might have had* | 104 | No |
| | | 2012 | | | | 62** | | | | |
| Hong Kong | Demand & Supply of Legal & Related Services | 2006 | General population | Household / Individual | Face-to-face | 1/5/ Life | 66 | ... as an individual | 67 | Yes |
| Japan | National Survey of Everyday Life & the Law | 2005 | General population | Individual & children | Face-to-face | 5 | 50 | ... in everyday life* | 66 | No |
| | Access to Legal Advice: National Survey | 2006 | General population | Individual | Face to ace | 5 | 49 | Trouble or unsatisfactory/un-acceptable event | No details | No |
| | Everyday Life and Law | 2007 | General population | Individual | Internet | 5 | No details | ... as listed | No details | No |
| Moldova | Met and Unmet Legal Needs in Moldova | 2011 | General population | Individual | Face-to-face | 3.5 | No details | serious and difficult to solve ... needed legal measures to solve | 66 | Yes |
| Netherlands | Paths to Justice in the Netherlands | 2003 | General population | Individual | Internet | 5 | 83 | ... in daily life | 66 | Yes |
| | | 2009 | | | | | 74 | | 68 | |

| | | | | | | | | | | |
|---------------------------------|--|------|---------------------|------------------------|-------------------------|---|------------|---|-----|-----|
| New Zealand | Legal Advice & Assistance Survey | 1997 | General population | Individual & children | Face-to-face | 3 | 7 | ... may have needed help | 27 | Yes |
| | Unmet Legal Needs & Access to Services | 2006 | General population | Individual | Telephone | 1 | - | ... in daily life | 40 | Yes |
| Northern Ireland | Northern Ireland Legal Needs Survey | 2005 | General population | Individual | Face-to-face | 3 | 62 | ... that are difficult to solve | 110 | Yes |
| Scotland | Paths to Justice Scotland | 1998 | General population | Household / Individual | Face-to-face | 6 | 61 | in daily life | 61 | Yes |
| Slovakia | Legal Needs in Slovakia | 2004 | General population | Individual | Face-to-face | 2 | - | ... experienced by individuals/families | 100 | Yes |
| Taiwan | Legal Dispute Settlement Behaviour | 2011 | General population | Individual & children | Face-to-face | 5 | 48 | ... that might result in a dispute | 68 | Yes |
| Ukraine | Legal Capacity of the Ukrainian Population | 2010 | General population | Individual | Face-to-face | 5 | No details | Problems from a list | 44 | No |
| United States of America | Comprehensive Legal Needs Study | 1993 | Low- and mid-income | Household | Telephone/ Face-to-face | 1 | 74 | Important issues facing households today*** | 78 | No |

* Some incidental references to law or legal services in survey materials.

** As the CSJPS is a panel survey, the response rate was calculated as the combination of the response rates for the fresh and (42.4%) and longitudinal (69.4%) samples.

*** Some problems descriptions included the phrase 'major problem' or 'serious problem'.

More problematic for broad comparison is under-coverage of target populations resulting from inadequate sample frames. This is also a real problem in relation to the generalisability of findings. Under-coverage can effectively preclude like-for-like comparison, as it can lead to biased estimates (e.g. de Leeuw et al 2008) and contributes to total survey error (e.g. Groves and Lyberg 2010).

Groves et al (2009) provide the following equation to calculate coverage bias.

$$\bar{Y}_C - \bar{Y} = \frac{U}{N}(\bar{Y}_C - \bar{Y}_U)$$

Where,

\bar{Y} = mean of the entire target population

\bar{Y}_C = mean of the population on the sampling frame

\bar{Y}_U = mean of the target population not on the sampling frame

N = total no. of members of the target population

C = total no. of eligible members of the sampling frame (covered)

U = total no. of eligible members not on the sampling frame (not covered)

So, for example, in a face-to-face survey of legal need, such as the 2006-2009 CSJS in England and Wales, there are a number of discrete groups (k groups) not in the sampling frame (as discussed in Pleasence et al 2011), each with its own mean problem prevalence (\bar{Y}_{Uk}) and total number of eligible members (U_k). In this case, (\bar{Y}_U) can be calculated by summing eligible members for each discrete group multiplied by the mean for each group, divided by U , i.e.,

$$\bar{Y}_U = \frac{\sum_{k=1}^n U_k \bar{Y}_{Uk}}{U}$$

Groups missing from the CSJS sample frame are shown in Table 3, along with approximate numbers of each group in the adult population of England and Wales, and possible problem prevalence for each group (estimated for the purpose of the example below).

Table 3. Groups missed from the 2006-2009 CSJS sample frame

| Group | Approximate number (England and Wales) | % of target population | Estimated problem prevalence |
|---|---|---------------------------|------------------------------------|
| Residential care > 60 | 320,000 | 0.73 | 10 |
| Residential care < 60 | 55,000 | 0.13 | 40 |
| Residential care - involuntarily detained | 15,000 | 0.03 | 100 |
| Students in communal establishments | 200,000 | 0.46 | 30 |
| Prisoners | 85,000 | 0.20 | 65 |
| Defence establishments | 50,000 | 0.11 | 35 |
| Temporary accommodation | 55,000 | 0.13 | 80 |
| Rough sleepers | 500 | 0.001 | 85 |
| Gypsies/travellers in caravans | 115,000 | 0.26 | 90 |
| Missed from the sample frame | 895,500 | 2.06 | - |
| Included in the sample frame | 42,674,500 | 97.94 | - |
| Target population | 43,570,000 | - | - |

Combining the groups, as shown in the equation above, would yield problem prevalence for the groups missing from the sample frame of 39.0% for approximately 2.1% of the entire target population. Using the coverage bias equation above, compared to a prevalence of 35.1% for the population on the sample frame, coverage bias would equal -0.1% (i.e. the difference between prevalence of 35.1% for those included in the sample frame, and 35.2% for the target population).

Even if all of the missing 2.1% had 100% problem prevalence, coverage bias would still only be -1.3%, while if none of the groups had any problems at all, coverage bias would be 0.7%. Essentially, there is relatively little scope for bias with a sample frame covering 98% of the target population.

Some of the surveys listed in Table 2 are notably affected by under-coverage, which (in the case of general population surveys) is linked to mode of survey administration. National face-to-face surveys tend to have sample frames with good coverage (Bowling 2005). For example, the *Paths to Justice* surveys and the CSJS have all used the small user Postcode Address File (PAF) as a sample frame. As suggested above, this captures around 98% of the general population, though even here some well-defined, but relatively small, sub-populations are excluded (as shown in Table 3). However, national telephone and Internet surveys (of which 7 feature in Table 2) are more prone to under-coverage.

Telephone surveys of the general population are becoming increasingly associated with under-coverage as a consequence of the growing proportion of (especially young and low income) adults with no fixed-line telephone (Blumberg and Luke 2007). Under-coverage of telephone surveys is also a particular issue in the case of remote indigenous populations, such as remote Australian Aboriginal and Torres Strait Islander (ASTI) people, for whom telephone surveys are “inappropriate” (Taylor et al 2011, p.5). This was recognised by the authors of the 2008 Australian survey, who had to accept that it was “unrealistic in these remote areas to achieve Indigenous numbers in proportion to the population” (Coumeralos et al 2012, p.58).

Under-coverage is most problematic, though, for Internet surveys. This is despite Internet penetration continuing to grow, removing a fundamental structural barrier to good coverage. For an Internet survey, we might expect many of the groups shown in Table 3 to be excluded again. In addition, those without Internet access would not be included in the sample frame. Using data from the 2006-2009 CSJS, we found that around a third of respondents did not have Internet access at home, and this group also had lower problem prevalence (29.7% vs. 37.8%). Again using the coverage bias formulae above, those included in the sample frame may be assumed to account for around 65.1% of the target population and have a prevalence of 37.8%. Those excluded (those without Internet access at home, plus the groups in Table 3) might account for 34.9 of the target population and have a problem prevalence of 30.3% (again using CSJS data). With problem prevalence for the target population of 35.2% and 37.8% problem prevalence for those able to be surveyed, coverage bias would be 2.6%.

However, in the Netherlands – one of just two jurisdictions in which large-scale national legal need studies have been conducted online – 94% of households had Internet access in 2011, the highest rate of access in Europe.¹⁰ This is not far short of coverage for the PAF surveys detailed above. Nevertheless, the lack of comprehensive and effective sample frames remains a problem for Internet surveys, meaning that such

¹⁰ Eurostat STAT/11/188, 14 December 2011.

surveys are still reliant on opt-in panel membership (as in the case of the Dutch surveys), and are thus prone to selection bias (Lensvelt-Mulders et al 2009).

Importantly, Internet access does not equate to panel membership and a high percentage with Internet access does not mean that a high percentage of the target population will be part of the sample frame. In reality, a relatively small percentage of the target population will 'opt-in', and coverage bias could be substantial. Non-probability 'opt-in' panels may also attract a particular type of active Internet user, who could potentially have very different problem prevalence, increasing coverage bias further. For example, if Internet users who 'opt-in' accounted for 10% of the target population and had a problem prevalence of 50% or more (as in both Netherlands surveys) compared to 30% prevalence for those excluded, the target population would have an actual prevalence of 32% and coverage bias would be 18%. Evidently, low percentage coverage and differences in problem prevalence can result in substantial bias. In reality, coverage will be far lower than 10% of the target population. For example, in the UK, a large Internet panel (such as YouGov's) may cover 350,000 people. This would equate to less than 1% of the adult population of the UK. In this case, coverage bias would simply be the difference between the prevalence for the Internet panel and those excluded or the target population (as the two would essentially be the same). In the example above, it would be 20%. As Baker et al., (2010) suggest in their review of research on non-probability samples, the combination of major undercoverage and high nonresponse (at various stages of constructing the panel) is likely to result in substantial bias in surveys using nonprobability panels. This bias is not well understood in the literature.

Selection bias is also a key feature of surveys with significant non-response and, as can be seen from Table 2, recent national legal need surveys have met varying degrees of success in convincing potential respondents to participate. Again, response rates are linked to mode of administration, with face-to-face surveys generally delivering the lowest refusal rates (e.g. see Groves et al 2009) and generally higher response rates than telephone surveys (Sykes and Collins 1988; Bowling 2005). Table 2 bears this out, with the three Canadian surveys being reported to have had much lower response rates than the various face-to-face surveys. On the face of it, the 2008 Australian telephone survey appears to hold up well in this regard. However, the calculation of this response rate might be considered more forgiving than for the face-to-face surveys. The Australian sample of 20,716 respondents required in excess of half a million attempted phone contacts, of which many were of unknown eligibility, including 74,802 'unknown other' calls incorporating refusals before screening. As Coumeralos (2102, p.13) herself points out, "There are several methods for calculating response rate, and response rate estimates can vary dramatically depending on the particular method used."

The reported response rate for the Dutch Internet surveys also appears to be high relative to the face-to-face surveys¹¹, particularly given that "the Netherlands is internationally notorious for its low response rates" (Stoop 2005, p.5). This can, though, be explained by the sample being drawn from an opt-in panel, meaning that participants had already been filtered for amenability during previous exercises. In the case of nonprobability online samples, nonresponse is typically conceptualised and measured in a different way to traditional surveys, and the nonresponse at various stages of the study/panel construction is often not reported (Baker et al 2010). There is

¹¹ It is also high when compared to the typically falling response rates observed for nonprobability panels (Baker et al 2010).

nonresponse at the recruitment (into the panel), joining procedure profiling, specific survey sampling and panel maintenance stages. Actual nonresponse is far greater than whether panel members respond to an invitation for a study (i.e. at the specific survey sampling point). Not surprisingly, studies comparing results from nonprobability samples and traditional methods almost always find major differences, though it can be difficult to determine whether sample bias (due to major undercoverage/nonresponse) or mode is the greater cause (Baker et al 2010).

Nonresponse results in nonresponse error; the nonobservational gap between the sample and the respondent pool (Groves et al 2009) and a contributor to total survey error (e.g. Groves and Lyberg 2010). Error arises when the value of statistics (e.g. problem prevalence) for the survey respondents differ from those based on the entire sample. For a given statistic, nonresponse error can be calculated as the proportion failing to respond multiplied by the difference in the statistic between the respondents and the nonrespondents (e.g. see Groves et al 2009). Consequently, the lower the response rate, the greater the potential for nonresponse error, though even high response rates can result in high levels of bias (i.e. where the nonrespondents are particularly distinct). For example, with a response rate of 60% (such as for the 2008 Australian survey in Table 2) and a 5% difference between problem prevalence for those responding compared to those not responding would equate to a nonresponse bias of 2%. If the difference in problem prevalence were doubled, this would double the bias to 4%. For a survey with a lower response rate of 20% (e.g. the 2008 Canadian survey in Table 2), similar differences (5% and 10%) in prevalence between those responding and not responding would equate to nonresponse bias of 4% and 8% respectively.

The 2008 Australian survey can also be distinguished from others in its use of quota sampling, as opposed to probability sampling. While “controlled experiments between sampling methods often produce little or no difference in data,” quota sampling does lack “the theoretical basis for drawing inferences from the data,” making comparison more of an exercise in faith (Bradburn 1992, p.393). Though, this is no different to the position where a sample frame lacks coverage or response rates are low. All aspects of the implementation of a sample frame, along with the potential influence on results, must therefore be considered when looking to draw comparisons between findings from different surveys.

Mode of administration: further Issues

The surveys listed in Table 2 have employed three modes of administration: face-to-face interviews, telephone interviews and online questionnaires.

In addition to issues around coverage and response rates, as just outlined, there are other reasons why results from surveys that are differently administered might differ significantly.

First, questions may need to be formulated differently, depending upon mode of survey administration. As we detail in the next section, this can significantly impact on responses. Face-to-face and Internet surveys are more suited to detailed and complex questions, and can employ show cards and visual aids to convey information and promote understanding. Indeed, Internet surveys are particularly suitable for visual enhancement (e.g. Pleasence, Balmer and Reimers 2011).

However, while Internet surveys can introduce substantial complexity, they are generally limited in their duration, needing to remain relatively short. Czaja and Blair (2005) suggest that 10-15 minutes is a long duration for an Internet survey, though de Leeuw et al (2008) note the potential for longer surveys for special groups, panel

members and cases where the topic is particularly salient. Telephone and, in particular, face-to-face surveys, offer greater scope for extended duration. This, in turn, means they can be more comprehensive. While interviews for the 2004 Canadian and 2006 New Zealand telephone surveys had an average duration of 15 minutes or less (Currie 2005, Ignite Research 2006), the 2008 Australian telephone survey had an average duration of 26 minutes (Coumarelos et al 2012). This is not far short of typical face-to-face surveys, which have tended to average between 30 and 40 minutes (e.g. Pleasence et al 2011).

Evidently, the duration of interviews dictates how comprehensive they can be (in terms of the range of questions asked). Thus, as in illustrated in Table 4, all of the 9 most comprehensive recent legal need surveys have been conducted face-to-face. The duration of interviews also dictates the detail of data collected within particular topic areas. So, while the face-to-face *Paths to Justice* surveys included 37 questions on the cost of legal services, the *CSJS* in 2007 included 34 questions on health and well-being, and the recent face-to-face Taiwanese survey included 20 questions on alternative dispute resolution, such detailed interrogation in relatively narrow topics was unheard of in surveys administered in different ways.

In addition to the above, face-to-face surveys are generally regarded as producing the highest quality responses, partly as a consequence of having the interviewer present (Bowling, 2005, Cooper and Schindler 2001, Curran and Blackburn 2001), which can aid comprehension, reduce item non-response (Bowling, 2005) and make complete interviews far more likely (Groves et al, 2009; de Leeuw et al, 2008).

However, the presence and greater involvement of an interviewer in face-to-face surveys is not unproblematic. As de Leeuw et al (2008) put it, the greatest asset of face-to-face surveys, the presence of an interviewer, can also be their greatest weakness. While careful briefing and monitoring of interviewers can mitigate the problem, interviewers in face-to-face surveys can more easily introduce their own misunderstandings into the data collection process. Moreover, respondents may be more concerned to present a favourable image of themselves or discuss matters of personal sensitivity in the presence of, or when talking directly to, an interviewer. This is an issue of far lesser concern in the case of, for example, anonymous Internet surveys (Bowling 2005).

The difference in responses between different modes of administration was starkly illustrated by the 1996 *British Crime Survey*, which incorporated a computer assisted self-interviewing (CASI) domestic violence module in addition to the usual face-to-face questioning (Mirrlees-Black 1999). Just 32% of female and 9% of male respondents who reported domestic violence through the CASI module also reported it through standard interviews.

Different modes of survey administration are also associated with different levels of ‘satisficing’ behaviour. Satisficing behaviour involves the taking of cognitive shortcuts to reduce the effort required to answer questions (e.g. Krosnick 1991). Tourangeau, Rips and Rasinski (2000) describe the steps required to answer questions as the interpretation of meaning and intent, the retrieval of relevant information from memory, the integration of information into a summary judgment, and the reporting of that judgment, taking into account the provided response alternatives.

While many respondents may perform these steps, other respondents may skip, or pay sub-optimal attention to, one or more of them. Heerwegh and Loosveldt (2008), for example, suggest that Internet survey respondents produce a higher “don’t know” response rate, differentiate less on rating scales, and produce more item nonresponse

than face-to-face survey respondents, resulting in data of poorer quality. Of course, the ability of respondents to skim through online surveys can be reduced to some extent by question design and page layout, although not removed completely. Also, the time taken to complete online surveys is easy to monitor.

Different modes of survey administration may also promote different expectations as to subject-matter on the part of respondents. For example, the evident expense of face-to-face surveys may lead respondents to assume that they are about matters of particular significance, rather than routine or trivial matters. This could impact on the types of problems reported, and go some way to explaining the much higher problem prevalence reported through Internet surveys.

Table 4. Topics Included in Survey Questionnaires (Where Known)

| Survey jurisdiction and date | Questionnaire topics | | | | | | | | | | | |
|------------------------------|----------------------|-----------------------------|-------------------------|---------------------------------|----------------------|----------------|------------|-----------------|------------------|---------------------|---------------------|--------------|
| | Nature of problem | Problem resolution strategy | Nature of help obtained | Satisfaction with help obtained | Time/mode of contact | Processes used | Objectives | Form of outcome | Details of costs | Causes/consequences | Attitudes/awareness | Demographics |
| Australia 08 | ● | ● | ● | ● | ● | ● | | ● | | ● | ● | ● |
| Bulgaria 07 | ● | ● | ● | ● | ● | ● | ● | | ● | | | ● |
| Canada 04 | ● | ● | | ● | | ● | | ● | ● | | | |
| Canada 06 | ● | ● | | ● | | ● | | ● | ● | ● | ● | ● |
| Canada 08 | ● | ● | | ● | | ● | | ● | ● | ● | ● | ● |
| England 97 | ● | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● |
| England and Wales 01 | ● | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● |
| England and Wales 04 | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| England and Wales 06-09 | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| England and Wales 10 | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| England and Wales 12 | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Japan 05 | ● | ● | ● | ● | ● | ● | | ● | ● | ● | ● | ● |
| Hong Kong 06 | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Moldova 11 | ● | ● | ● | ● | ● | ● | ● | | ● | | ● | ● |
| Netherlands 03 | ● | ● | ● | ● | ● | ● | ● | ● | | | | ● |
| Netherlands 09 | ● | ● | ● | ● | ● | ● | ● | ● | | | | ● |
| New Zealand 97 | ● | ● | ● | ● | ● | ● | | ● | | | | ● |
| New Zealand 06 | ● | ● | ● | ● | | | | ● | ● | ● | ● | ● |
| Northern Ireland 05 | ● | ● | ● | ● | | ● | ● | ● | ● | ● | | ● |
| Scotland 98 | ● | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● |
| Slovakia 04 | ● | ● | | | | ● | ● | ● | | | | ● |
| Taiwan 11 | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Ukraine 10 | ● | | ● | ● | ● | | ● | | ● | | | ● |
| USA 93 | ● | ● | ● | ● | | ● | | ● | ● | | ● | ● |

Framing and question formulation

How surveys are presented to respondents and how particular questions are formulated can have a substantial impact on the nature of responses (e.g. Tourangeau et al 2000).

For example, Presser et al (1992) and Galesic and Tourangeau (2007) have both demonstrated that the disclosed identity of a survey sponsor can have a significant impact on survey responses. In the more recent study, the identity of a survey sponsor was randomised – between a feminist organisation fighting against sexual harassment and a neutral research institute – as part of an online experiment, resulting in significant differences in responses to questions around the prevalence and severity of episodes of sexual harassment. This effect was argued to be attributable to various mechanisms: through respondents' decisions on whether to participate, through helping resolve ambiguity in the meaning of questions, or assisting recall of memories.

In the context of recent legal need surveys, some have declared sponsors that are unquestionably situated in the legal domain (e.g. 1997 New Zealand survey¹²), others have alluded to sponsors indistinct in their domain (e.g. 2006 New Zealand survey¹³). Some have introduced survey authors evidently situated in the legal domain (e.g. 1997 *Paths to Justice* survey¹⁴), others have referred to authors of undefined domain (e.g. 1998 *Paths to Justice Scotland* survey¹⁵). Some have managed to avoid any reference to law prior to enquiring about problem incidence (e.g. 1993 US *Comprehensive Legal Needs Survey*, 1998 *Paths to Justice Scotland* survey), others have expressly referred to a law-related survey purpose (e.g. 2008 Australian Survey¹⁶).

Following on from Galesic and Tourangeau (2007), by putting respondents in mind of the law – either through reference to a sponsor, survey purpose or incidental reference to law – respondents might have a different propensity to participate (owing to, say, the perceived level of interest or relevance of the survey), interpret questions to be about matters they perceive as being legal (and so narrow the range of responses provided), or be reminded of experience of legal services or processes (and so boost recall of associated matters). Thus, even subtle changes in framing might be expected to have some influence on results.

A recent experiment conducted by Pleasence, Balmer and Reimers (2011a) revealed that the addition of a single word ('legal') on a single page (the introduction page) of an Internet survey brought about an almost 15% reduction in the rate at which problems are reported. The change was also observed to upset the mix of problems reported. So, for example, problems concerning consumer transactions or neighbours appeared not to be regarded as legal, while other problems – such as divorce, negligent accidents and rented housing – were. This ties in with other research reported by Pleasence, Balmer and Reimers (2011) suggesting that around three-quarters of people put a legal label on divorce, negligent accidents and problems concerning rented housing of the type included in the experiment, but only slightly more than one-third put a legal label on problems concerning anti-social neighbours, and just over one-half on problems concerning consumer transactions.

¹² The 1997 New Zealand *Advice and Assistance Survey* introduction referenced the New Zealand Legal Services Board as the survey sponsor (Maxwell et al 1999).

¹³ The 2006 New Zealand survey introduced the sponsor (the Legal Services Agency) as “a non-profit national organisation that funds and provides services to the community.”

¹⁴ The 1997 English *Paths to Justice* survey advance letter was written on University College London Faculty of Laws headed paper (Genn 1999).

¹⁵ The Nuffield Foundation (Genn and Paterson 2001).

¹⁶ The 2008 Australian survey was expressly introduced as being “on how to improve legal services” (Coumeralos et al 2012).

An effect of problem mix changing as a result of changes to survey framing is also likely to be altered reported patterns of problem resolution behaviour. A narrowing of problems to those perceived as having a legal dimension will doubtless yield an increase in reported lawyer use. For example, Pleasence, Balmer and Reimers (2011) found that labelling a problem as ‘legal’ significantly increased the likelihood that a lawyer would be suggested as an appropriate source of advice about the problem. Corroborating this, respondents to the 2010 *CSJS* who characterised problems as legal reported obtaining help from a lawyer more than twice as often as those who did not characterise them in this way.¹⁷

Turning to specific survey questions, it seems that even relatively straightforward descriptive information can vary as a result of changes in question form. Dillman (2006), in the context of survey mode effects, cites an example of the percentage of ‘single’ respondents declining significantly in an Internet compared to a telephone survey. Upon examining the form of the questions in the two surveys, he found that the telephone version was open-ended, asking respondents “what is your marital status”, whereas the Internet version presented a list of categories. The decline was a function of an increase in ‘divorced’ and ‘widowed’ in the Internet survey, information which many telephone respondents would not think to offer without prompting, and a direct result of the question framing.

The key problem identification questions used in the 26 national legal need surveys have varied. Again, while most surveys have employed questions that avoid reference to law, the 2008 Australian survey (problems or disputes “that may raise legal issues”) and 2011 Moldovan survey (problems that “needed legal measures to solve”) both make explicit reference to law (Table 2). As with general survey framing, this could be expected to influence results.

Importantly, also, some surveys have adopted the wording of the original *Paths to Justice* survey question, which included a triviality filter requiring that problems be ‘difficult to solve’, while others have eschewed this on the basis that it conflates problem prevalence and problem resolution behaviour (Table 2). As Coumeralos et al (2012, p.11) have observed, problems may not be captured simply “because they were easy to handle,” which goes straight to capability, which links to problem resolution behaviour (Balmer et al 2010). The removal of the filter should therefore lead to a higher proportion of problems being reported that are handled without recourse to help.

Thus, the presence of the ‘difficult to solve’ filter might be expected to limit the range of problems reported (as intended) through surveys, limit the range of respondents reporting problems (to those with less capability to deal with problems), and impact on the pattern of problem resolution strategies associated with reported problems (difficult to solve problems might be expected to more often involve the obtaining of advice).

The *CSJS* incorporated the ‘difficult to solve’ filter up to 2009, after which time it was removed. While various other design changes were also made after 2009, it is interesting to note that that this change was accompanied by a marked change in reported problem resolution strategies. So, while the 2006-9 survey indicated that 49% of problems led to formal advice being obtained, with 12% of problems leading to advice being obtained from a solicitor, the 2010 survey indicated that just 29% of problems led to formal advice being obtained, with only 7% of problems leading to advice being obtained from a solicitor. This suggests that the removal of the filter led

¹⁷ 49% versus 22%, $\chi^2_1 = 23.46$, $p < 0.001$.

to the reporting of a significant number of problems that were not ‘difficult to solve’, and which did not therefore require advice to be obtained.

Providing further evidence of the impact of the ‘difficult to solve’ triviality filter, a recent experiment demonstrated that the inclusion of the filter in the problem identification question of an Internet survey reduced the rate of problem reporting by 30% (Pleasence, Balmer and Reimers 2010). Furthermore, as with changes to survey framing, the effect of the ‘difficult to solve’ filter was not uniform across problem types. The experimental findings suggested that respondents found problems with anti-social neighbours more difficult to solve than problems concerning consumer transactions or employment.

The form of questions asking about problem resolution strategy has also varied considerably between surveys. This has even been the case between instances of the same survey. For example, there was a significant change in the way that basic problem resolution strategy was identified between the 2001 and later iterations of the CSJS. This was then compounded by a further change in 2010. The 2001 survey presented respondents with a list of 10 broad strategies (in terms of use of support mechanisms), ranging from doing ‘nothing’ to trying to ‘obtain information from a lawyer or solicitor’ (Pleasence et al 2004a). Apart from doing nothing, the strategies were compatible and respondents could provide multiple answers. The 2004 survey separated out different elements of problem resolving behaviour included in the list (direct negotiation, use of self-help materials, use of advice), and asked about each one separately. Those who failed to report any actions were defined as having done nothing.¹⁸ The 2010 survey reverted to the use of an initial list of strategies, but this time the components were mutually exclusive and (it was hoped) comprehensive. These changes might be expected to have impacted on findings.

The potential impact of changing between a series of questions asking about distinct aspects of behaviour and a single question through which respondents are asked to identify aspects of behaviour from a list about problems was made plain by Pleasence, Balmer and Reimers’ (2010) series of experiments into the effects of design change on the results of legal need surveys. As can be seen from Figure 1, the use of lists was found to generally reduce reporting of specific aspects of behaviour. In particular, it significantly reduced reporting of formal process and alternative dispute resolution.

This may lie behind the near significant drop in reports of mediation between the 2006-9 (separate questions) and 2010 (list) English and Welsh surveys,¹⁹ although there was little difference in the rate at which formal court process was mentioned between the two surveys. However, the 2010 survey also saw the removal of the ‘difficult to solve’ triviality filter, which appears to have had the effect, described above, of increasing the proportion of less serious problems reported, and less serious problems are less likely to lead to advice or formal process.²⁰ So the findings are not inconsistent.

¹⁸ This also hints at one of the problems of comparing rates of ‘lumping’ between surveys and jurisdictions. Namely, the different ranges of problem resolving behaviour asked about in surveys leading to differently composed residual groups of those taking ‘no’ action. This was addressed in the 2010 *English and Welsh Civil and Social Justice Panel Survey* (for detailed questioning only) by asking, at the end, about any other actions taken.

¹⁹ $\chi^2_1 = 6.07$, $p = 0.058$

²⁰ For example, for the 2010 English and Welsh survey, for whether a court hearing took place, $\chi^2_1 = 27.09$, $p < 0.001$.

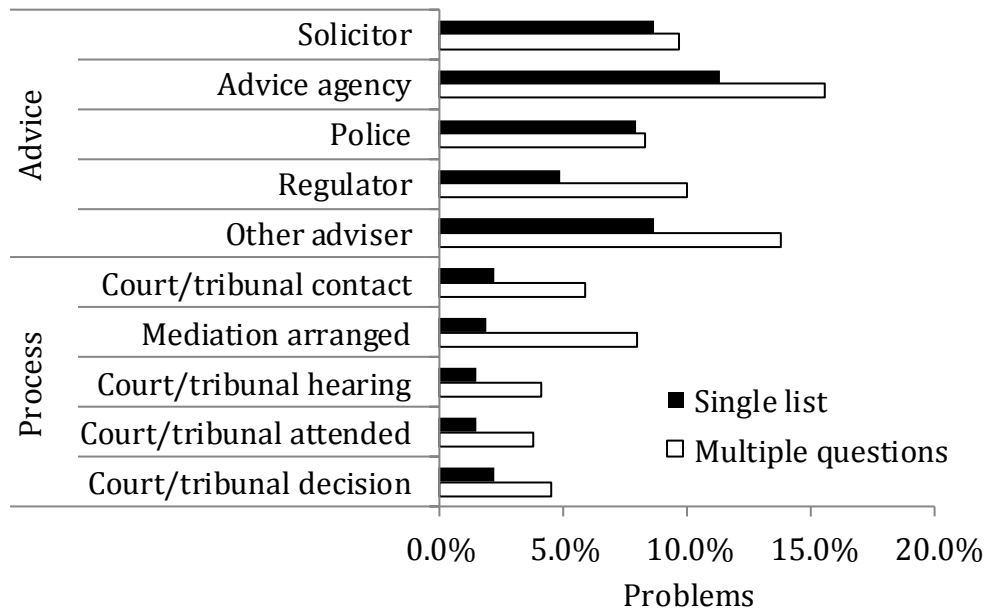


Figure 1. Percentage of respondents reporting each adviser and process by whether they were presented in a single list or in multiple questions

As regards international comparisons, there is also the problem of differences in the terminology used to describe lawyers, other legal service providers and advisors more generally. And this is on top of differences in the structure of legal professions, systems and markets!

The range of problems included

As can be seen from Tables 2 and 5, the number of problems included in recent national legal need surveys differs substantially. While the original *Paths to Justice* survey included 58 specific problems, later surveys have generally included a higher number. For example, the 2005 Northern Ireland survey included 110 problems.

There are also notable differences in the types of problems included in the surveys (Table 5). For example, a significant number of surveys extend beyond civil law to include the experience of crime (beyond the criminal dimensions of the included civil problems). A few embraced business related, as well as personal, civil justiciable problems. The Australian and Slovakian surveys include personal civil justiciable problems, the experience of crime and business related matters.

The effect of modifying the scope of a legal need survey was well illustrated by the 2008 Canadian survey, which saw the inclusion of neighbours related problems for the first time. This contributed half of the rise in the percentage of respondents reporting one or more problems from 45% in 2006 to 55% in 2008 (as ascertained by the simple removal of neighbours problems from the calculation).

Evidently, when reporting global findings (i.e. across the full range of problems surveyed), these differences in scope will have an important impact. But, even within relatively narrowly formulated problem categories, there are still important differences between surveys. For example, while some surveys have taken a broad approach to the 'family' problem category, extending it even as far as issues concerning nursing care and inheritance (e.g. the Japanese and Taiwanese surveys), others have disaggregated problems concerning family breakdown from other types of family related problems

(e.g. the English and Scottish surveys). Similarly, some surveys have taken a broad approach to the 'housing' problem category, extending it to problems faced by both tenants and owner-occupiers (e.g. the 2006 New Zealand and Canadian surveys), while others have dealt with these separately (e.g. the earlier New Zealand and Bulgarian surveys).

As with questions around problem resolution strategy, the composition of problem categories sometimes changes even between instances of the same survey. For example, while the 2004 and 2008 Canadian surveys both included 7 types of money/debt problem, only 2 of the 7 were exactly the same. Some were very different. For example, the later survey restricted the problem of being subjected to procedures for the recovery of outstanding debt to occasions of 'being harassed persistently'. It also introduced the wholly new problem of being mis-sold financial products. Such changes must affect reporting patterns. These changes may well have contributed to the drop in prevalence of money/debt problems, from 27% to 20%, between the two surveys.

Linked to this, the level of detail in descriptions of the problems under investigation presented to respondents has also varied considerably. The amount of detail in questions may have bearing on the accuracy of reporting. If there is too much detail in the questions, 'excessive complexity' may result in questions that prevent respondents from inferring the intended meaning (Groves et al., 2009). This could increase or decrease problem prevalence depending on how the question is interpreted. Conversely, a lack of detail may affect reporting through the use of 'unfamiliar terms' and 'false inference' on the part of respondents as they again misinterpret the intention of question (Groves et al., 2009) or search some areas of memory while neglecting others (Schaeffer and Presser, 2003). An example of this in legal need surveys is discussed by Pleasence and Balmer (2011) with regard to discrimination problems. They observed that for the 2006-2009 *CSJS* discrimination was often misunderstood as referring to insensitive or unpleasant public behaviour. As a consequence questions about discrimination were paired with other problem types (such as employment or housing) in subsequent surveys in England and Wales, rather than being introduced in isolation.

Table 5. Types of justiciable problems included in Recent Legal Needs Surveys (Where Known)

| | Australia 08 | Bulgaria 07 | Canada 04 | Canada 06 | Canada 08 | England 97 | England 01 | England 04 | England 06/9 | England 10 | England 12 | Hong Kong 06 | Japan 05 | Moldova 11 | Netherlands 03 | Netherlands 09 | New Zealand 97 | New Zealand 06 | N. Ireland 05 | Scotland 98 | Slovakia 04 | Taiwan 11 | Ukraine 10 | United States 93 | |
|---------------------------|--------------|-------------|-----------|-----------|-----------|------------|------------|------------|--------------|------------|------------|--------------|----------|------------|----------------|----------------|----------------|----------------|---------------|-------------|-------------|-----------|------------|------------------|---|
| Non-criminal | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | |
| Care (of others) | ● | | ● | ● | ● | | | | | | | | ● | | | | ● | | ● | | ● | ● | | ● | |
| Children (abduction) | | | ● | ● | ● | ● | ● | ● | ● | | | | | | | | | | ● | ● | ● | | | | |
| Children (adoption) | ● | | ● | ● | ● | | ● | ● | ● | | | | | | ● | ● | | ● | ● | | ● | | | ● | |
| Children (care) | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | | | ● | | | ● | ● | ● | ● | ● | | ● | ● | |
| Clinical negligence | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Consumer | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Defamation | | | | | | | | | | | | ● | ● | | ● | ● | | | | ● | | ● | | ● | |
| Discrimination | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● |
| Domestic violence | | ● | | | | ● | ● | ● | ● | ● | ● | ● | | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Education | ● | ● | ● | | | ● | ● | ● | ● | ● | ● | ● | | ● | ● | ● | ● | ● | ● | ● | | | ● | ● | |
| Employment | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Family (divorce) | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Family (ancillary issues) | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Govt./administrative | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Housing (neighbours) | ● | ● | | | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Housing (homelessness) | | | | | | | ● | ● | ● | | | ● | | | | | | ● | ● | | | | | | |
| Housing (rented) | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Housing (owned) | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Housing (renting out) | ● | ● | | | | ● | | | | | | ● | ● | ● | ● | ● | ● | ● | | ● | ● | ● | ● | ● | |
| Immigration | | | ● | ● | ● | ● | ● | ● | ● | | | ● | | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● | |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------------|---|---|----|----|----|---|---|---|---|---|---|----|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Mental health | ● | | ● | ● | ● | | ● | ● | ● | ● | ● | ● | | | | | | | ● | | | | | ● | |
| Money (Debt) | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Money (Fin. services) | ● | ● | * | * | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Personal injury | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● | ● | ● | ● | ● |
| Police (treatment by) | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● | ● | | | ● | ● | ● | ● | ● | ● | ● |
| Social services (access) | | ● | ● | ● | ● | | | | | | | | | ● | ● | | | | ● | | | | ● | ● | |
| Welfare benefits | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | | ● | ● | ● | ● | ● | ● | ● | ● | | | ● | ● | ● |
| Wills and probate | ● | | ● | ● | ● | ● | | | | | | ● | ● | | ● | ● | ● | ● | | ● | ● | ● | | ● | |
| Other | ● | | ● | ● | ● | ● | ● | | | | | ● | ● | | | | ● | ● | | ● | ● | ● | | | |
| Criminal | ● | | | | | | | ● | ● | ● | ● | ● | | | | | | | ● | ● | | | ● | | |
| Criminal (victim) | ● | | ** | ** | ** | | | ● | ● | ● | ● | | | | | | | | ● | ● | | | ● | | |
| Criminal (offender) | | | ● | | | | | ● | | ● | ● | ** | | | | | | | ● | ● | | | ● | | |
| Business | ● | | | | | | | | | | | | | | | | | | | | | | ● | ● | |

Selection of problems for data collection

Even where problem definitions are consistent between surveys, the methods used to select problems for data collection have not always been the same. This has been an issue as, when multiple problems are reported, surveys have been limited in the number of problems about which full data can be collected.

Unfortunately, in terms of drawing comparisons and in terms of generalisability, different surveys have employed different methods for problem selection, with not all surveys having sought to obtain a representative sample of problems. However, obtaining a representative sample of problems through simple random selection of problems is not without its disadvantages in this context. If the number of problems followed up is low, but multiple problem experience is common, then there is a risk that random selection will lead to only very few problems of less common types being selected. This limits the possibility for proper comparison of problems of different types.

The United States *Comprehensive Legal Needs Study* collected data relating to 5 problems, and so no problems were envisaged with the use of simple randomisation. The Canadian surveys collected data relating to 3 problems and limited these to one per category to prevent the data being overwhelmed by the most common problem types. Likewise, the early *CSJS*, while seeking to capture basic nature and strategy information about all problems, employed a weighted random selection method for detailed follow up, to prevent problem samples being overwhelmed by the most common problem types. The recent Taiwanese survey collected data for the most recent of multiple problems to minimise “the risk of memory loss” (Chen, Huang and Lin 2011, p.9), although it was recognised that this strategy also involved a risk of problems being more likely to be ongoing. In addition, as is explained in the next section, by selecting recent over older problems, selected problems are likely to be less serious. The original *Paths to Justice* surveys collected data for the second most recent problem identified, as a compromise.

For some surveys concerns about the methodological purity of problem selection have clearly given way to pragmatic concerns about the incorporation of good numbers of problems involving the use of legal services or processes. So, for example, the 2005 and 2006 Japanese surveys, 2006 New Zealand survey and 2008 Australian survey all collected data for the most serious problems faced. As has been repeatedly shown (e.g. Pleasence et al 2004a, Dignan 2006, Kritzer 2008, Pleasence, Balmer and Reimers 2011, Chen et al 2012, Pleasence and Balmer 2012), advice, including legal advice, becomes more likely as problems become more serious, and so problems about which data was obtained in these surveys will (as intended) be more likely to have involved advice, legal advice, and legal process (e.g. Pleasence et al 2004a). This makes comparison with findings from more representative samples of problems difficult. It also makes it difficult to describe the sample of problems, as they are not necessarily the most serious (as these may cluster within particular individuals) and they are not a broad cross-section.

Reference period

The surveys listed in Table 2 have reference periods ranging from 1 to 6 years. It might be thought that changing a reference period will have the effect of proportionately changing the number of justiciable problems that are reported.

Unfortunately, recall of events is not consistent going back through time, with a general rule that failure to recall becomes more of a problem the further back in time

events have occurred (Sudman and Bradburn 1973). This means that changes to reference period duration do not simply bring about proportional changes in problem reporting. Frequency of recalled events cannot be simply divided by time to produce a standardised figure.

On top of this, memories of different types of episode do not always exhibit similar “forgetting curves” (i.e. patterns of recall error over time) (Tourangeau et al 2000, p.84). In the context of legal need surveys, this means that different mixes of problem types will be associated with different “forgetting curves” and thus the means to arrive at time standardised figures will differ.

There seem to be several factors underlying differences in forgetting curves, but in general terms, as Tourangeau et al have commented (p.92), “... we are less likely to forget important events than unimportant ones; we are more likely to notice them in the first place and to discuss and think about them afterward. Thus, important events have the advantage of both more elaborate initial encoding and greater rehearsal after the fact; both factors probably contribute to greater retrievability.”

This phenomenon of different types of events having different forgetting curves is well illustrated, in the context of justiciable problems, by Pleasence et al (2009). Their analysis of the pattern of reporting of problems in the 2001, 2004 and 2006-9 English and Welsh surveys demonstrated a sharp contrast between well-remembered divorces (!) and poorly remembered consumer problems (Figure 2).

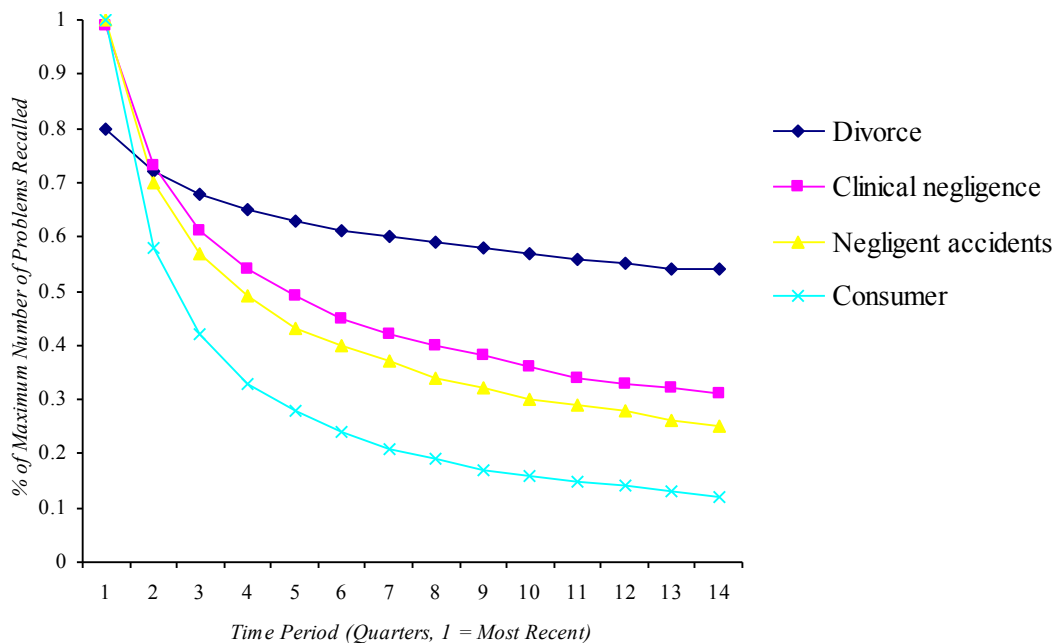


Figure 2. Forgetting Curves for Different Justiciable Problem Types (2001 CSJS)

Partly as a consequence of patterns of recall error, the Hong Kong survey, which asked respondents to recall events from 1 year, 5 years and over the entire life course, recorded respective problem prevalence rates of 19%, 32% and 40%.

Remarkably, a recent experiment found that changes to a legal need survey’s reference period from one to three years did not yield a significant change in the rate at which problems were reported (Pleasence, Balmer and Reimers 2010).

Changes in reference period duration will also impact on the nature of problems reported, with longer reference periods capturing a greater proportion of

more serious problems and, as a consequence, different proportions of problems of different categories. This will affect reported problem resolution strategies.

As advice, including legal advice, becomes more likely as problems become more serious, it can be expected that as survey reference periods increase, so too will the proportion of reported problems about which advice is obtained.

Similarly, as advice seeking behaviour is closely associated with problem type (e.g. Reese and Eldred 1994, Genn 1999, Maxwell et al 1999, Genn and Paterson 2001, GfK Slovakia 2004, Van Velthoven and ter Voert 2004, Currie 2007, Dignan 2006, Pleasence 2006, Murayama 2007, Sato et al 2007, Asia Consulting Group Limited and Policy 21 Limited 2008, Kritzer 2008, Pleasence and Balmer 2009, Van Velthoven and Haarhuis 2010, Pleasence et al 2011, Chen et al 2012, Coumeralos et al 2012), it can be expected that changes to survey reference periods will also impact on problem resolution behaviour through impacting on the mix of problem types reported.

Data structure and units of analysis

The surveys listed in Table 2 have also employed different data structures and units of analysis. This presents a further obstacle to the simple comparison of findings. Data structure is really an aspect of sampling, but we deal with it here as it has a direct bearing on units of analysis.

As can be seen from Table 2, the great majority of the surveys listed are of individuals. Indeed, one of the most patent features of the *Paths to Justice* tradition of surveys is that the constituent surveys tend to be concerned with individual experience. This contrasts with the, largely isolated (e.g. Access to Justice Study Committee 2007) tradition of (generally sub-national) legal need surveys in the United States, which have taken the household (rather than the person) as the unit of analysis. All but one of the 17 contemporary United States national and state surveys has adopted this approach.

As can also be seen from Table 2, the Canadian surveys have fallen in-between the two traditions. In the Canadian surveys, questions about problem experience were asked about respondents and their life partners together. This is likely to have had a significant impact on reported problem prevalence, with prevalence inflated (as compared to surveys of individuals), through the greater opportunity for problems to be recorded against couples, as opposed to individuals. By way of illustration, if data from the 2006-9 CSJS are re-analysed, aggregating the reported experience of married/cohabiting respondents, then problem prevalence increases from 36% to 48%.

Similar to this, the 1997 New Zealand survey, the 2005 Japanese survey and the 2011 Taiwanese surveys all asked about problems experienced by respondents and their children²¹ together. Again, this is likely to inflate recorded prevalence.

It might be assumed that the collection of individual data is preferable to the collection of household or combined partner data, as individual data can be aggregated to the household level. However, there are distinct benefits to the collection of household data. Aside from cost advantages,²² household data may more accurately reflect the experience of shared problems (i.e. those that are faced by families together), the linking (and counting) of which can be problematic in individual surveys. But, as not all problems within households are shared, household data collection is more likely to miss problems experienced by household members other

²¹ In the case of New Zealand, this extended to children still in the case of the respondent. In the case of Japan and Taiwan children were included up to the age of 19.

²² The experience of a greater number of individuals can be covered than the number of interviews conducted.

than the immediate respondent. It will be less reliable in relation to such problems when they are identified.

Individual data collection within a household based sample frame, such as in the English and Welsh, Hong Kong and Scottish surveys, also allows for data analysis at multiple levels of aggregation and the investigation of household effects (e.g. Pleasence et al 2004b). However, this form of data structure also raises obstacles to the comparison of the published results of inferential statistical analyses. Some reported analyses of data from the *Paths to Justice* surveys (Genn 1999, Genn and Paterson 2001) and the first *CSJS* (Pleasence et al 2004a) did not account for this data structure. Ignoring data structure with hierarchical data not only overlooks potentially important (and interesting) group effects, but also undermines many traditional statistical analyses (Goldstein 2011). In an individual level analysis, failure to account for the hierarchical (household) structure will not recognise the existence of clustering, and will generally result in the underestimation of standard errors associated with model coefficients (e.g. Rasbash et al. 2012).²³

The published Hong Kong survey findings (Asia Consulting Group and Policy 21 2008) do not extend beyond basic descriptive statistics.

In addition to the above, where multiple problems experienced by the same person are included in problem level analyses, the fact that an individual links the problems should also be accounted for.

A Note on the Limits of Legal Need Surveys

While legal need surveys have been found to provide a rich source of data concerning people's experience of and basic responses to justiciable problems there are absolute limits to their utility. There are limits that relate to their implementation. For example, they involve concepts (such as 'legal need' and 'access to justice') that are not only contested, but also hugely challenging when it comes to translation into simple, comprehensible, quantitative questions. But there are also limits that relate to their nature. For example, there are limits to the utility of self-reported data, which is prone to problems of understanding, recall and communication. They are also passive, in so far as they provide no opportunity (other than to the limited extent possible in the context of longitudinal surveys) for intervention in respondents' worlds to explore patterns of causation that lie behind observed phenomena. They are also relatively inflexible, in that they do not lend themselves to following-up or testing matters of interest that arise beyond the confines of their set questions.

Thus, it is important to recognise that "surveys are not the only way to collect information about large populations" (Groves et al 2009, p.32). Also, it is important to recognise that simple cross-sectional and longitudinal surveys do not provide the only framework for quantitative investigation of phenomena of interest in the context of legal needs and access to justice. So, for example, qualitative research, such as that conducted by the law and justice Foundation of New South Wales to complement its traditional legal need surveys (e.g. Forell et al 2005, Karras et al 2006) has an important role to play in exploring the experience of harder to reach populations, as well as exploring issues that lie behind the findings of legal need surveys (e.g. Turley

²³ Conversely, in aggregate analyses (e.g. at a household level), failure to account for structure would make it unclear how to interpret relationships (see Woodhouse and Goldstein, 1989 for an empirical demonstration). There is also an increased interest in statistical survey analysis methods for complex samples which control for aspects of design, including clustering and stratification (e.g. see Heeringa et al 2010), though there is little evidence of such techniques being incorporated into the analysis of legal need survey data to date.

and White 2007). And experimental work has an important role to play in investigating the impact of advice and representation to case outcomes (e.g. Greiner and Pattanayak 2012).

Conclusion

There are marked differences between the 26 surveys detailed in Table 2 in sample frames, sampling methods, response rates, modes of administration, data structure, units of analysis, reference periods, filtering, the justiciable problems included, framing and question formulation. Each of these differences can be expected to impact on survey findings.

In the development of future surveys, the impact of design decisions should be considered carefully. In light of the above:

- Efforts should be made to avoid under-coverage of the target population when adopting a sample frame, to promote generalizability.
- Stress should be placed on response rates.
- Particular heed should be paid to survey framing, and even subtleties, such as references to survey sponsors, should be considered in drawing up advance letters, survey introductions, etc..
- Unnecessary changes to tried and tested questions should be avoided.
- In relation to the ‘difficult to solve’ triviality filter, it is suggested that it is not used in future, owing to its conflation of problem experience and problem resolution behaviour.
- As far as possible, problem definitions and categories should be defined to allow comparison with other survey findings.
- Flexibility around the post-survey re-construction of categories is also something to consider.
- Problems should be selected for detailed follow-up on a random, or quasi-random, basis, to ensure the coherence of the sample.
- The trade-offs between longer and shorter reference periods should be properly considered in deciding on rules for problem selection.
- Increased focus should be placed on capturing the experience of groups who are typically excluded from sample frames, excluded by methodology/mode of administration or not sampled in suitable numbers to allow their experience to be examined accurately (despite their nominal inclusion).

And, of course, other principles of good survey design should be adhered to! Moreover, it should not be forgotten that legal need surveys provide just one of many ways to investigate the public’s experience of and responses to justiciable problems.

3 The Big Picture

As indicated in the previous chapter, the existence of a line of legal need surveys, all following on from the *Paths to Justice* survey has inevitably led to comparisons being drawn between their main findings. As the reported problem prevalence and lawyer use figures in Table 6 show, there is a lot of scope for contrasting findings, and some have been seduced into embarking on explanations for differences in the headline findings of sometimes very differently designed surveys.

Unfortunately, the evidence from other fields, changes adopted in particular series' of surveys, and from recent experiments exploring the impact of design changes in the context of legal need surveys, demonstrate clearly that relatively small changes to survey design can have a substantial impact on findings.

Table 6. Prevalence and Lawyer Use as reported by National Legal Need Surveys (Last 20 Years)

| Country | Study | Date | Size | % 1+ problems | % lawyer use |
|--------------------------|---|--------|-------|---------------|--------------|
| Australia | Law Australia Wide Survey | 2008 | 20716 | 46 | 11 |
| Bulgaria | Access to Justice and Legal Needs Bulgaria | 2007 | 2730 | 46 | 15 |
| Canada | National Survey of Civil Justice Problems | 2004 | 4501 | 48 | NR |
| | | 2006 | 6665 | 45 | 12 |
| | | 2008 | 7002 | 55 | NR |
| England and Wales | Paths to Justice | 1997 | 4125 | 39 | 27 |
| | Civil & Social Justice Survey (CSJS) | 2001 | 5611 | 36 | 14 |
| | | 2004 | 5015 | 33 | 16 |
| | | 2006-9 | 10537 | 36 | 12 |
| | Civil & Social Justice Panel Survey (CSJPS) | 2010 | 3806 | 33 | 7 |
| | | 2012 | 3911 | 33 | 6 |
| Hong Kong | Demand & Supply of Legal & Related Services | 2006 | 10385 | 19/32/40* | < 6 |
| Japan | National Survey of Everyday Life & the Law | 2005 | 12408 | 19 | 12 |
| | Access to Legal Advice: National Survey | 2006 | 5330 | 37 | 4 |
| | Everyday Life and Law | 2007 | 5500 | 55 | NR |
| Moldova | Met and Unmet Legal Needs in Moldova | 2011 | 2489 | 22 | 4 |
| Netherlands | Paths to Justice in the Netherlands | 2003 | 3516 | 67 | NR |
| | | 2009 | 5166 | 61 | 11 |
| New Zealand | Legal Advice & Assistance Survey | 1997 | 5431 | 51 | 18 |
| | Unmet Legal Needs & Access to Services | 2006 | 7200 | 26 | 15 |
| N. Ireland | Northern Ireland Legal Needs Survey | 2005 | 3361 | 35 | 16 |
| Scotland | Paths to Justice Scotland | 1998 | 2684 | 26 | 29 |
| Slovakia | Legal Needs in Slovakia | 2004 | 1085 | 45 | 22 |
| Taiwan | Legal Dispute Settlement Behaviour | 2011 | 5601 | 57 | 5 |
| Ukraine | Legal Capacity of the Ukrainian Population | 2010 | 2463 | 54 | 5 |
| United States | Comprehensive Legal Needs Study | 1993 | 3087 | 50 | 24 |

NR = Not reported

* 1 year/5years/lifetime

In light of this, there is evidently a need for real caution when bringing together and comparing headline figures (whether they relate to problem prevalence, resolution strategy, process or outcome) stemming from different legal need surveys, even where surveys appear to share a commonality of approach.

As can be seen from Table 6, where a series of surveys has been undertaken in a single jurisdiction using substantially the same methods (e.g. Canadian *Survey of Civil Justice Problems*, Dutch *Paths to Justice Survey* and the CSJS up to 2009) a good deal of consistency in headline findings has been evident (although even here it is important to be aware of the potential impact of small changes in framing and questionnaire design that might have contributed to observed differences).

However, there is only superficial consistency of approach and method in respect of recent legal need surveys undertaken in different jurisdictions, despite them mostly forming part of a *Paths to Justice* tradition of surveys. Consequently, aside from the very real questions that surround the substantially different prevalence rates and problem resolution strategies reported by respondents to the near identical English and Scottish *Paths to Justice* surveys,²⁴ it is debatable whether any useful comparison of headline figures is possible between surveys undertaken in different jurisdictions to date.²⁵ For example, we do not share Murayama's (2008, p.269) confidence, on the basis of the 1980s Wisconsin Civil Litigation Research Project (Trubek et al. 1983) and the 2005 Japanese survey, that "it is apparent that problems were more widely experienced in the U.S. than in Japan."

As indicated in Table 2, recent legal need surveys have employed different sample structures, modes of administration, framing, reference periods, approaches to excluding trivial problems, and numbers and types of justiciable problem for investigation. Beyond this, there are also differences in structure, language and terminology that permeate all aspects of the questionnaires used. Each of these differences can be expected to influence responses, and some combinations of differences might be expected to yield radically different results.

However, this does not mean that there is *no* scope for exploring similarities and differences between the experiences of justiciable problems of people in different jurisdictions from past surveys.

Patterns of Problems and Patterns of Vulnerability

For example, while the absolute rates of problem prevalence cannot be compared across jurisdictions, the relative rates of prevalence of particular problem categories provide some interest where there are equivalent definitions, particularly when set within a theoretical framework. So for example, Van Velthoven and ter Voert (2005) have argued, referencing participation theory, that problems can be expected to increase along with participation in economic and social life, with problems related to the most frequent forms of activities the most frequent forms of problems. Similarly, Pleasence et al (2004a, p.28) have argued that "the frequency of reporting of different problem types in large part reflects the frequency of experience of the 'defining circumstances' from which they can arise." Thus, "the most common problems arise from circumstances routinely experienced across the adult population."

²⁴ Other than the subtle differences we have identified in how the surveys were presented to respondents in advance letters, minor changes to a small number of show cards to reflect differences in available services, and different personnel undertaking fieldwork (albeit they were working for the same organisation), the two *Paths to Justice Surveys* were identical.

²⁵ Once exception to this could be for the Northern Irish survey and English and Welsh *Civil and Social Justice Survey*, which used the same general methodology and set of core questions.

So, reflecting the routine nature of consumer transactions, of the 20 recent national legal need surveys for which findings are available, (at least²⁶) 12 indicated that problems in the consumer category (i.e. problems concerning defective goods and services) were the most frequently reported, and 18 indicated that consumer problems were among the three categories of problems that were most often reported. Similarly, reflecting the frequency of interaction between neighbouring households, problems concerning neighbours were among the three most common problem categories for all 13 surveys that included neighbours problems as a distinct category. And reflecting the centrality of money in life, problems concerning money were found to be among the three most common problem categories in 15 of 18 surveys for which findings are available.

The similarity of patterns of vulnerability to particular types of problems as between recent legal needs surveys also provides some interest.

As problem experience is tied to experience of the defining circumstances of problems, this entails that “experience of them varies between different population groups” (Pleasence et al 2004a, p.29). On top of this, it has been argued that “people’s physical make-up, experience, resources and disposition will also affect their vulnerability to experiencing problems” (Pleasence et al 2004a, p.30).

Following on from this, it is to be expected that similar patterns of experience might manifest around the world, and where there are differences these might constitute useful sites for research.

Differences in the definition of problems included in surveys, along with differences in the range and form of demographic data collected through surveys, militate against comparison. As do, of course, the many differences in surveys outlined and explored in the previous chapter. Here, though, once a problem is identified as consistent across jurisdictions, and comparable demographic data is available, then each survey provides an opportunity to test hypotheses originating from participation and related theories.

Unfortunately, a problem for reviewing findings across jurisdictions is that there has been little consistency in analytical approach and, quite incredibly (given the cost of undertaking national surveys on a reasonable scale), sometimes very little analysis at all. In fact, demographic patterns of experience have only been reported in respect of 14 of the 22 recent national legal need surveys that have been reported on in English, and one of these was the original *Paths to Justice* survey, which only collected gender and age data for the full sample. Moreover, multivariate analysis has only been conducted in relation to 6 of these 14 surveys, with 2 being in the same jurisdiction (England and Wales), and one having had findings reported for only one variable (health status) across all problem types. This is a shame, as only multivariate analysis is able to control (at least to some extent) for the differences in problem mix that are inevitably thrown up by different survey designs.

A useful starting place for comparative research in this area would be a series of standardised multivariate analyses, with reconfigured, closely matching problem categories, and a standard set of predictor variables. However, for now it is only possible to review those studies for which similarly reported results are available.

Tables 7 to 11 set out reported findings concerning patterns of vulnerability to five common types of justiciable problems. The problem types do not include any housing problems, as these are often defined quite differently. The predictor variables

²⁶ The two *Paths to Justice* surveys did not report findings in a way that allowed different types of family and housing problems to be easily aggregated, meaning that in both instances consumer problems could have been in the top three problem categories in terms of incidence.

included in the tables are those that are most commonly used. Other predictors have frequently been included, but not so uniformly.

As can be seen, the patterns are fairly similar across jurisdictions, with few conflicts (especially among the multivariate analyses). All five of the problems are generally experienced at a stage of life associated with elevated social and economic activity (i.e. mid-life, as compared to early and later life). Problems are also generally associated with ill-health/disability, although more extensive multivariate analyses of English, New Zealand and Australian survey data suggest this is principally so in relation to mental ill-health/disability (Pleasence and Balmer 2009, Coumarelos et al 2013). This is likely to indicate both a general vulnerability to problematic circumstances and the emotional fallout from more serious problems. It may also indicate elevated sensitivity (Balmer, Pleasence and Buck 2010). Unusually, the recent Taiwanese survey found few links between problem experience and ill-health.

Table 7. Reported Predictors of Consumer Problem Experience

| Predictor | Jurisdiction | | | | | | | | | | |
|---------------------|--------------|-----------|------------|------------|------------|---------------|------------|---------------|-------------|-----------|-------------------|
| | Australia 08 | Canada 06 | England 97 | England 01 | England 04 | England 06-09 | England 10 | N. Ireland 05 | Slovakia 04 | Taiwan 11 | United States 93* |
| Gender | = | = | = | = | = | = | = | = | n/r | F | n/r |
| Age (increasing) | ↓ | ↓ | ∩ | ∩ | ∩ | ∩ | ∩ | ∩ | ∩ | ↓ | ↓ |
| Ethnicity (BME) | = | = | n/r | = | = | ↑ | ↑ | n/r | n/r | n/r | n/r |
| Family Status | LP | C | n/r | = | = | C | C | = | n/r | M | = |
| Income (increasing) | n/r | = | n/r | = | ↑ | ↑ | ↑ | n/r | n/r | ** | = |
| Education | ↑ | = | n/r | n/r | n/r | ↑ | ↑ | n/r | n/r | ↑ | ∩ |
| Illness/disability | ↑ | ↑ | n/r | ↑ | ↑ | = | = | = | n/r | = | n/r |
| Unemployment | ↑ | = | n/r | = | ↑ | = | = | = | n/r | = | n/r |

Shaded columns represent multivariate analysis

* = Mid income survey, ** = Missing, n/r = not reported

'=' indicates that no association was observed. Specific association are detailed by direction or category. ∩ = ∩-shaped distribution (peaks in middle of range), Family status: C = Children, LP = Lone parent, M = Married, ↑ = Positive relationship, ↓ = Inverse relationship.

Looking at specific problems, consumer problems have been found to be associated with both high income and unemployment, suggesting a link to activity and relative value. The association with higher levels of education may be a facet of this, but might also be a facet of sensitivity to problems (Pleasence et al 2004a). Employment problems have been found to be associated with working age – reflecting the defining circumstances of problems – and unemployment (at the time of interview) – reflecting the consequences of such problems. Family problems are associated with mid-life, when people are more often within working families with children, and so at greater risk experiencing problems concerning relationship breakdown and disputes around children. Family problems are also associated with lone parenthood and being divorced (again at the time of interview), reflecting the nature of the problems. Money problems are also associated with lone parenthood, reflecting the stresses placed on people following relationship breakdown, particularly when faced with primary responsibility for children. Negligent accidents, meanwhile, appear to be broadly distributed across a

population, with just some indication of elevated experience among men, perhaps linked to risk taking or forms of employment; though neither of these possibilities has been investigated.

Table 8. Reported Predictors of Employment Problem Experience

| Predictor | Jurisdiction | | | | | | | | | | |
|---------------------|--------------|-----------|------------|------------|------------|---------------|------------|---------------|-------------|-----------|-------------------|
| | Australia 08 | Canada 06 | England 97 | England 01 | England 04 | England 06-09 | England 10 | N. Ireland 05 | Slovakia 04 | Taiwan 11 | United States 93* |
| Gender | = | = | = | = | M | = | = | = | M | = | n/r |
| Age (increasing) | ↓ | ↓ | ↓ | ∩ | ∩ | ∩ | ∩ | ∩ | ∩ | ↓ | ↓ |
| Ethnicity (BME) | = | = | n/r | = | = | = | = | n/r | n/r | n/r | n/r |
| Family Status | = | = | n/r | = | = | CH | C | = | n/r | S | = |
| Income (increasing) | n/r | = | n/r | = | = | ↑ | ↑ | n/r | ↑ | U | = |
| Education | ↑ | = | n/r | n/r | n/r | ↑ | ↑ | n/r | ↓ | ∩ | ∩ |
| Illness/disability | ↑ | ↑ | n/r | ↑ | ↑ | = | = | ↑ | n/r | = | n/r |
| Unemployment | = | ↑ | n/r | ↑ | ↑ | = | = | = | n/r | ↑ | n/r |

Shaded columns represent multivariate analysis

* = Mid income survey, n/r = not reported

'=' indicates that no association was observed. Specific association are detailed by direction or category.

∩ = ∩-shaped distribution, U = U-shaped distribution, C = Children, CH = Cohabiting, S = Single, ↑ = Positive relationship, ↓ = Inverse relationship.

Table 9. Reported Predictors of Family Problem Experience

| Predictor | Jurisdiction | | | | | | | | | | |
|---------------------|--------------|-----------|-----------|------------|------------|---------------|------------|---------------|-------------|-----------|-------------------|
| | Australia 08 | Canada 04 | Canada 06 | England 01 | England 04 | England 06-09 | England 10 | N. Ireland 05 | Slovakia 04 | Taiwan 11 | United States 93* |
| Gender | = | F | = | = | = | F | = | = | F | F | n/r |
| Age (increasing) | ↓ | ∩ | = | ∩ | ∩ | ∩ | ∩ | ∩ | ∩ | ↓ | ↓ |
| Ethnicity (BME) | = | A | = | ** | ** | ↓ | = | n/r | n/r | n/r | n/r |
| Family Status | LP | LP | C | LP | LP | LP | LP | D | n/r | O | C,D |
| Income (increasing) | n/r | ↓ | = | = | = | = | = | n/r | n/r | ↓ | = |
| Education | = | ↑ | = | n/r | n/r | ↑ | = | n/r | ↓ | = | = |
| Illness/disability | ↑ | ↑ | ↑ | ↑ | ↑ | = | = | = | n/r | ↑ | n/r |
| Unemployment | ↑ | ↑ | = | = | = | ↑ | ↑ | ↑ | n/r | = | n/r |

Shaded columns represent multivariate analysis

* = Mid income survey, ** = Lower for Asian respondents, n/r = not reported

'=' indicates that no association was observed. Specific association are detailed by direction or category.

∩ = ∩-shaped distribution, U = U-shaped distribution, A = Aboriginal, C = Children, D= Divorced/separated LP = Lone parent, O = Other, ↑ = Positive relationship, ↓ = Inverse relationship.

Table 10. Reported Predictors of Money Problem Experience

| Predictor | Jurisdiction | | | | | | | | | |
|---------------------|--------------|-----------|------------|------------|---------------|------------|---------------|-------------|-----------|-------------------|
| | Australia 08 | Canada 06 | England 01 | England 04 | England 06-09 | England 10 | N. Ireland 05 | Slovakia 04 | Taiwan 11 | United States 93* |
| Gender | M | = | = | M | = | = | = | n/r | M | n/r |
| Age (increasing) | ↓ | ↓ | ∩ | ∩ | ∩ | ∩ | ∩ | ∩ | ∩ | ↓ |
| Ethnicity (BME) | = | = | = | = | ↓ | = | n/r | n/r | n/r | n/r |
| Family Status | = | = | LP | LP | LP | LP | = | D | = | = |
| Income (increasing) | n/r | = | = | = | = | ↑ | n/r | n/r | = | = |
| Education | ↑ | = | n/r | n/r | ↑ | ↑ | n/r | n/r | ∩ | = |
| Illness/disability | ↑ | ↑ | ↑ | ↑ | ↑ | ↑ | = | n/r | = | n/r |
| Unemployment | = | = | ↑ | ↑ | ↑ | ↑ | = | n/r | = | n/r |

Shaded columns represent multivariate analysis

* = Mid income survey, ** = Missing, n/r = not reported

'=' indicates that no association was observed. Specific association are detailed by direction or category.

∩ = ∩-shaped distribution, U = U-shaped distribution, D= Divorced/separated LP = Lone parent, ↑ = Positive relationship, ↓ = Inverse relationship.

Table 11. Reported Predictors of Personal Injury Problem Experience

| Predictor | Jurisdiction | | | | | | | | | |
|---------------------|--------------|-----------|------------|------------|---------------|------------|---------------|-------------|-----------|-------------------|
| | Australia 08 | Canada 06 | England 01 | England 04 | England 06-09 | England 10 | N. Ireland 05 | Slovakia 04 | Taiwan 11 | United States 93* |
| Gender | = | = | = | = | = | M | = | M | M | n/r |
| Age (increasing) | ↓ | ↓ | = | = | ↓ | ∩ | = | ↓ | ↓ | ↓ |
| Ethnicity (BME) | I | = | = | = | ↓ | = | n/r | n/r | n/r | n/r |
| Family Status | LP | = | = | = | SNC | NC | = | n/r | O | = |
| Income (increasing) | n/r | = | = | = | ↑ | ∩ | n/r | n/r | = | = |
| Education | ↑ | = | n/r | n/r | ↑ | = | n/r | n/r | ↑ | ↑ |
| Illness/disability | ↑ | ↑ | ↑ | ↑ | = | ↑ | ↑ | n/r | = | n/r |
| Unemployment | ↑ | = | = | = | = | = | = | n/r | = | n/r |

Shaded columns represent multivariate analysis

* = Mid income survey, ** = Missing, n/r = not reported

'=' indicates that no association was observed. Specific association are detailed by direction or category.

∩ = ∩-shaped distribution, U = U-shaped distribution, I = Indigenous, LP = Lone parent, NC = No children, O = Other, SNC = Single, no children, ↑ = Positive relationship, ↓ = Inverse relationship.

Problem Resolution Strategies

Because many of the design effects detailed in the previous chapter impact on the mix of problems that are reported through legal need surveys, comparative analysis of problem resolution behaviour is even more treacherous than analysis of patterns of problems and patterns of vulnerability. Rates of action, advice, lawyer use and court process are all highly sensitive to the nature and mix of problems reported. Thus, in this area, particular heed needs to be paid to the nature and mix of reported problems, and comparison of findings from analyses which do not account for possible differences (i.e. univariate analyses) should be avoided.

Unfortunately, aside from having to deal with differences in the way that problem resolution behaviour has been captured in different legal need surveys,²⁷ comparative analysis in this area is (again) limited by the paucity of reported findings from recent surveys. While demographic and problem associations with inaction in the face of problems have been reported for 16 surveys, multivariate analysis has been reported for only 6 (Table 12).

A reasonably consistent story emerges from these 6 analyses, with the association between different strategies and different problem types a common theme (e.g. Kritzer 2008, Pleasence and Balmer 2012).

Inaction is generally more common among men, becomes less common with age (although there is suggestion that it may become more common once again in later years), less common with higher levels of education and less common along with the value and seriousness of problems. Inaction is also associated with problems concerning anti-social neighbours, but not with family problems. There are mixed findings around employment problems.

Ten surveys have led to multivariate analyses of associations with advice (although half of these have been in the United Kingdom) (Table 13). Again, a reasonably consistent story emerges. Women are more likely to seek help about a problem, with advice seeking rising with age (although again with a possibility of a dip in later years) and along with the value and seriousness of problems. Advice is least often obtained in relation to consumer issues, and maybe problems concerning debt. In contrast, high rates of advice seeking are associated with family problems, personal injury, employment and owned housing. There was a mixed picture in relation to problems relating to rented housing and anti-social neighbours.

The most prominent anomaly visible in Table 12 is the negative association between employment problems and advice found in Australia.

Two analyses that specifically explored lawyer use found that it was associated with income, with lawyer use generally rising with income. However, the most recent findings from the 2010 CSJPS suggested a U-shaped association, produced by the availability of legal aid for those on the lowest incomes (Pleasence and Balmer 2012).

²⁷ This is particularly a problem in relation to inaction, which is generally a residual category into which respondents are placed if they do not report having undertaken any of a (generally differently) defined set of actions.

Table 12. Findings from multivariate analyses of inaction

| Predictor | Jurisdiction | | | | | |
|---------------------|--------------|------------|------------|----------------|----------------|-----------|
| | Australia 08 | England 01 | England 04 | Netherlands 03 | Netherlands 09 | Taiwan 11 |
| Gender (Male) | ↑ | ↑ | ↑ | n/r | = | = |
| Age (increasing) | U | ↓ | ↓ | = | U | = |
| Ethnicity (BME) | = | ↑ | = | n/r | n/r | n/r |
| Family Status | = | = | = | Not Married | = | Other |
| Income (increasing) | n/r | = | = | = | = | ↓ |
| Education | ↓ | ↓ | ↓ | ↓ | = | = |
| Illness/disability | ↓ | = | = | n/r | n/r | n/r |
| Value (increasing) | n/r | n/r | n/r | n/r | ↓ | ↓ |
| Seriousness | n/r | n/r | n/r | n/r | ↓ | = |
| Consumer | = | ↓ | ↓ | = | = | = |
| Debt | ↑ | n/r | n/r | n/r | = | = |
| Domestic violence | n/r | ↑ | = | n/r | = | n/r |
| Employment | ↓ | ↑ | = | ↑ | = | = |
| Family | ↓ | ↓ | ↓ | = | = | = |
| Neighbours | n/r | ↑ | ↑ | = | = | = |
| Owned housing | n/r | = | = | = | = | = |
| Rented housing | n/r | = | = | n/r | = | ↑ |
| Personal injury | = | ↑ | ↑ | = | = | n/r |
| Welfare benefits | n/r | = | = | n/r | = | n/r |

All analyses compared inaction to action.

n/r = not reported

'=' indicates that no association was observed. Specific association are detailed by direction or category.

U = U-shaped distribution, ↑ = Positive relationship, ↓ = Inverse relationship.

Looking further at lawyer use, as in the case of problem prevalence, reports of the relative use of lawyers for different problem types are remarkably similar across jurisdictions. In fact, in 19 of the 20 surveys for which findings are available lawyers were most commonly used in relation to family problems. The exception was Moldova, where lawyers were most commonly used in relation to housing problems. Family saw lawyers used at the second highest rate. Problems concerning housing, particularly owned housing (in the top three categories on 8 of 11 occasions), and personal injury (in the top three categories on all but one occasion) also see high levels of lawyer use across jurisdictions.

This has fuelled various enquiries into what might lie behind the associations between these problem types and high levels of lawyer use (e.g. Kritzer 2008, Pleasence, Balmer and Reimers 2011).

Table 13. Reported Predictors of Advice

| Predictor | Jurisdiction | | | | | | | | | |
|----------------------|-------------------|------------|------------|------------|-------------|----------------|----------------|----------------|-------------|-----------|
| | Australia 08 | England 97 | England 01 | England 04 | England 10* | Netherlands 03 | Netherlands 09 | New Zealand 06 | Scotland 98 | Taiwan 11 |
| <i>Compared with</i> | NA | NA | HA | HA | NL | HA | HA | NA | NA | HA |
| Gender (Male) | ↓ | ↓ | = | = | n/r | n/r | n/r | ↓ | = | = |
| Age (increasing) | ↑ | ∩ | ∩ | ∩ | n/r | ∩ | = | ↑ | = | ↑ |
| Ethnicity (BME) | = | n/r | ↓** | ↓** | n/r | n/r | n/r | = | n/r | n/r |
| Family Status | LP | n/r | = | = | n/r | M | D | = | n/r | = |
| Income (increasing) | n/r ²⁸ | = | = | = | U | U | = | ↑ | ↓ | n/r |
| Education | ↑ | ↑ | = | = | n/r | Mix | = | n/r | = | = |
| Illness/disability | ↑ | n/r | = | = | n/r | n/r | n/r | = | n/r | n/r |
| Value (increasing) | n/r | ↑ | ↑ | ↑ | n/r | n/r | ↑ | n/r | n/r | ↑ |
| Seriousness | n/r | n/r | ↑↑ | ↑↑ | ↑↑ | n/r | ↑↑ | n/r | n/r | ↑↑ |
| Consumer | ↓ | ↓ | ↓ | ↓ | ↓ | ↓ | ↓ | Ref | ↓ | ↓ |
| Debt | ↓ | n/r | n/r | n/r | n/r | n/r | n/r | n/r | n/r | ↓ |
| Domestic violence | n/r | n/r | = | = | n/r | n/r | n/r | n/r | n/r | n/r |
| Employment | ↑ | ↑ | ↑ | ↑ | Ref | = | ↑ | ↑ | = | ↓ |
| Family | ↑ | ↑ | ↑ | ↑ | ↑ | ↑ | ↑ | ↑ | ↑ | ↑ |
| Neighbours | n/r | ↑ | = | = | ↓ | n/r | n/r | n/r | = | ↑ |
| Owned housing | n/r | ↑ | = | = | = | ↑ | ↑ | n/r | ↑ | ↑ |
| Rented housing | n/r | ↓ | = | = | n/r | = | ↓ | n/r | = | ↑ |
| Personal injury | ↑ | = | ↑ | ↑ | ↑ | ↑ | ↑ | n/r | ↑ | ↑ |
| Welfare benefits | n/r | n/r | = | = | n/r | n/r | n/r | ↑ | n/r | n/r |

* = Advice from a lawyer, ** = Black, n/r = not reported

‘=’ indicates that no association was observed. Specific association are detailed by direction or category.

HA = Handled alone, NA = No advice, NL = No lawyer

∩ = ∩-shaped distribution, U = U-shaped distribution, D = Divorced/separated LP = Lone parent, M = Married, ↑ = Positive relationship, ↓ = Inverse relationship.

Common Interests and Emerging Themes

The fact that there is limited potential for comparative analysis on the basis of past surveys is not to diminish the richness and utility of findings that have been reported from individual surveys to date.

Individual survey analyses around problem experience and problem resolution strategy have frequently gone well beyond what we have presented in standardised summaries above – though the form of analyses has varies considerably, limiting our ability to present findings together. Moreover, many other forms of analysis have also been undertaken around the world, providing a sometimes detailed platform for access to justice policy development.

²⁸ Forthcoming findings indicate a mixed picture, with a U-shape discernible for problems for which legal aid is most commonly available.

In the following paragraphs we present some examples of findings in areas of common interest and emerging areas of study.

Problem Clustering

Paths to Justice tradition surveys have provided ample opportunity for study of justiciable problem clustering.

Using data from the original *Paths to Justice* survey, Genn (1999) set out a cross-tabulation of “the overlap between the incidence of different types of problems occurring during the survey reference period,” and pointed to the “problem types most commonly experienced together” in “problem clusters” (pp.31-36). The most common pairings were divorce and family matters, family matters and problems concerning children, divorce and problems concerning children, employment and money problems, residential property and consumer problems, rented property and money problems, and employment and residential property problems. She then described how the experience of one problem could lead to another, in a “cascade effect” (p.35):

“Empirical studies of the financial consequences of accidental injury and work-related ill health have shown that many victims suffer financial hardship and have problems with benefits in the immediate aftermath of an injury as a result of being unable to work²⁹. In addition there may be longer-term employment consequences and financial hardship if the victim suffers a substantial degree of residual disability, even if compensation for the injury was obtained via the legal system. A study of the long term financial effects of personal injury conducted by the Law Commission showed that as well as losing earnings from work, accident victims often incur other costs (for example for medical treatment, rehabilitation etc) or suffer other losses and other household members may have to give up work altogether as result of the victim’s accident, thereby causing a *further loss* in household income. The Law Commission study found that nine in victims of serious injury had received state benefits since the date of their accident. The report concluded that having to pay extra costs while living on a reduced income resulted in many accident victims experiencing financial problems, and many borrowed money or accumulated debts as a result of their accident.³⁰

Certain types of situations can have a cascade effect. For example, threatened repossession of the family home can lead to marital strain and breakdown, mental health problems, leading to difficulties at work and problems in caring for children.”

This simple early analysis has since been substantially built on using more sophisticated forms of cluster analysis (e.g. Pleasence et al 2004c, Gramatikov 2008, Currie 2009, Coumarelos 2012). The most visible clusters have consistently been seen in the context of family breakdown, where domestic violence, divorce, ancillary issues and problems concerning children link closely. While the precise details have differed between jurisdictions, other problem clusters have also been identified, including clusters centred on economic activity (e.g. problems concerning employment, money,

²⁹ Harris, D. et al (1984)

³⁰ Law Commission (1994)

consumer transactions, welfare benefits and housing), and problems centred on poor quality housing.

Analysis of ordering in sequences of problems suggests that family breakdown is a key “trigger” of problems more generally (e.g. Pleasence et al 2004a, Pleasence et al 2004c).

One limitation of most published results is the use of hierarchical cluster analysis as the main form of analysis, as this restricts individual problem types to placement in a single cluster. Factor analysis of 2001 CSJS data provided a more flexible basis for looking at cluster composition (Pleasence et al. 2004a), as well as a means to explore demographic associations with particular clusters – although Gramatikov (2008) has also done this within the context of hierarchical cluster analysis. It is suggested that latent trait analysis might provide the best basis for future work in this area.

Allied to cluster analysis, the degree to which multiple problem experience extends beyond justiciable problems, to social problems, has also been increasingly investigated – through the form of multivariate analysis described in relation to patterns of problems/vulnerability above and through analysis of responses to questions asking about the causes and consequences of problems.

As indicated above, a key common experience has been found to be that of justiciable problems and morbidity. As indicated above, the findings of a variety of surveys, including the 2004 Canadian survey have “demonstrated that disability and poor health are associated with a wide range of justiciable problems” (Currie 2009, p.62). Thus, Currie (2009, pp.62-63) concluded that “justiciable problems and disability are both aspects of the broader complex referred to as social exclusion.”

Also as indicated above, analysis of English and Welsh and New Zealand data suggest that the principal association is between psychiatric morbidity and justiciable problem incidence.

Detailed examination has also been undertaken of multiple problem experience around family breakdown (e.g. Miles, Pleasence and Balmer 2009) and, particularly in the context of the recent global economic downturn, job loss (Pleasence and Balmer 2010).

Obstacles to advice

It is evident from the original *Paths to Justice* survey (Genn 1999, pp.69-75) and subsequent surveys in, for example, England and Wales (e.g. Pleasence et al 2001), Canada (Currie 2007) and Australia (Coumeralos 2012), that many people who ‘lump’ justiciable problems are unsure about their rights, their prospects, and the availability of help.

Building on this, analyses of CSJS data have explored how awareness of rights and available services influences advice seeking, with a general finding that awareness improves access (e.g. Balmer et al 2010).

There is also mounting interest in exploring how problem resolution behaviour is influenced by beliefs about law, lawyers and dispute resolution, and people’s perceptions of the issues they face and their motivations in addressing issues through particular channels. This is beginning to conjoin theories of legal consciousness and legal empowerment with the *Paths to Justice* tradition of research.

The 2005 Japanese survey included an array of questions concerning connections with the law, as well as an innovative question around whether respondents were aware of problems being related to the law (Murayama 2007), a form of which has since been incorporated into recent English and Welsh surveys. Both the 2005 Japanese survey and 2010 CSJS indicated that whether justiciable problems are

perceived as 'legal' is an important influence on problem resolution strategy – particularly the use of lawyers (Murayama 2009, Pleasence and Balmer 2011).

People's expectations around how problems resolve have also been highlighted by Gramatikov in the context of the Bulgarian survey, in light of his finding that "more than a third of those who had justiciable problems expected that a public institution will intervene and will solve [them]" (Gramatikov 2008, p.10). As he explains, "Still many of the citizens of these [East European] countries, and Bulgaria in particular, expect the state to play extensive corrective role in cases when their private lives, rights and interests are endangered" (p.11).

Questions around confidence in resolving particular forms of disputes, developed by Gramatikov and Porter (2011) in the context of legal empowerment, have been introduced into the 2012 CSJS.

Linked to this, results from both Japanese and English and Welsh surveys indicate that previous experience of dispute resolution influences advice seeking behaviour. In England and Wales it has been found that problem resolution strategies become entrenched within individuals, and also households (e.g. Pleasence and Balmer 2009). And in Japan, it has been found that prior use of lawyers is crucial in subsequent use of lawyers (Murayama 2009). In both cases it has been suggested that people tend to trust to what they know. However, in the Japanese context there is a further explanation that references social conventions in accessing lawyers. "While connections with lawyers ... help people to get access to legal services anywhere ... Japanese lawyers usually expect their clients to seek their advice after introduction by a person or an organisation that they know directly or indirectly" (Murayama 2009, pp.171-2). This therefore presents an additional obstacle to accessing lawyers in Japan. Further work in this area is on-going in Taiwan, though results are not yet published.

Evidently, broader social and cultural factors – such as language (e.g. Coumeralos 2012) – also influence problem resolution strategies. As do a broad range of physical factors. So, geographical, technological and other physical and structural access issues (e.g. opening times, service availability, service cost, service integration) have been explored across a range of jurisdictions (e.g. Genn 1999, Genn and Paterson 2001, Pleasence et al 2004, Murayama 2009, Patel et al 2009, Chen et al 2012, Coumeralos et al 2012, Pleasence and Balmer 2012).

Proximity to legal services appears to influence mode of access more than the fact of access to advice, with telephone becoming more prominent with distance (Patel et al 2009). Different demographics are also associated with different propensities to use different modes of communication with advisers. For example, there has been a suggestion that young people, while heavy users of online services, are not great users of online advice services (e.g. Denvir et al 2011).

Referral between advisers has been shown to disrupt advice seeking, with evidence from successive CSJS pointing to the existence of a phenomenon of 'referral fatigue', meaning "that the likelihood of [people] obtaining advice from an adviser to whom they had been referred declined as respondents visited more advisers" (Pleasence 2006, p.119).

Financial resources and the use of lawyers

An area of controversy has emerged around the extent to which access to lawyers is related to income, with associations between income and lawyer use being found in some jurisdictions (e.g. Bulgaria), but not others (e.g. Japan). A detailed analysis of 2010 CSJS data suggested that the relationship might be quite complex, and be mitigated by the availability of legal aid, fee schemes employed by lawyers and the

structure of the legal services market (Pleasence and Balmer 2012). So, a linear relationship between income and lawyer use in Bulgaria (which had little in the way of public subsidy of legal services) was contrasted with a U-shaped relationship in England and Wales (which had generous legal aid provision), with support suggested to come from the 2006 Canadian and New Zealand surveys and the *Paths to Justice Scotland* surveys also.

Linked to this, the 2009 Dutch survey has been used to explore the relationship between legal expenses insurance (LEI) and access to advice and lawyers. For higher-income citizens it was found that LEI increases both access to advice (e.g. from LEI provider staff) and lawyers, while for lower-income citizens, there is no net change in accessing help (van Velthoven and Klein Haarhuis 2011).

Law on the periphery

All surveys in the *Paths to Justice* tradition have pointed to the often peripheral role of legal services and legal processes in relation to many types of justiciable problem. So, for example, while family disputes are associated with high levels of lawyer and legal process use, the same cannot be said for consumer or welfare benefits issues.

In England and Wales, findings from the 2010 CSJS indicated that only one problem in fifteen saw respondents obtain help from a lawyer and one in twenty court or tribunal involvement. However, figures ranged between 28% (lawyer use) and 15% (court/tribunal involvement) across family problems to 1% (lawyer use and court/tribunal involvement) in the case of consumer problems, and less than 1% (lawyer use)³¹ in the case of problems concerning welfare benefits.

As we have highlighted, specific percentages vary dramatically across jurisdictions, but the pattern of lawyer and process use is fairly consistent. So, for example, looking at the (higher reported) percentage of justiciable problems that involved a court appearance derived from the 2006 Canadian survey, while the figure was over 40% for family problems, it was just 8% for consumer problems.

Conclusion

It would be a brave person who would be confident in drawing comparisons between headline problem prevalence and strategy rates reported for the great majority of the *Paths to Justice* tradition legal need surveys. This is despite their common approach and structure. There are simply too many methodological differences to allow for the direct comparison of specific figures. Furthermore, there is no sensible way to modify results to reflect key methodological differences. First, because there are so many differences. Second, because the individual and cumulative impact of differences is hard to gauge.

However, that is not to say that there is no value in comparing reported patterns of incidence and behaviour. Here, precise numbers are of less importance than associations, and provided that comparative analyses are undertaken carefully (so as to ensure likeness of the subjects of study) and, as far as possible, are backed by multivariate techniques (to reduce the influence of, say, differences in the nature and mix of reported problems) there is the potential for useful investigation of similarities and differences between jurisdictions.

Unfortunately, a key word from the last sentence is 'potential'. There are surprisingly few detailed analyses of data from the 26 surveys set out in Table 1, and there has been little co-ordination to maximise the possibilities for comparison. Thus,

³¹ The figure was 2% in relation to court or tribunal use.

at present, there is little scope for anything but relatively superficial comparison. And even in drawing superficial comparisons, while it is possible to be reassured and interested in similarities, there is an overarching concern that differences may be methodological artefacts. So, even here, confident comparison is not truly possible.

Perhaps, if the methodological insights that have arisen through the undertaking of past surveys, along with interest in promoting greater potential for comparative analysis, can lead to future surveys learning, building upon and standardising best practice, then this may change in the future. Here we could echo the words of Cantril (1996, p.7), who said after the completion of the *Comprehensive Legal Needs Study* that people should “draw on the experience with the Comprehensive Legal Needs Study to improve the methodology of legal needs surveys and identify important topics for further study.” We now have 26 recent surveys to learn and draw from! But, for now, caution must prevail.

However, lack of easy comparability does not detract from the wealth of findings that have originated from recent legal need surveys, which are applicable locally. Nor does it detract from the importance of the emerging themes of research in the *Paths to Justice* tradition. There are substantial programmes of ‘legal need’ research on-going in the United Kingdom, Australia, Japan, the Netherlands, Taiwan, the United States and (albeit more dispersed) across Eastern Europe. These programmes are building, more and more, upon these emerging themes and introducing new sophistication to thinking around clustering, capability, client focused forms of service provision and the wider role of law and legal services in justiciable problem dispute resolution.

Furthermore, the lack of easy comparability should not detract from the influence of the *Paths to Justice* tradition of surveys. In the next section we turn to look at this impact.

4

The Impact of the Surveys

Introduction

As can be seen in Appendix 2, which sets out the findings of content analysis of the use of research findings in recent official publications, *Paths to Justice* tradition survey findings have been referenced in various English and Welsh government publications since the publication of *Paths to Justice* – although the major 2010 Ministry of Justice consultation paper *Proposals for the Reform of Legal Aid in England and Wales* contained no references to any *Paths to Justice* related research, despite representing a substantial change of direction in legal aid policy. Of course, *Paths to Justice* tradition research featured in the consultation response, and in associated impact assessments, though these fell outside the scope of the study.

The intervening years however saw more overt use of *Paths to Justice* and CSJS findings and, more broadly, the Legal Services Commission underpinned their 2005 strategy, set out in *Making Legal Rights a Reality* (Legal Services Commission 2005) with CSJS findings.

Findings from the *Paths to Justice* and CSJS also saw significant exposure in select committee deliberations and reports over this period – though the use of survey findings was somewhat different at the beginning and end. In the Constitutional Affairs Select Committee 2004 and 2005 reports on legal aid related matters, *Paths to Justice* related research was used to evidence or support government policy or defend the government’s position. However, by 2011 nearly all use of *Paths to Justice* related research was either providing context for a criticism of government policy or, more commonly, used to directly criticise policy.

The CSJS was also formally integrated into government performance management, with the survey first adopted to measure progress against government Public Service Agreement (PSA) targets around access to legal services, and then, more recently, to measure “equal protection and support for individuals with civil justice problems” within the Equality Measurement Framework (Alkire et al 2009). The conduct of the CSJS has also been seen by the Legal Services Commission as central to discharging its statutory duty to “inform itself about the need for, and the provision of Community Legal Service services,” under Section 4(6) of the Access to Justice Act 1999.

In this chapter, we explore the use of *Paths to Justice* related research in the policy process in England and Wales, and then internationally, through the findings of a series of interviews with UK policy makers in the access to justice field and of a survey of legal aid and justice ministry officials in the United Kingdom, Australia, New Zealand and Canada.

Paths to Justice and UK Access to Justice Policy

Interviews with Stakeholders

To assess the reception and impact of *Paths to Justice* tradition research in the UK legal aid and advice policy realm, stakeholder respondents from the public sector, the

private sector, and the nongovernmental, not-for-profit sector were interviewed about their own and their colleagues' use and evaluation of *Paths to Justice* tradition research. The interviews were conducted by Rebecca Sandefur.

In July and August of 2012, eight interviews were conducted with respondents who worked in England and Scotland. Interviews were conducted via telephone and lasted between 23 minutes and one hour. So that they might feel comfortable speaking frankly about both *Paths to Justice* research and its impact on their own work and that of their colleagues, funders or employers, respondents were assured that they would not be identified in connection with the project. The quotations from the interviews below are therefore presented without attribution. Respondents were asked if they would give permission for the interview to be recorded; all consented. The research employed standard interviewing techniques (Weiss 1995). The interview schedule and the list of respondents were developed in consultation with the project's advisory board. The list of interview topics is included in Appendix 4. As the study progressed, research notes were compiled identifying and exploring emerging themes (Lofland *et al.* 2006). Review and analysis of the interviews, with transcriptions, form the empirical basis for the report below.

Respondents were queried about their work experience and current job, about their own and their organization's or department's use of empirical research evidence, their perceptions of other stakeholders' use of such evidence, and their familiarity with and views on the *Paths to Justice* tradition of surveys, including the England and Wales CSJS. Respondents were also asked to discuss what they saw as important research needs going forward.

Four themes emerged in the respondents' accounts:

- *Paths to Justice* tradition research is well-known across the legal aid and advice field.
- *Paths to Justice* tradition research has transformed thinking about legal aid and advice.
- Stakeholders' assessment of the usefulness of particular bodies of empirical research, including *Paths to Justice* tradition research, was shaped by their particular research needs at the time of the interviews. In this case, the interviews occurred during a time of historic economic, political, and regulatory change affecting the legal aid and advice field.
- *Paths to Justice* tradition research is generally well received. Critiques are disparate, reflecting respondents' specific perspectives and research needs rather than broadly shared concerns.

Theme 1: Paths to Justice research is well-known across the legal aid and advice field

Students of the impact of social science research on policy have observed that "research usually affects the development and modification of policy in diffuse ways. It provides a background of empirical generalisations and ideas that *creep* into policy deliberations" (Weiss 1980: 318, original emphasis). This phenomenon of "evidence creep", also termed "enlightenment," was clearly evident for *Paths to Justice* tradition research. (Weiss 1986). *Paths to Justice* tradition research permeated stakeholders' discussion of their work.

During each interview, before any mention by the interviewer of *Paths to Justice* tradition studies, respondents were asked about their use of empirical research generally and about their views on "evidence-based policy." In responding to this query, respondents referenced research findings from a variety of different sources.

Respondents described drawing on administrative data, international studies exploring aspects of legal aid and advice in other jurisdictions, literature reviews, and public opinion polling. They explained that they received this research from a variety of different kinds of sources: reports commissioned from academics or private research firms; the research divisions of other stakeholder organisations, such as the Ministry of Justice, the Legal Services Research Centre, the Legal Services Commission, or the Scottish Legal Aid Board; and, stakeholder organisations' own research efforts.

In all of these accounts, *Paths to Justice* tradition research figured prominently in respondents' discussions of evidence. Respondents spoke of a number of *Paths to Justice* tradition research findings as common knowledge throughout the field. One finding prominently mentioned in this unattributed way was the clustering of justiciable problems of different types in the lives of the people who experience them. Respondents attributed the policy response of "joined-up services" to assist the public with the research discovery of "joined-up" problems. For example, one respondent described Community Legal Advice Centres (CLACs) as a "research-based policy" designed to respond to the discovery that problems cluster. Another explained that

"We have a quite a bit of research that demonstrates that if somebody's got a problem with their housing or their employment... then they've probably got other issues that also need resolution. And ... therefore we designed our services to ensure that rather than being just able to take advice on , say, debt , they were able at the same to get advice on housing, employment,... through a kind of one-stop-shop approach."

When respondents were, later in the interview, asked directly if they were familiar with the *Paths to Justice* tradition of research, respondents were familiar with the research, often referring to the various projects by the principal investigators' names, as in: "of course, that's Hazel's work," or "Alan Paterson pulled it out of his... rucksack" or "that's Pascoe, right?"

Paths to Justice tradition research is clearly well-known throughout the legal aid and advice field, and discoveries produced by the research program have become accepted as common knowledge.

Theme 2: Paths to Justice research has transformed thinking about legal aid and advice

After being asked in a general way about their use of empirical research evidence and then about their familiarity with *Paths to Justice* tradition research, respondents were asked specifically whether they believed *Paths to Justice* tradition research had changed thinking about legal aid and advice policy; all said that it had done so.

One respondent provided a general explanation for why *Paths to Justice* tradition research had been so influential. In this respondent's view, the quantitative nature of *Paths to Justice* tradition research was an important factor in its effectiveness, because quantitative research was viewed as more credible by important actors. As the respondent put it, "Politicians like quantitative studies."

Other respondents supported their assessment of *Paths to Justice* tradition research as influential by offering illustrations of how it had shaped public policy on legal aid and advice:

"The LSC, backed by the government, published a paper... "Making Rights a Reality.".... That paper was entirely based on [*Paths to Justice*

tradition research] and used them [the findings] to try and reconfigure how services were organized.... It had a very great impact.”

“[The Civil and Social Justice Surveys are] really important, and Hazel Genn’s previous research.... is really important. Certainly, our Legal Services Commission uses it to inform their planning of services, but I would argue it got rather... misinterpreted by some policy makers for their own ends.”

“[*Paths to Justice* tradition research has] changed the way they think about it [legal aid and advice].... I would say that the shift, before the current round of cuts,... there was a shift towards trying to design services that actually reflected people’s needs, rather than just services that lawyers wanted to deliver... beginning to use different channels to deliver it... it did inform all of that.”

One respondent noted that *Paths to Justice* tradition research had affected not only public policy affecting legal aid and advice funding, but also how providers and non-governmental funders of legal aid and advice think about their work:

“Problems don’t come alone. There are families of problems... That’s informed both funders and, actually, I think it’s helped providers to think about those things. Although all those initiatives... are all going now... government isn’t terribly interested in all this stuff. People often quote that stuff to non-governmental funders.... They’re aware of it as well...[it’s] been very useful.”

Respondents also readily provided a range of specific examples of influential research findings, including research discoveries made possible by *Paths to Justice* tradition research’s examination of legal aid and advice from the perspective of the public. These discoveries included greater understanding of public experience with civil justice problems and services:

“[*Paths to Justice* tradition research has] given us much better information about the sorts of problems that people have.”

Paths to Justice tradition discoveries also included insights into the markets for legal services:

“It’s really a solid basis of understanding of how individual consumers... use and understand legal services.”

“Solicitors aren’t even the main people who are providing advice.”

Paths to Justice tradition research is seen as persuasive and influential. Respondents described the research as having transformed understanding of public justice needs, of not-for-profit service provision, and of market service provision. Respondents also described the research as influencing changes in the ways that legal aid and advice services are delivered.

Theme 3: Contemporary research needs shape how existing research is received and used

The utility of any specific piece of research is shaped by a number of factors outside the research itself (Weiss 1980, 1986). The UK context in 2012 is characterized by significant cuts in public funding for legal aid and advice, by a shift in government priorities away from social welfare programs, and by regulatory changes that affect both how legal services may be provided and what will be the priorities of legal aid policy.

In the present study of *Paths to Justice* tradition research's impact, respondents' discussion of empirical research and its usefulness showed the powerful influence of government fiscal austerity in response to a deep global recession; of regulatory changes in the legal services market; and, of shifting political ideologies linked to the change in national government. These substantial changes in the landscape of both funding and provision clearly shaped stakeholders' perceptions of the research that they need. In describing their own and other's uses of research, respondents talked explicitly of how these developments' affected the utility of any specific body of evidence. In particular, they described how changes in government policy affected the utility of different pieces of evidence. Many respondents felt that research evidence had become more important for understanding the impact of policy changes and at the same time that it had become less important for guiding policy changes themselves. Recent policy developments were usually described by respondents as driven either by fiscal austerity or political ideology, or both.

In both England and Wales and Scotland, fiscal austerity was imposed across government functions in a climate of urgency that meant that new policies often had to be implemented quite quickly. In England and Wales, respondents described the utility of evidence as shaped by a combination of urgency and ideology:

“Previously, where we don't have a lot of evidence, people would have said ‘let's wait and gather evidence’... now, if we don't have the evidence, we're willing to go ahead on the basis that we think this is the right thing to do... take more of a leap into the dark, something that's manifest over the past couple of years.”

“This government doesn't seem to be terribly interested at all in evidence. If it's cheaper, and they can get away with it....”

Other respondents in England and Wales suggested that policy changes were driven largely by ideology:

“You've got a government that thinks the state should be smaller and, you know, [therefore] you leave these things [people with certain civil justice problems] alone.”

“That's the policy driver, really....A fundamental belief that society has become more litigious than it was -- unnecessarily so in some areas -- and people are too quick to run to court... as the only means of sorting out their problem.”

In this context, some respondents were discouraged about the utility of *Paths to Justice* tradition and other research:

“Don’t think government is particularly interested in it... We used it more previously because we don’t really think it’s going to get us anywhere [now].”

“If you have those that control the budget not wanting to fund particular types of services then it doesn’t really matter the detail below that how you should deliver to meet particular needs or get to particular groups.”

By contrast with England and Wales, Scottish respondents described an ideology that included a continuing commitment to legal aid, which had to be put into practice under new conditions of austerity. In Scotland, *Paths to Justice* tradition and other research informed understanding of how changes would impact the population:

“[The government] set about reducing our deficit.... Legal aid [was] targeted.... [We were] moving very quickly. We made a lot of changes to legal aid. We were trying to make sure that people could still get legal aid.... We were trying to preserve legal aid. Was that based on evidence? I think it was a principle that people do need legal aid.... Where we were using evidence was to assess the impact of the changes we were implementing.... We really made sure we assessed the impact of those things.”

This same respondent suggested that Scotland’s situation was different from that of England and Wales, where.

“If we’d have decided, as they’ve done down South, to take things out of scope, we’d have really struggled to justify that outside of monetary terms... We’d have really struggled on the evidence with that and on the impacts that would have. I think that would have been quite difficult for us.”

For many respondents, the changed political and economic context meant that *Paths to Justice* research was useful in new ways. Respondents described turning to the research to learn about the impact of the evolving situation on public experience of justiciable problems or the dynamics of legal services markets. They also described turning to *Paths to Justice* tradition research as a resource in developing research-grounded messages to send to other stakeholders. For example, one respondent was drawing on such research to understand

“Where are the knock-on consequences to other departments [of the cuts to legal aid]... for example, more litigants in person... [and] there is a cost to the health system because of [unresolved civil justice problems].”

Another explained that

“With the latest round of cuts... it stops people getting to a lawyer in the first place. [*Paths to Justice* tradition research] was quite ... useful ... for helping us identify where people will go [if they can’t go to a lawyer].”

One respondent described how *Paths to Justice* tradition research was helping to change providers’ thinking about how to deliver legal services under the new conditions:

“[*Paths to Justice* tradition research has] been quite useful for me... [There is a] large number of people that the legal profession has tended to ignore, who are a little too rich to qualify for legal aid... [*Paths to Justice* tradition research is] one of the first pieces of work that really identified the existence of this group. With the legal aid cuts, we’ve got another large cohort of clients [who will join them.] I’ve used it to get my colleagues to think about how to reorganise legal services.”

Policy responses to cuts in public funding also inspired a new focus on identifying ways that people could pursue resolutions to problems without the assistance of lawyers or with lawyers who were acquired through private purchase of services rather than through legal aid. *Paths to Justice* tradition research was proving useful in these respects, as well:

“There’s a big body of evidence there. We’re using that in [a current initiative]... looking at legal capability.”

“We’re trying to improve people’s ability to take action on their own behalf, or to provide them with support but not direct assistance.... It’s not really the fact of legal services that we’re worried about, it’s really about the impact of the loss of legal services that we’re worried about... It’s whether or not people are using those lawyers and whether or not they’re resolving their problems.... [T]he survey work is about the only way to get at that, because it’s terribly difficult to capture it in any other way.”

“We’ve taken a lot [from] *Paths to Justice* and [the] Civil and Social Justice Survey and built on that and we’re about to... look at ... problem type ... and transactional legal services as well... to look at the whole of the legal market from the perspective of consumers.”

Significant political, economic and regulatory changes shaped the way that *Paths to Justice* tradition research was received and used. Some respondents were discouraged about the use of any research, including *Paths to Justice* tradition research, to inform policies that they believed were driven largely by ideology. Nevertheless, many respondents were finding that *Paths to Justice* tradition research had become useful in new ways.

Theme 4: Respondents see disparate research gaps. These gaps reflect particular needs rather than broadly shared concerns about Paths to Justice tradition or other research.

After discussing *Paths to Justice* tradition research, respondents were asked to describe what they saw as important research gaps and as their own research needs going forward. Respondents identified a variety of gaps. These reflected their particular perspectives as regulators, civil servants, or representatives of professional or nonprofit groups, in a context of fiscal austerity, political change, and regulatory reform. Across respondents, there is no consensus about what is missing from the contemporary evidence base nor is there a broad-based critique of *Paths to Justice* tradition research. Rather, critiques and desiderata are disparate, some indicating a need for more *Paths to Justice* tradition-style research and some indicating a need for additional approaches to supplement the evidence base.

In discussing their research needs, a number of respondents identified research gaps that were essentially extensions of the *Paths to Justice* tradition research program. Some wanted more information about the impact of justiciable problems on the people who experience them. For example, one respondent was concerned that existing *Paths to Justice* tradition research might be producing underestimates of the severity of justiciable problems' impact and of the incidence of severely impactful problems:

“What we haven't had is a very clear set of data about what I could call serious problems. The problem with the survey is it asks ‘have you had a problem that was difficult to solve,’ but you don't get a very clear idea about how serious an impact it has on people.”

The same respondent also wanted more information about the experiences of special populations with justiciable problems:

“I would like to see more focused on particular communities... [for example] new migrants in areas like London.... It would be really useful to have information about how people who are new to the country, how they cope with finding their way around.... We don't have any research, really, that describes that particularly well. [Although,] I don't think the government would be at all interested.”

Similarly, another respondent felt that, in order to deliver legal aid and advice effectively, policy makers, funders and providers needed

“an understanding of what it's like to be poor in 2012 facing a social justice problem, because I suspect it's very different to what it was like in the 70s.... My sense is people [now] are both richer when they're poor and more excluded. And I suspect that has implications for both the design and delivery of legal aid services, and also for pricing. What are people willing to pay for legal services?”

Some respondents called for extensions of *Paths to Justice* tradition research that would enable better understanding of how to maintain access to services in a changed regulatory and fiscal context. For example, one respondent wanted more information about how members of the public make choices among different potential providers, and about the relative effectiveness of different mechanisms of delivery for different groups in the population. This respondent hoped that future research could

“[e]xpand to look much more at channels of delivery... what works for whom, how do consumers choose, and how can you structure it to get the right services to people... in times of austerity to still deliver services to the people who need them.... That’s really, really important.”

In thinking about changes in the scope of problems that would come under the legal aid scheme, another respondent wanted to understand

“Why is it that people definitely want their day in court, and do they want their day in court more in relation to some issues rather than others?”

Another respondent echoed this, calling for qualitative research to supplement *Paths to Justice*-style work. This respondent encouraged

“smaller bits of qualitative work to try and get a richer understanding of why people make the choices they do.... [that] we can set alongside the... quantitative work.”

Some of the research gaps that respondents identified departed from what one called the “consumer focus” of *Paths to Justice* tradition research, and indicated a need to understand the broad social and economic context of legal aid and advice provision. For example, one respondent wanted to understand the impact of legal aid and advice on society in the changed context, wanting to know whether

“For every one pound you spend on this advice, you actually save some amount of tax payer money... so much of the data you would need [to know this] just doesn’t exist.”

Another wanted to understand the impact of legal aid reform on courts and on justice:

“One of the things we’re really worried about... we know there will be an increase in litigants in person... particularly in family law... We know, well, we think we know, that people feel very, very strongly about family issues....They will still want to go to court. The concerns are, obviously,... [that] cases [will] drag out a lot longer, because we think... that these [litigant in person] cases do take longer. Also, is the outcome going to be less good for these people because they didn’t have representation?”

For some respondents, understanding the impact of regulatory changes in legal services markets was paramount, and importantly required information about providers as well as the members of the public who might use their services. For example, one respondent, seeking to operate in the context of the “liberalisation agenda... [the] opening up [of] the legal market to external capital,” wanted to know about the

“[l]egal market... What’s happening [now] in the legal market within England and Wales?”

Another respondent observed that the regulatory changes were

“mega-ly going to affect markets. We just don’t know in what ways.... so many bits of the picture are moving at the same time that it’s really hard to even know what your baseline is and then work out what the impact of particular policies is going to be.”

But other respondents sought to understand these same changes through a *Paths to Justice* lens:

“The existence of lawyers is a bit of a proxy for the policy goal, and the policy goal is for people to resolve their problems.... The only way to get at [whether that is happening] is through the [*Paths to Justice*-style] survey work that we need to do more of.”

In this context of legal aid cuts and market liberalization, another respondent called for information that would aid understanding about how to expand access to services. This respondent wanted to understand how to

“grow the legal services market... [because when this happens] more people are getting help. What are the services that a liberalized market will never deliver?.... What does [government] fund that it doesn’t have to fund?.... But there will be other areas where we may need to expand services quite significantly.”

Finally, each respondent was asked if he or she knew of someone who was doubtful or suspicious of research in general or *Paths to Justice* tradition research in particular. Most respondents said that stakeholders held generally favourable views of *Paths to Justice* tradition research. One respondent observed that the consumer- or public-focus of *Paths to Justice* tradition research, in particular, had some critics:

“Openly or not so openly... [Some stakeholders] have got nothing to gain from evidence being looked at in an area. And that can be quite problematic.”

This respondent suggested that, when important interests are at play, stakeholders will sometimes criticise research evidence not because they believe it to be incorrect, but because it presents them with inconvenient facts (Weber 1918 [1958]). In this words of this respondent

“They will always say of course the evidence is something we listen to... [but] you... get... some people who have got a vested interest and resist it and use methodology....They’ll attack the research and they’ll attack the evidence usually on methodological grounds.”

Another respondent suggested that some stakeholders’ seeming indifference to *Paths to Justice* tradition research reflected a general treatment of civil justice as

“the poor relation.... Criminal justice... tends to be seen as higher priority. ... You can do big research programs in criminal justice....We

couldn't even contemplate going near that for civil justice.... The struggle is to get policy makers to see that civil justice is not just a good thing in and of itself, but is an important component in delivering [the work of government]. There's a lamentable lack of evidence on the civil side. It's been recognised as a problem for years... It's never had the same clout as criminal justice... in terms of policy development or evidence base... partly because [the civil justice system is]... not a system as such, it's a whole range of different things... you may never come into contact with the civil justice system as the result of a civil justice problem....It not so much that people are not supportive of Paths-type research, it's just that there's a general lack of evidence in the area, and there's just a general acceptance that there's not a lot of evidence."

In discussing their own knowledge gaps and their colleague's reception of Paths to Justice-tradition research, respondents identified a range of research needs. Respondents universally described situations in which they had to formulate policies, take decisions, or move into action without all of the information that they wished to have. The research needs they identified included calls for extensions of *Paths to Justice*-style surveys and qualitative complements to survey research. Several respondents called for more research on providers and markets, to help them to understand the impact of legal aid and regulatory reform. No consistent critique of *Paths to Justice* tradition research emerged. Rather, research critiques, like perceptions of research utility, reflected respondents' particular roles and needs during a time of historic change in the legal aid and advice policy arena.

Conclusion

Interviews with respondents holding a range of stakeholder positions in legal aid and advice in both Scotland and England and Wales revealed that *Paths to Justice* tradition research is well-known and that several *Paths to Justice* tradition research findings have become elements of common knowledge. Respondents felt that, in the area of civil justice, they often laboured without the benefit of the full evidence base that they needed to do their work. Nevertheless, respondents were grateful for the evidence that they did have, and described *Paths to Justice* research as influential in shaping policy and as useful in understanding the conduct and impact of the substantial policy reforms occurring at the time of the interviews.

Paths to Justice and International Access to Justice Policy

To explore recognition and use of surveys by policy makers internationally we conducted an online (self-completion) survey of governmental policy stakeholders in England and Wales, Scotland, Northern Ireland, Canada, Australia and New Zealand. In addition to being cheap to implement, it was hoped that an online survey would also promote frankness, as the identity of individual respondents was not generally determinable by the research team. The survey was based on the recent online survey conducted by Balmer, Patel and Pleasence (2010) in England and Wales.

Methods

The international stakeholder survey was programmed in Opinio, with respondents invited to participate by email (with emails including a link to the survey). Respondents were first asked for details about themselves and the organisations they

worked for. They were then asked about their familiarity with legal need surveys, their use and importance to them and their organisation, the relationship between surveys and policy developments, key survey findings, limitations of surveys and alternative approaches. The survey took around twenty minutes to complete.

As no off-the-shelf sample frame was available, we manually sought out details of access to justice policy heads in organisations with responsibility for access to justice policy (generally in ministries of justice) and legal aid policy (generally in separate legal aid organisations) in each of the 6 English speaking jurisdiction in which a national *Paths to Justice* tradition survey has been conducted. We did this at both national and state/provincial level. Where it was found that the policy function was split within an organisation, multiple persons were approached. For a small number of states/provinces we were unable to locate the details sought. However, we were able to send out 44 invitations to complete the survey (along with multiple reminders), to 41 organisations across England and Wales, Scotland, Northern Ireland, Canada, Australia and New Zealand. 21 responses were received.

The majority of survey respondents were based in Canada (12 of 21), with five from Australia, two from England and Wales and two from Scotland. Larger numbers for Canada and Australia reflect the state/province/territory administration of legal aid, with participants invited from each relevant state/province/territory. The majority of the respondents (14 of 21) were organisational heads/directors. The remaining respondents were made up of six policy makers, a lawyer/adviser and a researcher. Respondents were also asked about the focus of their roles, with nine highlighting 'legal aid' (as a whole, with none specifying solely civil or criminal legal aid), seven 'access to justice', six 'legal/advice services', two 'non-legal public services' and one the 'justice system' as a whole. The shortest amount of time a respondent had worked in the access to justice field was two years, though the majority of respondents had worked in the field for a considerable length of time (17 of 21 in excess of 10 years, 11 of 21 in excess of 20 years). Participants' organisations covered a broad range of bodies responsible for the administration of legal aid, including federal/national government departments and legal aid administrations, state/provincial government departments and legal aid administrations, legal services organisations and regulators.

Use of Paths to Justice Tradition survey findings

Survey respondents were shown a range of legal need surveys conducted in recent years and asked which they had used personally, and which they were aware of having been used by others in their field. 11 of the 21 survey respondents reported having personally made use of the findings of at least one *Paths to Justice* tradition survey, with 16 reporting that use was made of the surveys in their area of responsibility.

Not surprisingly, given the distribution of survey respondents, Canadian surveys (National Survey of Justiciable Problems 2004, 2006, 2008) were commonly used (by 7 respondents personally, with 9 suggesting they were used in their field), as was the 2008 Australian Survey of Legal Need (by 6 respondents personally with 7 suggesting it was used in their field). The New Zealand Survey of Unmet Legal Needs and Access to Services (2006) was also well used (by 5 respondents personally with 7 suggesting they were used in their field). Surveys in the United Kingdom were also fairly commonly used, with five respondents having personally used the 1997 *Paths to Justice* survey (and 5 suggesting it was used in their field), six the CSJS (2001, 2004, 2006-2009) (and 6 suggesting it was used in their field), two the English and Welsh Civil and Social Justice Panel Survey (and two suggesting it was used in their field),

one the Northern Ireland Legal Need Survey (2005) (and three in their field) and three the *Paths to Justice Scotland* survey (1998) (and four in their field). Beyond these surveys, single respondents suggested that they made use of *Paths to Justice* in the Netherlands (2003, 2009) and the Hong Kong survey on Demand and Supply of Legal and Related Services (2006). No respondents made use of Bulgarian, Slovakian, Japanese and Taiwanese surveys, though this is likely a reflection of the domicile of the survey respondents.

Following on from this, respondents were asked how familiar they were with survey findings. Of those giving valid responses, the majority suggested that they were 'quite familiar' with the findings of *Paths to Justice* tradition surveys (10 of 18), with 4 'very familiar', 3 'not very familiar' and 1 'not at all familiar'. The majority of respondents also suggested that they had used legal need survey findings 'quite a lot' (12 of 19), with a further 2 suggesting 'a great deal' 4 'not very much' and 1 'not at all'.

Importance of survey findings and the regular conduct of surveys

The majority of respondents felt that legal need survey findings were 'quite important' to their work (13 of 19), with three suggesting they were 'very important'. On the other hand, three respondents felt that such surveys were 'not very important' to their work. Following on from this, the majority (14 of 19) felt that it was 'quite important' that legal need surveys are conducted regularly, with the remainder (5 of 19) suggesting that it is 'very important'.

General use of legal need survey findings

When asked about how legal need survey findings were personally used, responses focussed primarily on policy development and designing legal service programmes. For example, respondents spoke of survey findings "shaping legal aid programs in the civil law area" and "inform[ing] scoping of the Making Justice Work programme being developed by the Scottish Government". A number of responses went a step further, suggesting the use of survey findings in building a case for legal advice and funding in addition to general policy development. For example, it was said that "the results of the surveys are helpful in developing policy, program and funding proposals", and that results were used in relation to "program design, funding support, public legal education development, building support for legal aid and justice reform", as well as "planning services, setting strategy, public and stakeholder persuasion" and "funding submissions".

The idea of "public and stakeholder persuasion" was also picked up in responses, highlighting the use of survey findings to communicate with providers and stakeholders, to help explain aspects of legal need and to support arguments. For instance, findings were "referenced in presentations at legal forums." Another respondent explained that "I have referred to the findings of the surveys in communications activities. Some key themes have been useful in communicating with NGO providers and within our organisation."

There were also responses suggesting surveys were used specifically to understand which population groups are most likely to experience legal problem, with a view to understanding changes in the legal services market, targeting resources. One respondent said that survey findings had been used "to identify areas of legal need and groups experiencing a high incidence of legal issues to inform strategic planning, funding submissions and the targeting of legal aid services (including community legal education) to areas of greatest need." Another comment was that survey findings had

been used “to shape legal aid commissioning strategy” and then, in another role, “to understand market segmentation and use [them] as [a] route to track/understand changes in market.” Elsewhere it was said that “we have used them to determine how we might provide service to self-represented litigants and people living in our remote communities” or to “tell us about an effective community-based response.”

There was also a focus on using survey findings as a way of helping to understand the perspectives of clients (and potential clients). So, one respondent stated that, “I have used them to learn about both the substance of civil legal needs and the client perspective on access to justice generally.” Another said that findings were “used to connect legal market/regulation to ordinary people as way to inspire staff and connect their work to real people and problems they face.”

Finally, one response highlighted limitations on the utility of survey findings, suggesting that “legal need surveys inform our thinking when developing service responses but they are only part of the process, not the single source for all answers. Knowing what is contained in such surveys helps shape my thinking but I would not say they are documents I refer to often.”

When asked about organisational use, respondents often referred back to their response for personal use. Thus, responses concerning use by respondents’ organisations as a whole tended to make reference to service design, as well as making the case for (funding) legal services. For instance, one respondent indicated that “legal aid is now looking to expand its range of services in the areas of poverty law, aboriginal law and pension/unemployment law. Legal need surveys would help to develop arguments for increased funding, particularly from the federal government, for supporting these service program expansions.” Elsewhere it was stated that survey findings provided a “basis for developing justice transformation projects to address unmet legal needs.”

Issues around targeting resources and identifying vulnerable groups (and their needs) were also referred to. For example, one respondent talked of survey findings being used in “attempting to address the unmet legal needs” in their state. Another spoke of findings providing “a reference for prioritising and funding community law centres” in their jurisdiction. The ability of surveys to illustrate client’s perspectives was also again referred to, with one respondent stating that “our organisation recently went through a full scale review of our services and service delivery model. Needs surveys provided useful information for us to both identify and confirm the legal needs that our potential clients are experiencing.”

Influence of legal need surveys on policy

Sixteen of the survey respondents were able to set out specific policies that legal need survey findings had influenced. In all 28 policies/initiatives were set out (respondents could list up to three).

Policies influenced by legal need surveys fell into three broad, though interrelated groups; policies designed to argue for and prioritise spending, policies aimed at redesigning existing services and policies dictating the direction or development of new services.

With regard to policies relating to the justification of services and prioritisation, responses referred to survey findings’ influence on policies concerning financial eligibility, “competing civil legal needs,” “legal aid priorities in civil law,” and the need for “increased fiscal resources to meet access to justice needs.” At a greater level of detail, it was said that legal need survey findings provided “a reference for prioritising and funding community law centres...and most recently, in attempting

to determine legal needs priorities for a redeveloped national service design for community legal services purchased by the Ministry of Justice from NGO providers.” Another response went further still, focussing in some detail on the use of specific survey findings to prioritise services in an environment of reduced funding: “As with most legal aid plans, we have experienced budget cuts in the last few years. There was disagreement within the Board of Directors and the Government funders as to what services areas should be reduced as a result. Needs assessments allowed the Board to prioritize the legal needs, appreciate the issues around "clusters" and "triggers" and, as much as possible, maintain service delivery in priority areas, notwithstanding that they may be outside the traditional mandated areas of law.” A further response also highlighted the use of survey findings in prioritising groups poorly served by existing services/models and putting a “focus on those just above legal aid entitlement as badly served by existing legal services market.”

A number of responses made reference to policies focussing on the redesign of existing services. One respondent stated, “For our organization, the needs study provided us with information on the importance of providing both information and advice in a clinic setting rather than our previous model that concentrated largely on representation.” Survey findings were also said to have helped policy makers “shift away from [the] relentless focus on specialists (i.e. lawyers than only do one area of work) and onto joined up services that are client focused.” Going broader, survey findings were said to have influenced “legal aid programs that link with health and social service providers to provide ‘wrap around services’.”

Policies dictating the direction or development of new services influenced by survey findings included new advice centres in a Canadian province and “Public Legal Education and Information projects.” There was also reference to mode of delivery, with the “evolution of web-based legal services”, “telephone legal advice hotlines” and the “establishment of a telephone-based Customer Service Centre (CSC) [offering] information, referrals, the taking of applications and summary legal advice” being mentioned. There was also suggestion of outreach, and again, links to health, with responses referencing the “...development of mental health services, outreach advice services and CLE programs targeted to groups with special needs,” as well as, “more generally, Poverty law administrative legal aid services ... how legal aid is delivered: e.g. community based offices, outreach sites (thinking outside the office).”

Beyond these three broad groups, other responses focussed on supporting the direction of policy travel, such as towards “holistic philosophy.” In the context of youth crime, one respondent explained policy influence in detail: “Needs assessments validate the need to address socio-economic factors that affect youth criminal activity at the same time as dealing with their legal issue. To provide only support for the legal issue, without providing real assistance in dealing with the underlying issues, does not provide good outcomes for the client, or organization or society.”

More generally, it was commented that “without the legal needs surveys it would have been much harder to make case generally for evidence based policy making,” suggesting that the “example of legal need surveys has shown what can be achieved by getting high quality evidence.”

Respondents were also asked whether they felt that the policies or operational developments they identified would have been the same without findings from legal needs surveys. This was to address the extent to which use of survey findings simply reflected a receptive context (e.g. see Nutley et al., 2007) in which developments may have progressed in the absence of survey findings. Overall, there were six responses (18 per cent) where respondents felt that policies or operational

developments would ‘definitely not’ have been the same, 18 (55 per cent) where respondents suggested policies would ‘probably not’ have been the same, six (18 per cent) where they ‘probably’ would have been the same and three (9 per cent) where respondents were unsure. No respondents felt that policies or operational developments would definitely have been the same without survey findings.

How survey findings were used

Questions on specific policies and whether or not policies would have progressed without survey findings were followed by questions on whether or not respondents agreed with how findings had been used and, more broadly, whether there had been any controversy regarding how the findings had been used. This aimed to gauge the extent to which respondents felt research findings had been misused (see Shulha and Cousins, 1997 for a discussion of types of misuse).

Of responses relating to 32 policies or operational developments, respondents definitely agreed with how survey findings had been used for 15, probably agreed for 12 and were unsure for 5. There were no respondents who clearly disagreed with how survey findings were used, though this might be a function of the governmental roles of the respondents. Other stakeholders (e.g. advice providers, charities) may have presented different perspectives. With respect to 30 policies or operational developments, respondents felt the way in which survey findings had been used had been non-controversial for 17, controversial for 6 and were unsure for 7. Policies that respondents felt were controversial included setting up web and telephone based services, a shift from focussing on solely specialist legal advice, and the development of programmes taking a holistic approach to young people in the criminal justice system.

Most important survey findings

Respondents were asked to describe the most important findings to come from surveys of legal need (and were able to list up to three findings). A number of common themes arose.

Respondents frequently highlighted ‘clustering’ of legal problems as a valuable survey finding, along with findings that certain groups were disproportionately exposed to a higher problem incidence by virtue of their demographic characteristics. In particular, respondents spoke of the importance of survey findings having demonstrated the health, social and economic impact of experiencing a civil justice problem, and the inter-connectedness of problems in different domains. One respondent mentioned the “specific and cascading legal needs of low income people.” Another mentioned the importance of demonstrating “that the health and social costs of legal problems are material.”

Respondents also cited findings identifying specific gaps in legal services, and the areas of civil justice where increased demand for services may arise. Moreover, respondents found the survey findings helpful in identifying service preferences among clients and in determining the extent to which the public were aware of specific services – both factors that were, in turn, said to feed into the development of public policy.

A number of respondents referred to findings on the prevalence and distribution of justiciable problems. For example, basic information concerning the “frequency and pattern of justiciable problems” was described as being important, as were estimates of “the extent of problems that could be categorised as legal.” One

respondent observed that “the incidence of legal problems is not what lawyers and judges think.”

Some respondents also pointed to the importance of findings related to problem resolving behaviour, the use of advice and advice needs. For example, “the pattern of advice seeking by problem type/socio-economic/seriousness factors,” “understanding of access needs,” and “identif[ication] of the specific gaps in legal services” were all mentioned. Respondents also highlighted the importance of the surveys having demonstrated that “not all - or indeed most - advice is delivered by solicitors,” and their pointing to “multiple/ different points of access to legal assistance [being] optimal.”

More generally, responses referred the fact that surveys presented the “client perspective,” with surveys giving an “empirical foundation for analysing client preferences and experiences.”

Most important unanswered questions and the influence of legal need surveys

Despite legal need surveys having produced a broad range of findings concerning the public experience of justiciable problems, many of the questions that such surveys might address remain unanswered. A number of respondents pointed to the need to more effectively measure the impact of advice and the cost/benefit of services (although it is doubtful whether surveys are ever going to be able to deliver conclusive findings to this end). Others reported a need for more evaluative information on ‘what works’ in respect of policy responses in the field of civil justice and how legal need could better be addressed through policy interventions. Others felt more specific information relating to the problem-solving behaviour of individuals would be useful, or referred to how information could be effectively communicated to those with civil justice problems.

Specifically, regarding the impact of advice/no advice, unanswered questions include determination of “the actual cost of not having legal needs met for the clients and the system,” and the extent of “impact of advice on [the] future frequency/distribution [of] justiciable problems.” Some responses elaborated upon the idea of ‘impact of advice’, with unanswered questions such as “What is the economic benefit of civil legal aid?” or “What is the cost to the justice system of constricted financial eligibility for legal aid programs?”

Responses referring to ‘what works’ included questions around “how to meet need,” “what works best” and, more specifically, “effective ways of communicating to people the value of seeking legal help.” It was also noted that “there could be more on what acceptable options for addressing access to justice needs might be for different client groups.”

Unanswered questions relating to problem solving behaviour, meanwhile, included questions around “how do people want to access advice” (presumably since survey analysis typically focuses on what people *do*), “the reasons why people decide to represent themselves or simply let issue lie” and greater detail on “steps people use to deal with problems.”

Following on from ‘unanswered questions’, respondents were then asked about what they felt the limitations of legal need surveys are. Answers were often specific to the particular form of survey conducted in a respondent’s jurisdiction. Nevertheless, respondents identified a number of limitations, particularly with respect to sampling, and the extent to which sample frames excluded disadvantaged groups. Examples included “those who are most disadvantaged and may not be accessible by

phone, etc.,” “that part of the population that [is] hard to reach”, “those ... in remote areas” and the “remote aboriginal population.”

Other responses focussed on limitations associated with the survey methodology and its cost. These included the observation that “legal needs surveys ... are very expensive,” and the fact “they lead to more questions.” Elaborating on this, one respondent commented, “The problem seems to me be that to get the granularity needed to get really focused on different problem types means huge sample sizes that are not viable.” Responses also referred to data being suitably up-to-date, noting the “often ... significant delay in reporting.” Other concerns centred on issues with ‘legal’ framing – as “people sometimes do not identify a problem as a “legal issue” – which leads to “the risk that every problem gets seen, both through the prism of legal for its solution, and only in the context of some form of professional intervention being needed.”

One response questioned the extent to which surveys resulted in robust, generalisable findings as a limitation, with surveys being said to be “often reliant upon anecdote or interviews as opposed to empirical and quantifiable analysis.”

The continued usefulness of surveys and alternative methods

Of Thirteen respondents, eleven felt that legal need surveys continued to be of policy use, although there was a general suggestion that such surveys could only ever be part of the general arsenal of resources utilised to develop policy. So, it was commented that “[legal need] surveys are part of the research needed when developing service responses ... [along with] Consultation with other service providers, client organisations, lawyers, associations, government.” Similarly, another respondent commented that “[legal need] surveys are most effective when they are used in combination with other policy instruments/processes to present a textured picture of client needs, preferences, problem-solving strategies, etc..” The two other respondents suggested that legal need surveys now offered limited utility and that alternative methods should be tried.

With regard to alternative approaches, research on groups other than the general public was mentioned; predominantly as a way to complement findings from legal need surveys. respondents highlighted the need to address the fact that surveys miss or insufficiently sample minority groups of interest. One respondent also pointed to the limitation of surveys in establishing the impact of advice.

Respondents were also asked about ways in which legal need surveys could be amended to improve their relevance and increase their use. Referring to mode of administration, one respondent – in a jurisdiction in which no face-to-face survey had been conducted – highlighted issues with solely telephone based approaches, suggested combining modes: “In my view, the best approach is to combine general telephone surveys with in person surveys. The downside, obviously, is cost.”

Other responses again referred to the groups surveyed, touching on shortcomings when attempting to address the needs of minority groups who are under-represented or absent from national sample frames, and suggesting including a wider (or more narrowly defined) set of participants.

Finally, on the dissemination of survey findings, two respondents referred to the way in which legal need for “PR with regard to findings,” and the fact that “the density of some reports and the extent of footnoting can make some research reports heavy going for the general reader.”

The survey concluded by asking respondents whether or not they felt that any future legal need surveys should be funded. Of the fourteen respondents answering,

seven suggested that they would want such a survey to be funded, three were unsure, two felt that funding would be better spent on other research, and one that funding would be better used for other purposes.

Final Remarks

In England and Wales, economic constraints and major policy shifts (such as the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012) are creating a very different policy context for the use and application of *Paths to Justice* tradition survey findings. This is reflected in the comments of respondents detailed above. Key findings describing problem clustering, documenting and quantifying referral fatigue and pointing to the potential benefits of holistic/integrated services have lost influence in domestic legal aid policy, but remain important pillars of access to justice debate and are finding greater relevance in the context of the major market changes following on from the Legal Services Act 2007. Also, *Paths to Justice* tradition research appears to retain favour as a standard method for documenting the public experience of law more generally. The *Paths to Justice* tradition of research may, however, require some reinvention (in focus or audience) to maintain policy relevance, and is likely to be less of a focus in the access to justice field, now that the implications have become well understood, with evaluation of policy and practice change taking a more centre stage. The tradition may also require reinvention to suit the needs of researchers, policy makers and practitioners in other parts of the world, to fit their specific environments.

It is also possible that economic constraints will reduce investment in *Paths to Justice* tradition research in countries such as the UK, leading to reliance on more economical survey methods and/or increased use of administrative data. Any efforts to retain the *Path to Justice* approach using revised methodologies should, though, recognise the implications of methodological change as set out in this report. Also, where increased reliance is placed on administrative data, what is missed should be acknowledged; the base of the dispute pyramid, perhaps the major strength of the *Paths to Justice* approach.

5 Summary and Conclusions

This report has explored methodological issues, brought together findings, assessed the impact of, and provided guidance and resources for the future development of surveys of *justiciable* problems – problems which raise civil legal issues, whether or not this is recognised by those facing them and whether or not any action taken to deal with them involves the legal system (Genn 1999).

A tradition of surveys

Since the mid-1990s, at least 26 large-scale national surveys of the public’s experience of justiciable problems have been conducted in at least 15 separate jurisdictions, reflecting widespread legal aid reform activity. Twenty-four of these surveys fall within a growing *Paths to Justice* tradition, having firm roots in, and following the structure of, Genn’s landmark survey in England and Wales. This tradition recognises that law does not always provide the best context for problem solving, and sees the adoption of a neutral stance towards citizen experience and behaviour. The tradition is characterised by a focus on issues that *may* have a legal solution, but are not restricted to those familiar to lawyers or discussed in tribunals or civil courts. The aspiration is to observe the entire dispute pyramid, from everyday problems (whether or not they are understood as legal) to formal proceedings.

Similarities of approach: A world of difference

The proliferation of national ‘legal needs’ surveys sharing a methodological root has raised the prospect of wide ranging comparative analysis. However, as Van Velthoven and ter Voert (2005, p.21) have cautioned, “dissimilarities may ... be caused by methodological differences” as well as cultural or situational differences.

Despite being part of a single tradition, there are marked differences in the methods employed by recent surveys. Specifically,

- While most of the surveys have investigated the experience of the general adult population, some have been concerned with only particular sections of the population.
- Surveys have employed sample frames of varying adequacy.
- Surveys have obtained varying and sometimes low response rates.
- While a commonality of approach is apparent, and some question wordings have been employed in multiple jurisdictions, key questions (such as those concerned with problem identification or problem resolving behaviour) have frequently been formulated differently across surveys. In particular, not all surveys have employed the ‘difficult to solve’ triviality filter within problem identification questions.
- Surveys have included different ranges and numbers of often differently defined problems.
- Surveys have obtained data at different levels of detail and complexity.
- Surveys have involved different levels of risk of interviewer bias.

- Mode of delivery is likely to have impacted on survey findings, through differing levels/forms of inter-personal contact (including degrees of privacy), different levels of ‘satisficing’ behaviour, and different expectations as to survey subject matter.
- Surveys (even the two *Paths to Justice* surveys) have been differently framed.
- Surveys have taken different approaches to the selection of problems for detailed follow-up.
- Surveys have adopted different reference periods, ranging from 1 to 6 years.
- Surveys have employed different data structures and units of analysis, though the great majority of surveys are of individuals (one of the most patent features of the *Paths to Justice* tradition of surveys)

In the development of future surveys, the impact of design decisions should be considered carefully. In light of the above:

- Efforts should be made to avoid under-coverage of the target population when adopting a sample frame, to promote generalizability.
- Stress should be placed on response rates.
- Particular heed should be paid to survey framing, and even subtleties (such as references to survey sponsors) should be considered in drawing up advance letters, survey introductions, etc..
- Unnecessary changes to tried and tested questions should be avoided.
- In relation to the ‘difficult to solve’ triviality filter, it is suggested that it is not used in future, owing to its conflation of problem experience and problem resolution behaviour.
- As far as possible, problem definitions and categories should be defined to allow comparison with other survey findings.
- Flexibility around the post-survey re-construction of categories is also something to consider.
- Problems should be selected for detailed follow-up on a random, or quasi-random, basis, to ensure the coherence of the sample.
- The trade-offs between longer and shorter reference periods should be properly considered, with reference to decreasing recall/increasing error rates as reference periods extend.

While legal need surveys have been found to provide a rich source of data concerning people’s experience of and basic responses to justiciable problems there are limits to their utility. It is important to recognise that there are other approaches to investigating the public’s experience of justiciable problems, and that information concerning this experience can be collected in other ways.

The big picture

There is evidently a need for real caution when bringing together and comparing headline findings stemming from different legal need surveys. However, this does not mean that there is *no* scope for exploring similarities and differences between the experiences of justiciable problems of people in different jurisdictions from past surveys.

For example, while the absolute rates of problem prevalence cannot be compared across jurisdictions, the relative rates of prevalence of particular problem

categories provide some interest where there are equivalent definitions. Here, precise numbers are of less importance. Comparative analysis of this type is particularly persuasive when set within a theoretical framework, such as that provided by participation theory, as set out by Van Velthoven and ter Voert (2005). As Pleasence et al (2004a, p.28) have argued, “the frequency of reporting of different problem types in large part reflects the frequency of experience of the ‘defining circumstances’ from which they can arise.” Thus, “the most common problems arise from circumstances routinely experienced across the adult population.”

Reflecting the routine nature of consumer transactions, 18 of the 20 recent national legal need surveys for which findings are available indicated that consumer problems were among the three categories of problems that were most often reported. Similarly, reflecting the frequency of interaction between neighbouring households, problems concerning neighbours were among the three most common problem categories for all 13 surveys that included neighbours problems as a distinct category. And reflecting the centrality of money in life, problems concerning money were found to be among the three most common problem categories in 15 of 18 surveys for which findings are available.

The similarity of patterns of vulnerability to problems identified by recent legal needs surveys also provides interest. As problem experience is tied to experience of the defining circumstances of problems, this entails that “experience of them varies between different population groups” (Pleasence et al 2004a, p.29). On top of this, it has been argued that personal capability affects vulnerability to problem experience.

Unfortunately, a major obstacle to reviewing findings across jurisdictions in this area is that there has been little consistency in analytical approach and, quite incredibly (given the cost of surveys), sometimes very little analysis at all. In fact, demographic patterns of experience have only been set out for 14 of the 22 surveys reported on in English, and multivariate analysis has only been conducted for 6 surveys.

Looking at those analyses that have been undertaken, patterns are fairly similar across jurisdictions, with few conflicts (especially among the multivariate analyses). Problems are generally associated with ill-health/disability, particularly mental ill-health/disability. This is likely to indicate general vulnerability to problematic circumstances, the emotional fallout from more serious problems and elevated sensitivity. Anomalously, the recent Taiwanese survey found few links between problem experience and ill-health.

Looking at specific problems, consumer problems have been found to be associated with both high income and unemployment (suggesting a link to activity and relative value), employment problems with working age (reflecting the defining circumstances of problems) and unemployment (reflecting the consequences of such problems), family problems with mid-life (when people are more often within working families with children), lone parenthood and being divorced (reflecting to the consequences/nature of problems), and money problems with lone parenthood (reflecting the stresses placed on people following relationship breakdown).

Comparative analysis of problem resolution behaviour is even more treacherous than analysis of patterns of problem experience. Rates of action, advice, lawyer use and court process are all highly sensitive to the nature and mix of problems reported. Thus, *any* comparison of univariate analyses should be avoided. Also, there is again a paucity of reported findings from recent surveys, with the output of multivariate analysis reported for only 6 surveys. However, a reasonably consistent story emerges from these 6 analyses, with the strong association between strategy and

problem type a common theme. Inaction is generally more common among men, becomes less common with age (although there is suggestion that it may become more common once again in later years), less common with higher levels of education and less common along with the value and seriousness of problems. Inaction is also associated with problems concerning anti-social neighbours, but not with family problems.

Ten surveys have led to multivariate analyses of associations with advice (although half of these have been in the United Kingdom). Again, a reasonably consistent story emerges. Women are more likely to seek help about a problem, with advice seeking rising with age and along with the value and seriousness of problems. Advice is least often obtained in relation to consumer issues and most often obtained for problems concerning family breakdown, personal injury, employment and owned housing.

Two analyses that specifically explored lawyer use found that it was associated with income, with lawyer use generally rising with income, although the most recent findings from the 2010 CSJPS suggested a U-shaped association, produced by the availability of legal aid for those on the lowest incomes.

Lawyers have also been found to be most commonly used in relation to family problems (with the single exception of Moldova, where family problems saw lawyers used at the second highest rate), and (though less consistently) problems concerning housing and personal injury.

Common interests and emerging themes

The fact that there is limited potential for comparative analysis on the basis of past surveys does not diminish the richness and utility of findings that have been reported from individual surveys to date. For example, there is now a significant literature that describes and seeks to explain the clustering of justiciable problems, and the clustering of justiciable problems and problems (such as morbidity/disability) more generally. The most visible clusters have consistently been seen in the context of family breakdown, but other clusters – such as of problems centred on economic activity – have also been identified.

One limitation of most published results is the use of hierarchical cluster analysis as the main form of analysis, and it is suggested that future work seek to employ latent trait analysis in addition.

There is also a significant literature exploring obstacles to advice. It is evident that many people who ‘lump’ justiciable problems are unsure about their rights, their prospects, and the availability of help. Awareness of rights and available services also influences advice seeking, as do geography and the availability of technology, and a range of other aspects of personal capability (including past and household experience, language, educational attainment, confidence, personality, income, etc.).

There is also mounting interest in exploring how problem resolution behaviour is influenced by people’s framing of the problems they face. Surveys are increasingly suggesting that whether problems are perceived as ‘legal’ is an important influence on problem resolution strategy. This is beginning to conjoin theories of legal consciousness and legal empowerment with the *Paths to Justice* tradition of research.

Once people are within the advice system, the importance of quick and effective referral has also repeatedly been highlighted through the uncovering and investigation of the phenomenon of referral fatigue.

And of course, the 26 recent legal need surveys combine to present a compelling picture of law being very much on the periphery of most experiences of

justiciable issues, and a powerful case for developing related policy from the client, rather than the service deliverer perspective.

Lack of easy comparability does not, therefore, detract from the wealth of findings that have originated from recent legal need surveys. Nor does it detract from the importance of the emerging themes of research in the *Paths to Justice* tradition. Furthermore, the lack of easy comparability should not detract from the influence of the *Paths to Justice* tradition of surveys.

The impact of the surveys: official documents

Paths to Justice tradition survey findings have been referenced in a succession of English and Welsh government publications since the publication of *Paths to Justice*; although the major 2010 Ministry of Justice consultation paper *Proposals for the Reform of Legal Aid in England and Wales* provides a notable exception (though findings were referred to in the response to the consultation and related impact assessments)..

Findings from *Paths to Justice* and the CSJS have also been commonly referred to in select committee deliberations and reports. However, while findings were originally introduced by government to support policy change, they are now introduced primarily from other quarters to support criticism of policy change.

Elsewhere, the CSJS was formally integrated into government performance management, with the survey first adopted to measure progress against government Public Service Agreement (PSA) targets around access to legal services, and then, more recently, to measure “equal protection and support for individuals with civil justice problems” within the Equality Measurement Framework (Alkire et al 2009). The conduct of the CSJS has also been seen by the Legal Services Commission as central to discharging its statutory duty to “inform itself about the need for, and the provision of Community Legal Service services,” under Section 4(6) of the Access to Justice Act 1999.

The impact of the surveys: The views of UK stakeholders

To assess the impact of *Paths to Justice* tradition surveys in the UK, interviews were conducted with legal aid and legal services policy stakeholders. Stakeholders were asked about their own and their organisation’s use of empirical research evidence, their perceptions of other stakeholders’ use of such evidence, their familiarity with and views on the *Paths to Justice* tradition of surveys, and what they saw as important research needs going forward.

Four themes emerged:

- *Paths to Justice* tradition research is well-known across the legal aid and advice field.
- *Paths to Justice* tradition research has transformed thinking about legal aid and advice.
- Stakeholders’ assessment of the usefulness of particular bodies of empirical research, including *Paths to Justice* tradition research, was shaped by their particular research needs at the time of the interviews. In this case, the interviews occurred during a time of historic economic, political, and regulatory change affecting the legal aid and advice field.
- *Paths to Justice* tradition research is generally well received. Critiques are disparate, reflecting respondents’ specific perspectives and research needs rather than broadly shared concerns.

Paths to Justice tradition research figured prominently in respondents' discussions of evidence. Respondents spoke of a number of survey findings, such as the existence of problem clusters, as common knowledge throughout the field. They also attributed the policy response of "joined-up services" to assist the public with the research discovery of "joined-up" problems. For example, Community Legal Advice Centres (CLACs) were described as a "research-based policy."

Respondents also spoke of research discoveries made possible by the surveys' examination of legal aid and advice from the perspective of the public, and the detailing of the broad range of legitimate responses to justiciable problems, many of which do not involve the law. One respondent commented, "[S]olicitors aren't even the main people who are providing advice."

Overall, *Paths to Justice* tradition research was seen as persuasive and influential, and as having transformed understanding of public justice needs, of not-for-profit service provision, and of market service provision.

However, as already indicated, the utility of any specific piece of research is shaped by a number of factors outside the research itself, and use of the surveys' findings has changed since the onset of the global financial crisis. Respondents' discussion of empirical research and its usefulness showed the powerful influence of government fiscal austerity in response to a deep global recession; of regulatory changes in the legal services market; and, of shifting political ideologies linked to the change in national government.

These substantial changes in the landscape of both funding and provision clearly shaped stakeholders' perceptions of the research that they need. Respondents felt that research evidence had become more important for understanding the impact of policy changes and less important for guiding policy changes themselves.

Recent policy developments were usually described by respondents as driven either by fiscal austerity or political ideology, or both. However, in contrast with England and Wales, Scottish respondents described an ideology that included a continuing commitment to legal aid, which had to be put into practice under new conditions of austerity. In Scotland, *Paths to Justice* tradition and other research informed understanding of how changes would impact the population. One respondent described how research evidence acted to protect legal aid services in the face of cuts.

Some respondents were discouraged about the use of any research to inform policies that they believed were driven largely by ideology. However, for others, the changed political and economic context meant that *Paths to Justice* research was useful in new ways. For example, respondents described turning to the research to learn about the dynamics of legal services markets, or to identify ways that people could pursue resolutions to problems without the need for (particularly legal aid) lawyers.

There was no broad-based critique of *Paths to Justice* tradition research. Rather, critiques and desiderata were disparate. Some indicated a need for more *Paths to Justice* style research and some indicated a need for additional approaches to supplement the evidence base.

Particular areas identified for further investigation were the impact of justiciable problems on the people who experience them, the experiences of special populations, ways to maintain (or expand) access to services in a changed regulatory and fiscal context, that affordability of legal services for the socially excluded, the relative effectiveness of different delivery mechanisms, the impact of regulatory changes on legal services markets, and the economic and whole-system impact of legal

aid. There was also a call for qualitative research to supplement *Paths*-style work, to provide more explanation of survey findings.

When asked about those who were doubtful or suspicious of *Paths to Justice* tradition research, most respondents said stakeholders held generally favourable views of such research. However, one respondent noted that the consumer- or public-focus of such research had some critics, although the same respondent suggested that stakeholders will sometimes criticise research evidence not because they believe it to be incorrect, but because it presents them with inconvenient facts. Another respondent suggested that indifference to *Paths to Justice* tradition research could also reflect a general treatment of civil justice as the poor relation of criminal justice.

The impact of the surveys: an international perspective

To explore recognition and use of surveys by policy makers internationally, an online survey of 21 governmental stakeholders in 6 English-speaking jurisdictions was conducted.

Eleven of the 21 survey respondents reported having personally made use of the findings of at least one *Paths to Justice* tradition survey, with 16 reporting that use was made of the surveys in their area of responsibility, and 18 reporting that they were at least ‘quite familiar’ with findings.

All respondents felt that it was at least ‘quite important’ that legal need surveys were conducted regularly, and the great majority felt that survey findings were at least ‘quite important’ to their work, with just 3 saying that such surveys were ‘not very important’.

When asked about how legal need survey findings were used, responses focussed primarily on policy development and designing legal service programmes. The idea of “public and stakeholder persuasion” was also aired, as was the idea of understanding change. However, one respondent noted that “legal need surveys inform our thinking when developing service responses, but they are only part of the process, not the single source for all answers.”

Sixteen respondents were able to set out specific policies that survey findings had influenced and, in all, 28 policies/initiatives were set out (respondents could list up to three).

Policies influenced by legal need surveys fell into three broad, though interrelated groups; policies designed to argue for and prioritise spending, policies aimed at redesigning existing services and policies dictating the direction or development of new services.

Beyond these three broad groups, other responses focussed on supporting the direction of policy travel, such as towards “holistic philosophy.” More generally, it was commented that “without the legal needs surveys it would have been much harder to make case generally for evidence based policy making,” suggesting that the “example of legal need surveys has shown what can be achieved by getting high quality evidence.”

It was indicated that only a minority of the policy changes mentioned would have been the same in the absence of *Paths to Justice* style evidence.

In general, respondents agreed with how survey findings had been used, and there were no respondents who clearly disagreed, though this might be a function of the governmental roles of the respondents.

Respondents were asked to describe the most important findings to come from surveys of legal need. A number of common themes arose. Respondents frequently highlighted problem clustering, along with findings that certain groups were

disproportionately exposed to a higher problem incidence by virtue of their demographic characteristics. Respondents also cited findings identifying specific gaps in legal services, and the areas of civil justice where increased demand for services may arise. Survey findings were also thought useful in identifying awareness levels and service preferences among clients. More generally, responses referred the fact that surveys presented the “client perspective.”

Turning to evidence gaps, a number of respondents pointed to the need to more effectively measure the impact of advice and the cost/benefit of services (although it is doubtful whether surveys are able to deliver conclusive findings to this end). Others reported a need for more evaluative information on ‘what works’ in respect of policy responses in the field of civil justice and how legal need could better be addressed through policy interventions. Others felt more specific information relating to the problem-solving behaviour of individuals would be useful, or referred to how information could be effectively communicated to those with civil justice problems.

As regards the limitations of *Paths to Justice* tradition surveys, comments were often specific to the particular form of survey conducted in the respondent’s jurisdiction. Nevertheless, respondents identified a number of general limitations, particularly with respect to the extent to which sample frames excluded disadvantaged groups, limitations in the granularity of data collected, and common delays in reporting. It was also observed that “legal needs surveys ... are very expensive,” and “they lead to more questions.”

It was generally felt that legal need surveys continued to be of policy use, although there was a suggestion that such surveys could only ever be part of the general arsenal of resources utilised to develop policy. There was some suggestion, on the part of a small minority of respondents, that new surveys now had relatively little utility and alternative approaches to broadening the evidence base should be explored.

Finally, on the dissemination of survey findings, two respondents referred to the need to make reports more accessible.

Looking to the Future

In England and Wales, economic constraints and major policy shifts (such as the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012) are creating a very different policy context for the use and application of *Paths to Justice* tradition survey findings. Those key findings describing problem clustering, documenting and quantifying referral fatigue and pointing to the potential benefits of holistic/integrated services have lost influence in domestic legal aid policy, but remain important pillars of access to justice debate and are finding greater relevance in the context of the major market changes following on from the Legal Services Act 2007. Also, *Paths to Justice* tradition research is likely to remain a standard method used to document the public experience of the law more generally. It may, however, require some reinvention (in focus or audience) to maintain policy relevance, and is likely to be less of a focus in the access to justice field, now that the implications have become well understood, with evaluation of policy and practice change taking a more centre stage.

It is also possible that economic constraints will reduce investment in *Paths to Justice* tradition research in countries such as the UK, leading to reliance on more economical survey methods and/or increased use of administrative data. Any efforts to retain the *Path to Justice* approach using revised methodologies should, though, recognise the implications of methodological change as set out in this report. Also, where increased reliance is placed on administrative data, what is missed should be

acknowledged; the base of the dispute pyramid, perhaps the major strength of the *Paths to Justice* approach.

In conclusion

Overall, it is evident that findings from *Paths to Justice* tradition surveys have been profoundly influential on legal aid, legal services and access to justice policy and thinking. It is also clear that the surveys have collectively built up a substantial evidence base around the ‘client perspective’ of justiciable problem experience, which continues to be incrementally built upon.

However, comparative analysis of justiciable problem experience across jurisdictions is hampered by many differences in survey design and implementation. Some of these are unavoidable – relating to language, system, cultural and budgetary differences. But others are more a product of individual discretion. To promote greater opportunity for comparative research, and also to continue to improve the quality of *Paths to Justice* style surveys, we urge that survey designers heed the lessons of the past. There is vast experience now existing in the field that can be drawn from. In supporting this aim, it is also important that technical survey details are transparent, reports using survey data accessible and where possible, survey data made publicly available.

We restate the words of Cantril (1996, p.7), who said, after the completion of the *Comprehensive Legal Needs Study*, that people should draw on the experience gained “to improve the methodology of legal needs surveys and identify important topics for further study.” With 26 national surveys undertaken over the past two decades, regard to this sentiment is all the more critical.

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Appendix 1: The Questionnaires

In this appendix we set out the core survey questions that have been utilised within those *Paths to Justice* tradition surveys for which English language text is (or has been made) available. The core questions are those that are used to identify justiciable issues, basic response to problems, use of advice (particularly legal advice), formal process, and manner of conclusion.

While some elements of the core questions have been used reasonably frequently (such as the phrase “difficult to solve”), the form of core questions has varied considerably between jurisdictions, within jurisdictions and within survey series. This, as we discussed in the previous section, has important implications for both monitoring and comparative research.

Core Question Text

Below is set out the text for the core questions for all those surveys for which English versions/translations could be obtained. There are four sections: problem identification; strategy; processes utilised; manner of outcome.

Problem identification

Australia 2008

“In the last 2 years, have you or anyone in your household had any I am now going to ask you whether you’ve had certain problems or disputes in the last 12 months that may raise legal issues. Please only include problems or disputes that started during or continued into the last 12 months.

Bulgaria 2007

“I am going to ask you different types of questions about problems that you might have experienced from beginning of 2004 to now. Please respond only for those problems in which you were involved personally and not as a businessman or legal representative or someone else. Also we are interested about your personal experience and not what you have observed about somebody else.

Since 1 of January 2004 till now have you encountered any of the problems listed below?”

Canada 2004

“I would now like to read you a list of the types of problems and disputes that people sometimes experience. In each case, I’d like to know whether you or your partner (if you have one) has experienced this type of problem in the past three years; that is since January 2001. In some cases, I’ll also ask you when this problem first occurred. Please feel free not to answer any question you might not feel comfortable answering.”

“In the past three years, have you or your partner experienced any of the following problems or disputes that were difficult to resolve.”

Canada 2006

“I would like to begin by reading to you a list of the types of problems and disputes that people sometimes experience. In each case, I’d like to know whether you or your spouse or life partner (if you have one) has experienced this type of problem in the past three years; that is since March 2003. Problems that started **before** March 2003 should be mentioned so long as you were still dealing with them after that date.

We are interested in problems that you felt were serious and difficult to resolve. Please feel free not to answer any question you might not feel comfortable answering.”

“In the past three years, have you or your partner experienced any of the following problems or disputes that were serious and difficult to resolve.”

IF ASKED WHAT A SERIOUS PROBLEM IS, SAY: By “serious” we mean it was a large enough problem that you felt it could not be easily answered or solved, and that if you ignored it there would be negative consequences.

Canada 2008

I would like to begin by reading to you a list of the types of problems and disputes that people sometimes experience. In each case, I’d like to know whether you or your spouse or life partner (if you have one) has experienced this type of problem in the past three years; that is since February 2005. Problems that started **before** February 2005 should be mentioned so long as you were still dealing with them after that date.

We are interested in problems that you felt were serious and difficult to resolve. Please feel free not to answer any question you might not feel comfortable answering.

READ TO ALL: By “serious” we mean it was a big enough problem that you felt it could not be easily solved, and ignoring it would result in some disadvantage or negative consequences you would have wanted to avoid.

England and Wales 1997 (Paths to Justice)/Scotland 1998 (Paths to Justice Scotland)

“I would like to ask you about different sorts of problems you might have had. Please only include problems that you have had yourself, not situations where you helped somebody else with their problems. We are interested in those problems you have experienced as an individual, not those experienced by your employer or any business you might run. We are also only interested in problems you had since the age of 18.”

“Since [DATE], have you had any problems or disputes that were difficult to solve to do with ...”

England and Wales 2001

“I would like to ask you about different sorts of problems you might have had. Please only include problems that you have had yourself, not situations where you helped somebody else with their problems. We are interested in those problems you have experienced as an individual, not those experienced by your employer or any business you might run. We are also only interested in problems you had since the age of 18.”

“Since [DATE] have you had any problems or disputes that were difficult to solve to do with any of the things on this card?”

England and Wales 2004/England and Wales 2006

“I would like to ask you about different kinds of problems or disputes you might have had. Please only include problems or disputes you have had yourself, not situations where you helped somebody else with their problem. We are only interested in problems or disputes you’ve had since the age of 18 and problems you’ve experienced as an individual, not any experienced by your employer or by any business you run.”

“Since [DATE], have you had any problems or disputes that were difficult to solve of the type shown on this card?”

England and Wales 2010/England and Wales 2012

“I would like to ask you about different kinds of problems or disputes you might have had. Please only include problems or disputes you have had yourself/, not situations where you helped somebody else with their problem. We are only interested in problems or disputes you’ve had since [DATE], by which I mean problems that started since [DATE], or before then, but went on afterwards. Also, we are only interested in problems you’ve experienced as an individual, not any experienced by your employer or by any business you run.”

“Have you had any problems or disputes of the type shown on this card since [DATE]?”

Hong Kong 2006

“Please provide information on difficult-to-solve problems or disputes you have experienced as an individual, and not those experienced by your employer, your company or any business you run. These problems or disputes may be related to employment, renting or owning a property, money, family or other matters.

Any incidents?”

Japan 2005

“In the past five years, have you experienced any problems with another person? Please choose as many of the following problems as you have experienced. Please exclude problems that you have experienced in business. Please include problems that occurred more than five years ago, if such problems continued to exist five years ago. Please include problems of your child as your own, if the problems occurred when the child was less than 20 years old.”

“Have you experienced any problems concerning ...”

Netherlands 2003/Netherlands 2009

“In the past five years, have you had any of the following difficult problems or disputes to do with ...?”

New Zealand 1997

“This questionnaire asks about disagreements and problems for which you may have needed help in the past 3 years ... We are concerned only with disagreements or problems you may have had in your personal life or in the life of a child in your care – don’t include any situations where you are acting on behalf of someone else, or a business or some other organisation ... We are interested in problems about which you sought information or advice or at least thought about doing so ... Some of the questions may be quite personal, and we hope you will answer them fully, but you don’t have to answer anything you would prefer not to.”

“First, we will go through a list of different types of disagreements or problems, and then I will ask about how you solved or tried to solve them. You may feel that a particular problem could fit into several places on the list – please describe each problem only once ... In the past 3 years, that is since [DATE] have you, or a child in your care ever ...”

New Zealand 2006

“I will be asking you some questions that relate to problems or disputes you personally may have had over the last 12 months, including the last Christmas and New Year period. Can you please think back over the last 12 months?

So, in the last 12 months, have you had any problems or disputes yourself that were difficult to resolve, to do with any of the following ...”

Northern Ireland 2005

“We want to find out about what people do when they have problems or disputes that are difficult to resolve, especially the advice and information that people look for and receive. First, I would like to ask you about different kinds of problems or disputes you might have had.

Please only include problems or disputes you have had yourself, not situations where you helped somebody else with their problem.

We are only interested in problems or disputes you’ve had since [DATE] and problems you’ve experienced as an individual, not any experienced by your employer or by any business you run.

First, problems or disputes to do with ...”

Slovakia 2004

“In the last 2 years, have you or anyone in your household had any problems or disputes that were difficult to solve that were related to ...”

Taiwan 2011

“Now I am going to ask you about any disputes that you have had within the last 5 years. The disputes I am referring to are those that caused you or the other party to sustain loss or damages (including money, property or physical or mental health) and that concerned law.

Please report such disputes regardless of whether or not you took legal action, or whether the issue has been successfully resolved. For example, suppose you had a dispute with somebody who owed you money, this counts as a dispute whether or not the person eventually paid the money back or you went to court of mediation.

Please also include disputes that any of your children under the age of 20 have had, as if the disputes had been your own.

The last 5 years refers to the period since January 2006. If a dispute occurred more than 5 years ago, but lasted until after January 2006, it should also be included.

In the last 5 years did you have any disputes when”

Strategy

Australia 2008

“Did you try to resolve the problem or dispute by obtaining information from an internet website, book, leaflet or other self-help guide?”

“Did you go to any relatives or friends for information or advice to try to resolve the problem or dispute?”

“Next I’ll ask about any formal advisers you consulted to try to resolve the problem with [PROBLEM]. That is, any professionals or organisations that you, or a relative or friend on your behalf, spoke or wrote to directly, including any professionals you know personally. Please exclude merely visiting a website.

And please exclude any contact with the other side.”

“Did you seek information or advice from any lawyers, legal services or court staff?” “Please tell me all such advisers you contacted.”

“Did you seek information or advice from the police or any government or complaint handling bodies? For example, government departments, agencies or councils, members of parliament, ombudsmen or tribunals?” “Please tell me all such advisers you contacted.”

“Did you seek information or advice from any trade unions or professional associations? That is, organisations like the Teachers Federation or Master Builders Association?” “Please tell me all such advisers you contacted.”

“Did you seek information or advice from any medical, health or welfare professionals or services? For example, doctors, counsellors, social workers, hospitals or health care services?” “Please tell me all such advisers you contacted.”

“Did you seek information or advice from any other professionals or organisations such as your employer, school staff or community groups?” “Please tell me all such advisers you contacted.”

“Can I just check, (was the adviser)/(were any of the advisers) you contacted, the (person)/(organisation)/(person or organisation) who the problem or dispute was with?”

Bulgaria 2007

“When the problem emerged how did you expect it will be solved?”

“What did you do when the problem emerged?”

“Did you look for additional information to solve the problem?”

Canada 2004

“I would now like to ask you about the kinds of assistance you or your partner may have sought and received in connection with [one/two/three] of the problems or disputes you mentioned.”

“Did you apply for legal aid to resolve this problem?”

“Did you seek any other type of legal assistance in connection with your problem with [PROBLEM]?”

“What type of assistance?” (coded free response)

Canada 2006

“Did you do something or attempt to do something to resolve this problem?”

“Did you attempt to resolve this problem on your own without any help, or did you seek some type of assistance from another person, a professional or an organization?”

“From whom or where did you seek assistance with this particular problem?”
(coded free response)

“Was this a lawyer that was obtained through legal aid, or was the lawyer hired privately?”

“Did you actually receive assistance from legal aid?”

England and Wales 1997 (Paths to Justice)/Scotland 1998 (Paths to Justice Scotland)

“Thinking of the [PROBLEM], did you do any of the things on this card to try to resolve it?” Talked or wrote to the other side about solving the problem; sought advice about trying to solve the problem; threatened other side with legal action, went to court tribunal or arbitration/Started a court or tribunal case, or an arbitration; went to mediation or conciliation; took the problem to an ombudsman; took some other kind of action to try to solve the problem.

“Has there been any contact between you and [OTHER SIDE] to try to sort out [PROBLEM]?”

“Did you try to contact the [OTHER SIDE] to sort out [PROBLEM]?”

“Have you had any contact at any stage with any of the people or organisations on this card about [PROBLEM]?” (Citizens Advice Bureau (CAB), Law centre, Welfare Rights Officer (WRO), Consumer advice centre/Trading Standards Officer, Other advice agency/worker, Employer, Trade Union or Staff Association, Professional Body (e.g. BMA, Law Society), Trade Association (e.g. ABTA, Which, AA), Solicitor, Barrister, Claims agency (e.g. Direct Legal), Court Staff, Ombudsman, Other legal consultant (e.g. employment law/immigration law consultant), member of Parliament (MP) or Local Councillor, Local council department, Housing association, Social worker/Social Services, Police, Religious organisation (e.g. church, mosque, synagogue), Insurance company)

“Did you try unsuccessfully to contact any of the (other) people or organisation on this card” (card as above)

“Did you consider contacting any of the (other) people or organisations on this card for help or advice about [PROBLEM]?” (card as above)

There was also a check question about “legal advice or representation from a solicitor, barrister or other legal consultant” later in the questionnaire.

[If no adviser contacted] “Did you do anything else about [PROBLEM]?”
(coded free response)

[If no action taken] “Do you intend to do anything about [PROBLEM]?” (coded
free response)

England and Wales 2001

“Thinking about the problem or dispute, did you do any of the things on this card to try to resolve it? If yes, which ones?” (No, nothing; Tried to obtain information from a self-help guide/library; Tried to obtain information from an internet site; Tried to obtain information from the local council or other public authority; Tried to obtain information from the Citizen's Advice Bureau or similar advice organisation; Tried to obtain information from a law centre; Tried to obtain information from a trade union or professional body; Tried to obtain information from a lawyer or solicitor; Talked or wrote to the other side about trying to solve the problem/dispute; Obtained the service of a person/organisation to deal with the problem)

England and Wales 2004/England and Wales 2006

“Did you try to obtain information from any of these sources to try to resolve this [PROBLEM]?” (A leaflet, booklet or book; The Internet; None of these)”

Were you able to obtain some or all of the information you were seeking from [SOURCE]? (All of the information I needed; Some of the information I needed; None of the information I needed)

“Did you try to talk or write to the other side about solving the problem or dispute? (Yes – tried to talk to them; Yes – wrote to them; No)”

“Did you manage to talk to them?”

“Did you get a reply to their letter?”

“Did the other side try to talk or write to [you/your partner] about solving the problem or dispute?”

“Did you manage to talk to them?”

“Did [you/your partner] try to contact any of these people or organisations to obtain advice or information to help [you/them] resolve this problem or dispute?” ((Local Council) General Enquiries; Council Advice Service; Trading Standards; Other Council Department; (Advice Agency) Citizens Advice Bureau; Law Centre; Other Advice Agency; (Trade Union/Professional body) Trade Union/Professional body; (Lawyer) A solicitor; A barrister; (Other person or organisation) The Police; Your employer; An insurance company; A doctor or other health worker; A Jobcentre; A social worker; An MP or local councillor; Other)

“Were you able to obtain some or all of the advice or information [you were/your partner was] seeking from [ADVISOR]?” (All of the advice or information I needed; Some of the advice or information I needed; None of the advice or information I needed)

England and Wales 2010/England and Wales 2012

Which of these descriptions best indicates how you went about sorting out the problem? (Did nothing; Entirely on my own; With the help of *family/friends*; With the help of an *adviser/representative*; With the help of *family/friends* and an *adviser/representative*; *Family/friends* sorted out (or are sorting out) the problem for me; *Adviser/representative* sorted out (or is sorting out) the problem for me; *Friends/family* and a *adviser/representative* sorted out (or are sorting out) the problem for me)

“Which of these people or organisations best describes the advisers/representatives who helped (are helping) you sort out the problem?” ((Local Council) General Enquiries; Council Advice Service; Trading Standards; Other Council Department; (Advice Agency) Citizens Advice Bureau; Law Centre; Other Advice Agency; (Trade Union/Professional body) Trade Union/Professional body; (Lawyer) A solicitor; A barrister; (Other person or organisation) Community group; Insurance company legal advice service; The Police; Your employer; A doctor or other health worker; A Jobcentre; A social worker; An MP or local councillor; Other)

“Did you unsuccessfully try to get help from any of these people or organisations? Please tell me about particular advisors, rather than particular occasions.”

“Did you discuss the [PROBLEM] with family, friends or other people you knew, to help you sort it out? Please exclude anyone who had a job that involved advising about problems like yours.”

“Who did you discuss it with? Remembering to exclude any people who had a job that involved advising about problems like yours.” (Spouse/partner; Other relative; Friend; Work colleague; Somebody else I knew)

“Did you, personally, talk or write to the other side about the [PROBLEM]?” (Yes, talked; Yes, wrote; Yes, talked and wrote; No, neither)

“Did you, personally, try to talk or write to the other side about the [PROBLEM]?”

Did you, personally, receive any letters, emails or texts from the other side about the [PROBLEM]?

“Apart from anybody you have already told me about, did anybody else apart from you talk to or write to the other side to help sort out the [PROBLEM] whether you asked them to or not?”

Hong Kong 2006

“What actions have you taken to try to solve the problem?” (1. Take no action; 2. Actions taken are: talk to the other side, seek advice on how to resolve the problem, search for helpful information from libraries, Internet or other printed documents, threaten the other side with legal action, issue lawyer’s letter to the other side, seek help from consultant/claim’s agent, take the case to court or tribunal, mediation or arbitration, complain to government departments/relevant authorities (e.g. Consumer Council), complain to the mass media, seek help from voluntary agencies, other)

“Have you contacted the other party to try to settle the problem?”

“Have you successfully contacted the people or organisations listed?” (Family members/relatives/friends, social workers, councillors, Bar Association/Law Society, NGO with free legal advice, Social Welfare Department, Labour department, Home Affairs Department, other)

“Have you sought assistance from the Free Legal Advice Scheme of the Government?”

“Have you obtained assistance from solicitors?”

“Have you used the service of consultants or claims agents?”

Japan 2005

“Have you consulted a book and/or an Internet site concerning the problem?”

“In order to solve the problem, have you contacted or talked with the other party by yourself or through a third party? (Various responses including: “Met and talked with the other party;” “Contacted the other party by phone or letter (including fax or e-mail);” “Contacted the other party through a family member, relative friend or acquaintance.”)

“In order to solve the problem, have you contacted or talked with the other party by yourself or through a third party? (Various responses including: “Contacted the other party through a lawyer.”)

“Did you entrust the resolution of the problem to a lawyer? (‘Entrust’ means asking a lawyer to handle the problem, rather than a simple consultation.)”

“In order to solve the problem, have you consulted with someone or some agency? Please list all the third parties you have consulted.”

New Zealand 1997

“Did you seek any information, advice or help about [PROBLEM]? This could include asking friends or relatives, or knowledgeable people that you know,

getting hold of pamphlets or books, approaching helping groups or agencies, or approaching professionals such as a lawyer?”

“On this card is a list of five general sources of advice from which people who are experiencing problems may get help or advice. This is not necessarily a complete list but it may help remind you about who or what you used, and the order in which you used them ... For each general source you used we would like you to tell us specifically what type of person or organisation it was. We have shown some examples on the card which we have called ‘specific sources’, to help jog your memory. If you approached more than one person or source from within each general type, please tell me about each one separately ... It is important that we record this information accurately and in the right order, so think carefully about it and take whatever time you need.” (Family and/or close friends; Knowledgeable people that you know; Books or pamphlets; A helping group or agency or organisation; A lawyer)

“Who or what was the first source of information, help or advice you used?”

New Zealand 2006

“Did you, or do you intend to, seek advice or help from any of the following to try to resolve this problem?” (Various options, including “Leaflet, booklet or other publication; Internet site; Friends or other Family members; No, none of these”)

“Did you, or do you intend to, seek help or advice with your problem?”

“Did you, or do you intend to, seek advice or help from any of the following to try to resolve this problem?” (Various options including “Local council or other public authority; Community Law Centre; Citizens Advice Bureau; Other local social services and advocacy organisations, such as Women’s Refuge, people’s centres, budgeting services, relationship services, etc.; Lawyer you pay for; Lawyer doing pro bono or voluntary work; Legal aid lawyer; Insurance company; Government agency or department; Police; Doctor or other health professionals; Mediation or reconciliation service; Member of Parliament; Ombudsmen; Trade union; Court desk; Minister of religion; Maori organisation”)

Northern Ireland 2005

“Did you try to obtain information from any of these sources to try and resolve this?” (A leaflet, booklet or book; The Internet; None of these)

“Did you try to talk or write to the other side about solving the problem or dispute?”

“Did you try to contact any of these people or organisations to obtain advice or information to help you resolve this problem or dispute?” (Local council general enquiries; A Council department; Citizens Advice Centre; Law Centre; Other advice agency; Trade union/professional body; A solicitor; A barrister; The

police; Your employer; An insurance company; A doctor or other health worker; A jobcentre; A social worker; An MP, MLA or local councillor; Other)

“Were you able to obtain some or all of the advice or information you were seeking from / Considering all of the people or organisations that you contacted, were you able to obtain some or all of the advice or information that you were seeking?” (All the advice or information I needed; Some of the advice or information I needed; None of the advice or information I needed)”

Slovakia 2004

“Please briefly describe what steps you or a member of your household took to try to resolve this problem, if any.”

“I will read you a list of professions and please respond “yes” if you either hired or asked for help from someone in that profession in addressing this problem and “no” if you have not. You will not be asked to give names of any individuals.” (Lawyer, Bailiff/Executor, Notary, Judge, Court Personnel)

Taiwan 2011

“Have you read any books or searched online for solutions to this dispute?”

“Have you asked family members for advice about how to solve this dispute?”

“Have you asked friends, colleagues or other acquaintances for advice on solving this dispute?”

“Have you consulted a government agency, private organisation or expert to solve this dispute?”

“What agency, organisation or expert was it?” (Litigation counselling section of the court; government provided legal services; administrative agency; police; neighbourhood magistrate; voter services provided by political parties or politicians; union, farmers’ association, fishermen’s association, or irrigation association; religious group (including temples, church, etc.); legal services provided by bar associations, the Legal Aid Foundation or a university law department; consumer rights protection group (e.g. the Consumers’ Foundation); lawyer; escrow; accountant or accounting clerk; insurance company; radio station; other)

“Before you consulted the agency, organisation or expert, did you come into contact with the other party regarding this dispute?” (Actively contacted the other party and received a response; actively contacted the other party but did not receive a response; the other party actively contacted me and I responded; the other party actively contacted me and I did not respond; no contact at all)

Process utilised

Australia 2008

“Have there been, or are there going to be, any court or tribunal proceedings in relation to this problem or dispute?”

“Could you please tell me what type of proceedings: court or tribunal?”

“Have you attended, or are you going to attend, any formal mediation, conciliation or dispute resolution sessions in relation to this problem or dispute?”

Bulgaria 2007

“Did you contact the other party?”

“Who initiated the meeting between the parties?”

“Did the other party agree to cooperate?”

“Did you manage (alone or with intermediary) to reach agreement with the other party for the resolution of the problem?”

“What was your role in the procedure?”

“Did you participate in person in the court hearings?”

“Who represented you in the procedure?”

Canada 2004

“Did you have to appear at a court or other tribunal because of [PROBLEM]?”

Canada 2006

“Did you have to appear at a court or other tribunal because of this problem?”

“Did you attend any mediation or conciliation sessions in an attempt to resolve this problem?”

England and Wales 1997 (Paths to Justice)

“On this card are some examples of organisations that offer mediation or conciliation to people to help resolve disputes. Did you attend any mediation or conciliation sessions with any of these types of organisations to try to resolve [PROBLEM]?”

(Advisory, Conciliation and Arbitration Service (ACAS), Alternative Dispute Resolution (ADR), Centre for Dispute Resolution (CEDR), Mediation UK, Academy of Experts, Chartered Institute of Arbitrators, National Family

Mediation (NFM), Family Mediators Associations (FMA), BALM, SFLA, Other)

“Has there been a court/tribunal or arbitration hearing about [PROBLEM] even if you didn’t attend it?”

“Sometimes papers are sent to a court, tribunal or arbitration and a decision is made without a hearing. Can I just check, were papers about [PROBLEM] sent to a court, tribunal or arbitration for such a decision?”

“What kind of court or tribunal was it?” (Showcard)

“Has [PROBLEM] come before an Ombudsman?”

“Can I just check, was a court, tribunal or arbitration case ever started for a court case, this would mean that a writ or summons was issued?”

There was also a check question about whether the “problem came before court/tribunal/arbitration, court/tribunal/arbitration case started, problem went to mediation or conciliation, problem went to Ombudsman” later in the questionnaire.

England and Wales 2001

“Did you, or anybody acting on your behalf, do any of the things on this card to try to resolve this particular occurrence of the problem or dispute?” (No, none of these; Attend (or formally contact) a court or tribunal; Attend any mediation or conciliation meeting involving a professional arbiter; Contact an Ombudsman)

“Were you partner successful or unsuccessful in attempting to obtain information from the [*e.g. Local Council or other Public Authority*]?”

“On this card are some examples of organisations that offer mediation or conciliation to people to help resolve disputes. Did you attend any mediation or conciliation sessions with any of these types of organisation to try to resolve [PROBLEM]? (Advisory, Conciliation and Arbitration Service (ACAS); Alternative Dispute Resolution (ADR); Centre for Dispute Resolution (CEDR); Mediation UK; Chartered Institute of Arbitrators; National Family Mediation; Family Mediators Association; British Association of Lawyer Mediators (BALM); Scottish Family Law Association)

“Was there/has there been a court, tribunal or arbitration hearing about [PROBLEM] even if you didn't attend it?”

“Was a date ever set for [the problem] to come before a court, tribunal or arbitrator?”

“Sometimes papers are sent to a court, tribunal or arbitration and a decision is made without a hearing. Can I just check have/were papers about [PROBLEM] (been) sent to a court or tribunal or arbitration for such a decision?”

England and Wales 2004/England and Wales 2006

“On this card are some examples of types of court or tribunal that deal with these types of problem or dispute. Did you, or did anybody acting on your behalf, attend a court or tribunal to try to resolve [PROBLEM]?” (Yes – respondent attended; Yes – someone acting on respondent’s behalf attended)

“Which of these types of court or tribunal did [you/the person acting on your behalf] attend?” ((Tribunals) Employment Appeal Tribunal; Appeals Service (e.g. Benefits and Child Support); Immigration; Adjudicators/Immigration Appeal Tribunal; Education Appeals; Other Tribunal; (Courts) Small Claims Court; County Court; Magistrates Court; High Court; Other Court)

“As far as you know, was a date ever set for a court or tribunal hearing?”

“As far as you know, were any forms or paperwork sent to a tribunal or court even if a date wasn’t ever set for a hearing?”

“On this card are some examples of organisations that help people resolve disputes. Did you attend any mediation or conciliation sessions with any of these organisations or a similar organisation to try to resolve [PROBLEM]?” (Yes; No; Mediation/conciliation session planned for future)

“Were any mediation sessions arranged, even if you did not attend them?”

“Did you or anybody acting on [your/their] behalf contact an ombudsman to try to resolve [PROBLEM]?”

“Did the other side at any stage commence or threaten to commence legal proceedings against you?”

England and Wales 2010/England and Wales 2012

“Can I check whether any of the following things happened (have happened) as part of the problem or sorting the problem out?” (PROMPT: Contact includes any sort of contact - including meeting, telephoning or writing) (You contacted a regulator or ombudsman (e.g. Ofcom, Financial Ombudsman Service); You or the other side contacted the police; You or the other side contacted, or were contacted by, a lawyer; You or the other side contacted, or were contacted by, a tribunal or court; You or the other side contacted a formal appeals service; You were contacted by a formal agent of the other side (e.g. debt collection agency); Conciliation, mediation or arbitration was arranged with an independent conciliator, mediator or arbitrator; A court or tribunal hearing took place; A court or tribunal made a decision about the problem; None of these)

“Which regulator or ombudsman was it?”

“Was the formal appeals service operated by other side, or an independent service?” (Operated by the other side; Independent; Don’t know)

“And did the appeals service involve any ‘hearings’ - for example, where you had to appear before the appeals service to make your case?”

“And did the appeals service make a decision about the problem?”

“And, what sort of formal agent was it?”

“And were any conciliation, mediation or arbitration sessions held?”

Hong Kong 2006

“Has the case been taken to court or tribunal?”

(Small Claims Tribunal, Family Court, District Court, Court of Appeal, labour Tribunal, lands Tribunal, Court of First Instance, Court of Final Appeal)

“Have you tried mediation services?”

“Have you tried arbitration?”

The general strategy question (above) also provides information on process.

Japan 2005

“In order to solve the problem, have you contacted or talked with the other party by yourself or through a third party? (Various responses including: “Went to conciliation;” “Filed a lawsuit;” “Used other court procedure (family court judgment, payment order, provisional disposition, etc.)”)

“Has the other party taken any court procedure against you concerning the problem? Please choose all that apply.” (Conciliation; Litigation; Family court judgment, payment order, provisional disposition, etc.; Other)

New Zealand 1997

“On this card is a list of possible developments or outcomes for problems. Which one of these happened with your problem with [PROBLEM]?” (It was decided by a court; It was decided by a tribunal or board; It was decided by the Ombudsman; It was decided by mediation agreement; It was worked out by lawyers; It was worked out by an agency I consulted; It was worked out by me and/or by the person/organisation I had a disagreement with; Still working on it/no outcome so far; The person/organisation I had the disagreement with decided not to pursue it; Other)

New Zealand 2006

“Did you, or do you intend to, seek advice or help from any of the following to try to resolve this problem?” (Various options including “Mediation or reconciliation service”)

Outcome and current situation questions give some additional non-comprehensive indication.

Northern Ireland 2005

“On this card are some examples of types of court or tribunal that deal with these types of problem or dispute. Did you, or anybody acting on your behalf, attend a court or tribunal to try to resolve [PROBLEM]?” (Employment Appeal tribunal; Appeals Service (e.g. Benefits and Child Support); Immigration Adjudicators/Immigration Appeal Tribunal; Education Appeals; Other Tribunal; Small Claims Court; County Court; Magistrates Court; High Court; Other)

“As far as you know, was a date ever set for a court or tribunal hearing?”

“As far as you know, were any forms of paperwork ever sent to a court or tribunal even if a date wasn’t ever set for a hearing?”

“On this card are some examples of organisations that help people resolve disputes. Did you attend any mediation or conciliation sessions with any of these organisations or a similar organisation to try to resolve [PROBLEM]?” (Yes; No; Mediation/Conciliation planned for future)(Advisory, Conciliation and Arbitration Service (ACAS); Alternative Dispute Resolution (ADR); Centre for Dispute Resolution (CEDR); Mediation UK; Chartered Institute of Arbitrators; National Family Mediation; Family Mediators Association; British Association of Lawyer Mediators (BALM); Scottish Family Law Association (SFLA); Other)

“Were any mediation sessions arranged, even if you did not attend them?”

“Did anybody acting on your behalf contact an Ombudsman to try to resolve the problem?”

Scotland 2008 (Paths to Justice Scotland)

“On this card are some examples of organisations that offer mediation or conciliation to people to help resolve disputes. Did you attend any mediation or conciliation sessions with any of these types of organisations to try to resolve [PROBLEM]?”

(Advisory, Conciliation and Arbitration Service (ACAS), Comprehensive Accredited Lawyer Mediators (CALM), Centre for Dispute Resolution (CEDR), Mediation Bureau, Academy of Experts, Chartered Institute of Arbitrators, National Family Mediation (NFM), Family Mediation Scotland (FMS), ACCORD, SFLA, Other) 21 questions on mediation/conciliation

“Has there been a court/tribunal or arbitration hearing about [PROBLEM] even if you didn’t attend it?”

“Sometimes papers are sent to a court, tribunal or arbitration and a decision is made without a hearing. Can I just check, were papers about [PROBLEM] sent to a court, tribunal or arbitration for such a decision?”

“What kind of court or tribunal was it?” (Showcard)

“Has [PROBLEM] come before an Ombudsman?”

“Can I just check, was a court, tribunal or arbitration case ever started for a court case, this would mean that a writ or summons was issued?”

There was also a check question about whether the “problem came before court/tribunal/arbitration, court/tribunal/arbitration case started, problem went to mediation or conciliation, problem went to Ombudsman” later in the questionnaire.

Slovakia 2004

“Which of the following statements accurately describes the final outcome of this problem or conflict?”

(Various statements, including “Matter is still pending in court”)

The general strategy open text question (above) also provided information on process.

Taiwan 2011

“Was a mediation session ever held about this dispute?”

“The mediation was held by ...”

“Roughly when was the first court session held for this dispute?”

“In what court did your lawsuit end?”

Manner of outcome

Australia 2008

“How was the problem or dispute finalised? Stop me when I get to the answer that best describes how it was finalised. Was it through ...” (A court or tribunal; Formal mediation, conciliation or dispute resolution; An ombudsman or complaint handling body; Another agency (e.g. government body, insurance company, police, etc); A lawyer’s help; Someone else’s help; Direct agreement between you and the other side; The other side not pursuing the matter or doing what you wanted; You doing what the other side wanted; You deciding not to take the matter further; You resolving the matter without anyone’s help; Some other method)

Bulgaria 2007

“At this moment is the problem solved?”

“Did you achieve your initial objectives in solving the problem?”

England and Wales 1997 (Paths to Justice)

[If mediation/conciliation] “Did you come to an agreement at the end of the [MEDIATION/CONCILIATION] session?”

[If hearing with decision] “Did you win or lose the case?”

[If no decision by court/tribunal] “Did you at any stage reach an agreement or settlement with [OTHER SIDE] to end the dispute?”

[If agreement/decision] “Did the [AGREEMENT/DECISION] actually end the dispute between you and [OTHER SIDE].”

[If problem resolved and agreement/decision didn't resolve problem or if problem resolved and no agreement/decision] “How did the problem resolve itself?”

England and Wales 2001

“Did you reach an agreement or settlement with [the other side] end the dispute?”

“Before you reached the final settlement, were there any other agreements which broke down?”

“Who made the final decision about this [problem]. Would you say it was made by just you and the other side, or by a third party such as a court or tribunal?” (Parties themselves; Judge, magistrate or tribunal; Arbitrator; Ombudsman; Other)

England and Wales 2004/ England and Wales 2006

“Which of these best describes how the problem or dispute was finished?” (If 2+ answers, code highest on list) (Through a court or tribunal; Through mediation; Through an ombudsman; Agreement reached between you and the other side; The problem/dispute sorted itself out; Gave up trying to resolve the problem; Did nothing to resolve problem; Other)

England and Wales 2010/England and Wales 2012

“You said earlier that [you/your partner] and the other side are no longer in *disagreement*. Which of these descriptions best describes how the *disagreement concluded*? Tribunals have been known as the Appeals Service?” (Code lowest number (closest to 1) only) (Decision of a Court/Tribunal; Decision of a formal

appeals service; Decision/action of an independent third party (e.g. the police, a regulator); Agreement reached through conciliation, mediation or arbitration sessions, hosted by an independent person/organisation; Agreement reached through somebody who was acting for you (e.g. lawyer); Agreement reached by you personally, with the other side; The other side acted independently to end the disagreement; You acted independently of the other side to end the disagreement; Agreement occurred without you or the other needing to do anything)

“And you said earlier that the problem is [now over/most likely now over]. Which of these descriptions best describes how the *problem concluded*?” (Code only 1 from codes 1 to 10, plus code 11 in addition, if appropriate) (Decision of a court/tribunal; Decision of a formal appeals service; Decision/action of an independent third party (e.g. the police, a regulator); Agreement reached through conciliation, mediation or arbitration sessions, hosted by an independent person/organisation; Agreement reached through somebody who was acting for you (e.g. lawyer); Agreement reached by you, personally, with the other side; The other side acted independently to sort out problem; You acted independently of the other side to sort out problem; The problem sorted itself out without you or the other side doing anything; You ended the problem by moving away from it (e.g. leaving a job, moving home, etc.); Just putting up with the problem)

Hong Kong 2006

“Please tell me the present status of action taken by you or the other parties to solve the problem”

(Various options including ‘Decision already reached at court/tribunal or other resolution mechanism’, ‘Agreement reached with the other party and no action being taken’)

Japan

“What was the conclusion? Please choose one of the following” (My claim was fully accepted; My claim was mostly accepted; My claim was only partially accepted; My claim was not accepted at all; Other)

New Zealand 1997

“On this card is a list of possible developments or outcomes for problems. Which one of these happened with your problem with [PROBLEM]?” (It was decided by a court; It was decided by a tribunal or board; It was decided by the Ombudsman; It was decided by mediation agreement; It was worked out by lawyers; It was worked out by an agency I consulted; It was worked out by me and/or by the person/organisation I had a disagreement with; Still working on it/no outcome so far; The person/organisation I had the disagreement with decided not to pursue it; Other)

New Zealand 2006

“And how was the problem solved? (IF NECESSARY: Which of these best describes how the problem was finished?)” (After court or tribunal action occurred; Through mediation; Solved the problem with the help of someone (other than a mediator or family and friends); Solved the problem with the help of family or friends; Solved the problem on your own without the help of anyone else; Agreement was reached between you and the other party; Gave up trying to solve the problem; Did nothing to resolve the problem; The problem sorted itself out.)

Northern Ireland 2005

“Which of these best describes how the problem or dispute was finished? (If 2+ answers, code highest on list)” (Through a court or tribunal; Through mediation; Through an ombudsman; Agreement reached between you and the other side; The problem/dispute sorted itself out; Gave up trying to resolve the problem; Did nothing to resolve problem; Other)

Slovakia 2004

“Which of the following statements accurately describes the final outcome of this problem or conflict?”

(Matter is still pending in court; Matter is complete, but no resolution – problem not solved at all; Matter is complete and problem partially solved; Matter is complete and problem was solved completely; An out-of-court settlement was reached; I expect fewer problems in the future; I expect more problems in the future; I feel better about the situation, but nothing has really changed; Justice was done; All or some compensation has been paid; Things are worse now; My expectations have been met; Nothing has changed)

Taiwan 2011

“How was this dispute resolved?” (Private settlement; settled in court; not resolved)

Appendix 2:

Content Analysis of Official Publications

Introduction

In this appendix we set out findings from a content analysis of English and Welsh official publications in the access to justice field, detailing the extent to which and way that publications referenced research – and particularly research in the *Paths to Justice* tradition.

Findings are set out in three sections: one for consultation papers, strategy papers and reviews produced by the responsible government department (the Lord Chancellor’s Department, then Department for Constitutional Affairs, then Ministry of Justice); one for the Legal Services Commission; and, one for the Parliamentary select committees with responsibility for scrutiny of the responsible government department.

In looking at select committee publications, we not only examined select committee reports, but also additional written and oral evidence – though only *Paths to Justice* tradition research was assessed in additional evidence/written and oral evidence (rather than more general references to research).

Copies of documents were obtained in electronic format and searches conducted of the documents for references to the following search terms:

“Research”
“Survey”
“Study”
“Results”
“Findings”
“Evidence”
“Academic”
“University”
“Professor”

The names of research centres (e.g. LSRC) and researchers (e.g. Genn, Pleasence, Balmer, Moorhead, Paterson, Sherr, etc.) working in the access to justice field were also used as search terms.³² Following searches, documents were read to identify any other references to research that the automated searching did not yield.

References were quantified and, where they related to *Paths to Justice* tradition surveys were transcribed and examined to establish the context and purpose of the reference.

Not all references to *Paths to Justice* research in the official publications studied were easy to identify. This was particularly so in the case of select committee reports and evidence, as it was usual for references to source materials to be omitted. This was illustrated in the Constitutional Affairs Committee 2004 *Report on Civil Legal Aid*, where both ‘clusters’ and ‘referral fatigue’ were referred to. Both of these references are likely to stem from findings from the English and Welsh Civil and Social Justice Survey, though neither is referenced, nor for that matter referred to in research terms.

³² Along with common mis-spellings.

The problems of oblique reference to ‘research’ and a lack of citation are also illustrated in oral evidence supporting the Constitutional Affairs Committee 2009 *Report on Family Legal Aid Reform*. In this instance, the evidence refers to ‘independent research that provides a lot of information on the multidimensional difficulties that families have’. This may refer to *Paths to Justice* tradition research, but it is difficult to accurately attribute. Similarly, difficulties in attribution arise where evidence presented elsewhere is reinterpreted. For example, in the Justice Select Committee 2011 *Report on Government Proposed Reform of Legal Aid*, the Committee make reference to Shelter’s evidence, which in turn refers to findings which are likely to have stemmed from *Paths to Justice* related research, but without directly referencing them.

These difficulties are likely to have resulted in our having underestimated the level of use of *Paths to Justice* related research in select committee publications. Also, in light of these difficulties and the much more central position of research in select committee publications, we present our findings from select committee reports in a different format to those from government and Legal Services Commission publications.

Government Publications

Modernising Justice (1998)

Research referenced in 8 paragraphs, 12+ studies alluded to, 7 studies cited. No *Paths to Justice* tradition survey findings references.

| | |
|-------------|----------------------------------|
| “Research” | 9 matches, 5 paragraphs |
| “Study” | 1 match, 1 paragraph |
| “Results” | 1 match, 1 paragraph |
| “Evidence” | 2 relevant matches, 2 paragraphs |
| “Academic” | 1 match, 1 paragraph |
| “Professor” | 1 match, 1 paragraph |

Review of the Regulatory Framework for Legal Services (Clementi Review)(2004)

Research referenced in 27 paragraphs, 9 studies alluded to, 9 studies cited. 2 *Paths to Justice* tradition survey findings references.

| | |
|--------------|----------------------------------|
| “Research” | 14 matches, 9 paragraphs |
| “Survey” | 5 relevant matches, 3 paragraphs |
| “Study” | 10 matches, 8 paragraphs |
| “Academic” | 2 matches, 2 paragraph |
| “Professor” | 2 matches, 2 paragraphs |
| “University” | 1 match, 1 paragraph |

Purpose of *Paths to Justice* survey findings references:

| | |
|---|---|
| Research supporting of conclusions/approach | 2 |
| Future research to inform implementation | 0 |
| Problem identified by research | 2 |
| Evaluation / what works | 0 |

Paths to Justice survey findings references

Paths to Justice survey findings references:

Paragraph 6.5

Many people in their day to day lives face problems and disputes that have potential legal solutions. Research has estimated that over 1 million problems go unresolved each year because people don't understand their basic rights or know how to seek help. Problems then tend to escalate and become more difficult and expensive to resolve, which often leads to further problems. Those experiencing these multiple problems are often from disadvantaged groups and so vulnerable to social exclusion. The economic cost of these unresolved problems is believed to be between £2bn to £4bn annually.

Paragraph 6.7

We have identified the key barriers to providing earlier and more effective advice and assistance, which include:

- The complexity of the system results in confusion amongst the people who need advice
- Legal and advice services are not provided to mirror the 'clusters' of problems that people face
- Systemic problems are treated on a 'case- by-case' basis, which is inefficient
- There are areas of the country where certain types of advice are not readily accessible – some organisations have described these areas as 'advice deserts'.

The Future of Legal Services: Putting Consumers First (2005)

Research referenced in 8 paragraphs, 7+ studies alluded to, 7 studies cited. No *Paths to Justice* tradition survey findings references.

| | |
|------------|-------------------------------|
| “Study” | 1 match, 1 paragraphs |
| “Findings” | 1 relevant match, 1 paragraph |
| “Survey” | 2 matches, 2 paragraphs |
| “Academic” | 2 matches, 2 paragraphs |
| “Results” | 2 matches, 2 paragraphs |

Legal Aid Reform: The Way Ahead (Joint with the LSC) (2006)

Research referenced in 1 paragraph, 1 study alluded to, 1 study cited. No *Paths to Justice* tradition survey findings references.

| | |
|------------|----------------------|
| “Research” | 1 match, 1 paragraph |
|------------|----------------------|

2009 - Legal Aid Funding Reforms

Research referenced in 0 paragraphs, 0 studies alluded to, 0 studies cited). No relevant matches for “Survey”, “Research”, “Evidence”, “Study”, “Findings”, “Academic”, “Results”, “Professor” or “University”.

2009 - Legal Aid Refocusing on Priority Cases

Research referenced in 1 paragraph, 1 study alluded to, 0 studies cited. One possible Paths to Justice tradition survey findings reference.

“Research” 1 match, 1 paragraph

Purpose of Paths to Justice survey findings references:

| | |
|---|---|
| Research supporting of conclusions/approach | 1 |
| Future research to inform implementation | 0 |
| Problem identified by research | 0 |
| Evaluation / what works | 0 |

Paths to Justice survey findings references:

Paragraph 2.1

Many people who have been poorly treated simply want an investigation, and, where appropriate, an explanation and apology, rather than compensation. Research suggests that claimants in clinical negligence, children, discrimination, unfair police treatment and immigration cases are least likely to be primarily seeking financial compensation.

Public authorities are expected to have in place robust complaints systems through which the public can raise concerns, and seek explanations and apologies. Where the matters complained of are relatively minor, it may be more appropriate for complainants to use the public authority’s complaints and ombudsman schemes. However, in some cases it may be more appropriate for those seeking damages to seek instead judicial review and declaratory judgements as alternative and more cost effective methods of resolving disputes. The underlying principle would be for funding to be used to obtain correction of the original decision of the public body, rather than minor financial redress. This could take the form of a court judgement, apology from the public body, or change to the policy of that public body. This could be particularly relevant to discrimination claims where a declaration that a policy is discriminatory and must be changed is of more value than a small monetary award.

We estimate that this would affect 375 cases per year. There is also one multi-party actions every 1–2 years involving a number of such claims. These would typically be for people inappropriately detained by the police for a matter of hours, minor treatment in prison, or very minor levels of physical abuse in care.

2009 – Review of Legal Aid Delivery and Governance (McGhee)

Research referenced in 8 paragraphs, 6 studies alluded to, 6 studies cited. One Paths to Justice tradition survey findings references.

“Research” 5 matches, 5 paragraphs
“Study” 4 matches, 4 paragraphs
“Survey” 4 matches, 3 paragraphs

Purpose of Paths to Justice survey findings references:

| | |
|---|---|
| Research supporting of conclusions/approach | 0 |
| Future research to inform implementation | 0 |
| Problem identified by research | 1 |
| Evaluation / what works | 0 |

Paths to Justice survey findings references:

Annex C

The English & Welsh Civil & Social Justice survey (LSRC) looks at the incidence of civil legal problems. People vulnerable to social exclusion (e.g., lone parents, those on benefits, those who have a long-term illness or disability and victims of crime) report problems more often than others. Over 25% of problems lead to stress related illness.

2010 - Proposals for the Reform of Legal Aid in England and Wales

Research referenced in 10 paragraphs, 8+ studies alluded to, 6 studies cited. No *Paths to Justice* tradition survey findings references.

| | |
|--------------|----------------------------------|
| “Research” | 5 matches, 3 paragraphs |
| “Survey” | 12 matches, 5 paragraphs |
| “Evidence” | 2 relevant matches, 2 paragraphs |
| “Study” | 1 relevant match, 1 paragraph |
| “Findings” | 2 matches, 2 paragraphs |
| “University” | 2 matches, 2 paragraphs |

Legal Services Commission Publications

A New Focus for Civil Legal Aid (2004)

Research referenced in 1 paragraphs, 1 study alluded to, 1 study cited.

| | |
|-------------|----------------------|
| “Research” | 1 match, 1 paragraph |
| “Academic” | 1 match, 1 paragraph |
| “Professor” | 1 match, 1 paragraph |

Making Legal Rights a Reality (2005)

Research referenced in 25 paragraphs, 6+ studies alluded to, 5 studies cited. 13 *Paths to Justice* tradition survey findings references.

| | |
|------------|-------------------------------|
| “Research” | 19 matches, 18 paragraphs |
| “Evidence” | 9 matches, 9 paragraphs |
| “Survey” | 9 matches, 8 paragraphs |
| “Findings” | 1 relevant match, 1 paragraph |

Purpose of Paths to Justice survey findings references:

| | |
|---|---|
| Research supporting of conclusions/approach | 9 |
| Future research to inform implementation | 2 |

| | |
|--------------------------------|---|
| Problem identified by research | 6 |
| Evaluation / what works | 4 |

Paths to Justice survey findings references:

Paragraph 1.21

Many of the people helped by the services we fund and provide (and who in general fall within our financial eligibility criteria) are inevitably poor, socially excluded and heavily dependent on help provided by other government and local authority agencies. Research also shows that where they have one problem capable of legal resolution they are likely to have others.

Paragraph 7.3

We will also continue to draw on research, such as the Legal Services Research Centre's National Survey of Justiciable Problems, to inform our understanding of clients' needs and advice-seeking behaviour.

Paragraph 7.4

We know, from research such as the Legal Services Research Centre's National Survey of Justiciable Problems, that:

- there are likely to be over a million unsolved legal problems each year;
- if a client has one legal problem, they are likely to have another; if they have eight legal problems, it is almost inevitable that they will have nine;
- only half of those with a problem seek legal advice, and of those that do, one in seven fail to get it;
- many people that take action to resolve their problem(s) regret their handling of it; and 2 the more times a client is referred, the less likely they are to ultimately receive help.

Paragraph 7.5

Our challenge is to provide access to legal and advice services that change these startling statistics.

Paragraph 7.19

We know from the LSRC's National Survey of Justiciable Problems that factors often associated with social exclusion, such as disability or long-term health problems, poor housing or homelessness, or receipt of benefits are good indicators that a person may also be experiencing associated legal problems (Causes of Action, pp. 21-31). The Survey also shows an additive effect: '[e]ach time a person experiences a problem they become increasingly likely to experience additional problems' (Causes of Action, p.31). Equally significant is that people suffering from long-term health problems or disability, living in high-density housing or private rented housing, in receipt of benefits, or lone parents are more likely to report

multiple problems than others (Causes of Action, p.32).

Paragraph 7.25

We will seek to develop these Centres through long-term relationships with providers, to support services of guaranteed quality and accessibility. We will provide a clear specification of the services and outcomes to be delivered, and local providers will be able to bid, either individually or jointly, to provide them. While the broad specification will be set nationally, based on the best research and evidence available, it will allow for flexibility and local variation. The location of services (satellite offices; outreach locations such as GP surgeries), the balance between different categories of law, and the response to specific local issues (such as the need for a service in a particular language) will all be driven by local factors. We do not expect that the people delivering these services would be directly employed by the LSC, although we may pilot such a model.

Paragraph 7.48

A rights-based culture - in which people have a good awareness of their rights and how to exercise them – helps citizens to play an active role in a just society. The LSRC's National Survey of Justiciable Problems highlights that clients who are able to deal with problems they face without the need to seek advice and further help feel empowered. This links directly with the wider government agenda of building trust in public services and developing citizenship.

Paragraph 8.3

The link between family law legal information, advice and representation and social welfare law is vitally important. Evidence shows that family breakdown problems are proportionally more likely to give rise to other justiciable problems (see for example, Causes of Action and 'One Parent Families' Lone Parent Research 2004).

Paragraph 8.4

A key issue therefore is how we deliver social welfare law information, advice and representation services to clients who have primarily family problems. We have already begun to develop and research an approach to this through our Family Advice and Information Service (FAInS) initiative. As well as focusing on best practice in family law advice provision, FAInS seeks to place our directly- funded family law advice services within a network of other advice provision, including social welfare law providers, while also exploring mechanisms to address family issues outside of court proceedings.

Next steps, paragraph 6

We will look at ways of improving and making more robust the current process of assessing need for legal advice. We will also consider how the

LSC could support the assessment of need at a local level through centrally-provided data and research. The aim is to create a better flow of information to assist in local needs assessment and in the design of local services to meet these needs.

Achievements of the Community Legal Service, Paragraph 4, Section XX

Research, in particular the Legal Services Research Centre's first National Survey of Justiciable Problems, is providing funders and providers of legal services with evidence of the kinds of problems people experience; the impact of quality legal services in resolving them; and a framework for future policy development.

Initial Impact Assessment, Paragraph 3

The proposals contained in this consultation paper aim to secure the future of the Community Legal Service at a time when its funding is under increasing pressure. The strategy also seeks to address key issues identified in the Legal Services Research Centre's report on the National Survey of Justiciable Problems, 'Causes of Action' (2004), as well as in the Frontier Economics report, 'A market analysis of legal aided services provided by solicitors' (2003) and the report of the Independent Review of the Community Legal Service undertaken by Matrix Research and Consultancy (2004).

Initial Impact Assessment, Paragraph 5

Benefits of options:

a. Do nothing

There are no apparent advantages to doing nothing. We cannot ignore the issues raised by the research and analysis referred to in the background section of this impact assessment, and financial pressures are only likely to increase over time, intensifying the need for reform.

b. Develop only some of the proposals put forward in the CLS strategy and not others

It would be possible to uncouple some of the proposals and develop them in isolation. This would have the potential benefit of minimising the disruption caused. However, for the reasons set out below, we do not consider that this would be the most effective approach in the longer term.

c. Develop all the proposals for further consultation

The advantage of developing all the proposals together is that they have been designed to be mutually supportive, and adopting a systems-wide approach is more likely to deliver a robust and comprehensive framework to bring about improvements.

Select Committee Reports

Constitutional Affairs Committee - 2004 report on civil legal aid

In all there were 23 paragraphs making reference to research, including a three paragraph ‘research on need’ section. The ‘Paths to Justice’ specific search identified four paragraphs.

The first of these highlighted that ‘Causes of Action: Civil law and Social Justice’ had been used to provide evidence for the report, specifically regarding ‘the potential obstacles in the way of members of the public in their search for access to justice’.

The second reference is in the context of a discussion on ‘unmet need’, ‘unmet demand’ and the use of the term ‘advice deserts’. ‘Causes of Action: Civil law and Social Justice’ is cited as providing evidence of the extent of ‘unmet need’ for advice.

The third instance was in the context of the Lord Irvine of Lairg (prior to being appointed Lord Chancellor) highlighting the importance of legal aid funding representation at (particularly employment) tribunals. LSRC research is identified as showing that employment problems also frequently trigger other issues resulting in additional need for advice.

The fourth reference is again to ‘Causes of Action: Civil law and Social Justice’, and specifically to the idea of referral fatigue, where the success of referrals diminishes as they increase in number. The context of the reference is in highlighting potential impact of what the Legal Action Group felt were problems with the Community Legal Services system of referral.

References to Paths to Justice tradition research:

Paragraph 5

We took evidence from the witnesses listed on page 48. In addition to the formal evidence, we relied on important research commissioned by the Government, “Causes of Action: Civil law and Social Justice”, which provided a wide range of up-to-date evidence about the potential obstacles in the way of members of the public in their search for access to justice. During the course of our inquiry, the Government published significant pieces of research on the financial impact on the legal profession of the current system of providing civil legal aid, one by Matrix and two by Frontier Economics. The LSC has also published work on quality and access under contracting.

(In footnotes: *Causes of Action: Civil Law and Social Justice*, Pascoe Pleasence, Alexy Buck, Nigel Balmer, Aoife O’Grady, Hazel Genn and Marisol Smith, p 78. *Quality and Access: specialist and tolerance work under civil contracts*, Moorhead and Harding, Stationery Office, London, 2004)

Paragraph 56

Clare Dodgson refused to accept the term “advice deserts”, preferring instead to refer to:

“..... areas of unmet need. We would like that unmet need to translate more into demand, coming back to this piece of research that a significant number of people who have problems do not act on them.....” The

distinction between “unmet need” (namely, that people do not ask for advice) and “unmet demand” (namely that people are being turned away) is in one way a slight one. It is certainly not true to say, as Clare Dodgson implies, that the problem is only one of encouraging demand. There is plenty of evidence that there are people who are being turned away from solicitors because of lack of capacity. Nonetheless, the emphasis on addressing unmet need is important. The LSC’s own research “Causes of Action: Civil law and Social Justice” shows that there is plenty of unmet need as does their evaluation of telephone advice pilots.

(In footnotes: *Causes of Action: Civil Law and Social Justice*, Pascoe Pleasence, Alexy Buck, Nigel Balmer, Aoife O’Grady, Hazel Genn and Marisol Smith, p 78. Telephone Pilot Evaluation Report, available on the LSC website: www.legalservices.gov.uk)

Paragraph 109

Lord Irvine of Lairg, before he was appointed Lord Chancellor, described the exclusion of tribunal representation from legal aid funding as a: “...gap which cannot be rationally justified in the provision of legal aid... there is no greater unfairness than the legally unrepresented applicant against the legally represented employer in industrial tribunal cases... (it is) ...irrational to exclude tribunal cases from any call on the legal aid budget.” Several research projects have shown that unrepresented claimants in tribunal hearings are at a substantial disadvantage and the LSRC’s research for the LSC has demonstrated that employment problems are often triggers for a whole host of other justiciable problems, which tend to lead to further needs for advice.

(In footnotes: *The Legal System and Law Reform under Labour*, Lord Irvine of Lairg in *Law Reform for All*, Blackstones 1996. See e.g. *Tribunal Users’ Experiences, Perceptions and Expectations: A Literature Review*, Michael Adler and Jackie Gullaud, 2003, published by the Council on Tribunals, especially para 3.3; *Tribunals, Advice and the Community Legal Service*, Moorhead, 2001; *The Leggatt Review of Tribunals*, Academic Seminar Papers; *Tribunals and Informal Justice*, Genn, 1993; [1993] *56 Modern Law Review*, 393–411)

Paragraph 113

It has also been suggested that such refusals lead to “referral fatigue” on the part of claimants with otherwise resolvable legal problems. “Referral fatigue” is the term used to describe the situation where claimants become despondent and demoralised as a result of being pushed from advisor to advisor. Research work done in connection with the study “Causes of Action: Civil Law and Social Justice” indicates that constant referral leads to fewer successful outcomes for potential litigants. It is not surprising that the researchers found that “some respondents felt unable to maintain the necessary level of persistence and to invest the necessary amount of time to follow up repeated referrals in order to obtain the help they were looking for.”

(In footnotes: *Causes of Action: Civil Law and Social Justice*, Pascoe Pleasence, Alexy Buck, Nigel Balmer, Aoife O’Grady, Hazel Genn and Marisol Smith, p 78.)

Paragraph 114

Any system of civil legal aid must cater for the most vulnerable in society. These are the people whose problems may often to come in “clusters”. They also include some of the people who are most likely to suffer from “referral fatigue”. We believe that the current system of referring people results in many people giving up on legitimate claims.

Constitutional Affairs Committee – Legal Services Commission: Removal of Specialist Support Services. Fourth report of session 2005-2006

In all, there were five paragraphs making reference to research. There were no paragraphs making specific reference to Paths to Justice related research up to the ‘evidence’ section, and one reference in the ‘evidence’ section itself.

The reference is in an LSC response to a question about the removal of specialist support, and the ability of the CLS direct telephone service to function adequately without it. The response uses then unpublished LSRC research (from the CSJS) to highlight the extent to which people satisfactorily use the telephone alone to resolve legal problems. The research is primarily used to suggest that choice and plurality of modes of advice (including telephone only) is desirable.

References to Paths to Justice tradition research:

Oral evidence Q12, Ev4

Jeremy Wright: If CLS Direct is better, and not just cheaper, why do you think it is that all of those who are using that service, or at least the vast majority, based on the submission that we have had, would rather keep specialist support?

Crispin Passmore: I do not think there is any evidence that I have seen that says that clients do not want to access telephone advice. The Legal Services Research Centre, which is an independent academic research unit, has conducted a lot of research, not just on the problems that people face but the strategies they are deployed to deal with there. Some of the results of that research will be published in the next few weeks and will say, quite clearly, that around about half the people who have experienced a problem and who seek advice make the initial contact by telephone, and a significant proportion of them choose to go on to resolve their problem to their satisfaction without face-to-face advice. We are not saying to people you cannot access face-to-face advice. What we are saying to clients is, “Here is the choice for you.” CLS Direct is driven by clients. If they do not want to use the service, they will not use the service, and we are seeing very clearly that as fast as we expand capacity there is demand out there to use CLS Direct because people are very happy with the service. All of our users have shared this. Surveys of CLS Direct show a happiness rate of well over 90% where they are content.

Constitutional Affairs Committee - 2007 report on implementation of Carter Review of legal aid

In the report itself, 48 paragraphs make reference to research, though none refer specifically to Paths to Justice related work.

In the separate ‘oral and written evidence’ document, there were three paragraphs making reference to Paths to Justice related research.

The first reference appeared in evidence submitted by the Law Centres Federation. Their evidence set out their concerns over the failure of the reforms to adequately address client’s complex need in immigration and asylum cases, and allow for a holistic service addressing all of their needs. The evidence references both ‘Causes of Action: Civil Law and Social Justice’ and ‘Paths to Justice’ to firstly, support the existence of ‘problem clusters’ and secondly, to describe the extent to which immigration in particular tends to occur in combination with other problems.

The second reference was in evidence submitted by The Law Society. The evidence discusses the importance of funding legal aid and the ‘false-economy’ of under-investment. Research from ‘Causes of Action: Civil Law and Social Justice’ on the extent to which problems form ‘clusters’ is cited as supporting the notion that civil legal problems lead to downstream costs to other government departments and damaging consequences for individuals.

The third reference was in evidence submitted by the Advice Services Alliance. In a discussion of discrimination cases, research from ‘Causes of Action: Civil Law and Social Justice’ was used suggest that ethnicity was a predictor of discrimination, immigration and rented housing problems.

References to Paths to Justice tradition research:

Evidence submitted by Law Centres Federation (LAR 104) – Ev 151

The LCF is very concerned about the impact on immigration and asylum and asylum advice. Problems in these areas give rise to and exacerbate other legal problems and are an essential component of common problem clusters. The proposal to have national and regional suppliers mirrors the Home Office business plan for new asylum-seekers, however, new asylum seekers are a very small proportion of those requiring immigration and asylum advice. The plans seem to ignore the complex needs of the vast majority of immigration and asylum clients and will jeopardise the concept of providing a holistic service.

(In footnotes: Clusters of problems were first identified in Paths to Justice by Hazel Genn in 1999. Causes of Action: Civil Law and Social Justice published by the Legal Services Research Centre in 2004. p 40. The third cluster they identified was immigration, mental health and welfare benefits. 39% of immigration problems were reported in combination with a welfare rights problem.)

Evidence submitted by The Law Society (LAR 107) – Ev 156

Successive legal aid ministers have talked about legal aid being a pillar of the welfare state alongside state education and the National Health Service. However legal aid remains the Cinderella service and this is especially pronounced in relation to civil legal aid. We believe that under-investment in civil legal aid is a false economy as research has shown that

failure to access legal advice early enough can result in clusters of social problems such as homelessness, children taken into care and youth crime. Such problems increase costs for other government departments as well as having damaging consequences for the individuals involved and society as a whole.

(In footnotes: Pascoe Pleasance & o/s, TSO (2004) *Causes of Action: Civil Law and Social Justice*, p 107.)

Evidence submitted by the Advice Services Alliance (LAR 34) – Ev88

The *Causes of Action* research found that ethnicity was particularly influential in predicting problems relating to discrimination, immigration, and unsafe or unsatisfactory rented housing. Discrimination cases were found to take much longer than other types of employment cases in our analysis of NfP case lengths. The same is likely to be true for non-employment discrimination cases. Problems with unsafe or unsatisfactory rented housing are also likely to be more time consuming than other housing cases.

(In footnotes: *Causes of Action*, second edition p 37)

Constitutional Affairs Committee - 2009 report on family legal aid reform

There were 14 paragraphs making reference to research up to the ‘evidence’ section. There were no references to Paths to Justice related research in the main part of the report, though there were two references in the ‘evidence’ section.

The first was in evidence submitted by NAGALRO in the context of the UK Government’s obligations under the UN Convention on the Rights of the Child. Research using CSJS data commissioned by Youth Access is cited to suggest that young people tend to have more complex problems, are more likely to try but fail to access advice and frequently report adverse consequences stemming from legal problems, with proposed reforms likely to further disadvantage children and young people.

The second reference was used in evidence set out by the National Youth Advocacy Service. The evidence suggests that the removal of social work from the scope of funding will disproportionately impact upon children and young people, and goes against stated commitment to legal advice for young people. Again, the evidence references work for Youth Access using CSJS data, which highlighted an increased likelihood of trying but failing to obtain advice among young people and the adverse consequences stemming from problems (specifically regarding health and homelessness), as an example of the need for joined-up services.

References to Paths to Justice Tradition Research

Ev 81- Supplementary written evidence submitted by NAGALRO (copy of response to Family Legal Aid Consultation (extract))

Judith Timms
Policy Advisor
Judy Tomlinson

Secretary
April 2009

Limitation of Sustainable Access to Justice for Children and Young People

In September 2008 the UN Committee on the rights of the child formally examined the UK Government's implementation of the UN Convention on the Rights of the Child (UNCRC) following up the examination with 124 recommendations showing where the UK government is falling short of its obligations under the widely ratified international human rights treaty for children. There is mounting evidence that children cannot get the advice they need from the civil justice system to claim their rights. Research by Youth Access with the Legal Services Research Centre reveals that the majority of children and young people who have complex problems are far more likely to have tried and failed to get advice than adults. Many experience health problems or become homeless as a result of their unmet needs. The ongoing reforms to the legal aid system is making working with vulnerable children uneconomic and forcing many of the specialist lawyers and advisors to abandon legal aid work.

Taken together the proposals contained in the LSC consultation documents "Civil and Family Legal Aid funding from 2010" further erode the infrastructure of experienced child care law professionals carefully built up over the last thirty years to protect vulnerable children and young people. This is a particularly dangerous and ill advised strategy at a time when the global recession and the attendant social fall out and upheaval caused by widespread unemployment, rising poverty levels and the consequent stress on families, mean that children and young people are even more in need of a coherent network of services including legal services of advice and representation. The requirements of the Human Rights Act 1998 which incorporated the European Convention on Human Rights into our domestic legislation gives children and young people equal rights to be represented in proceedings which affect them as all other parties. (Article 6 ECHR) There is no explanation in the consultation document of how the proposals will impact on the Governments wider obligation to hear the voice of the child in the proceedings and ensure that they have the same representational rights as other parties. Similarly, the impact of the proposals on Article 8 ECHR—rights to respect for a private family life—Article 10 ECHR—rights to freedom of expression—and Article 13 ECHR—rights to redress—are not considered in a consultation document which does not demonstrate convention compliance. from this that children's rights to representation should not be "gate kept" (para.8.27) by CAF/CASS or indeed by any other body, whose priorities in relation to an individual child may be skewed by organisational or resource driven imperatives, rather than giving paramount consideration to the welfare of each child. The LSC itself acknowledges that the welfare of the child will not be the paramount consideration when it states at para 8.27 that "*The requirement of consent allows CAF/CASS to gate-keep the cases which it takes on and deals with entirely in-house and also to ensure the caseload reflects its High Court caseworker headcount and resources*"

It is for the courts to decide which children need separate representation, based on their hearing of the evidence, their duties under s1

CA 1989 and guided by the excellent Presidents Practice Direction of April 2005—which has proved very effective in its implementation, not CAFCASS however well intentioned. The proposal constitutes a dangerous undermining of judicial discretion, a breach of the Article 6 rights of children and a clear admission that the welfare of the child is an expendable commodity in the drive to cut costs. On the basis of the evidence presented to the UNCRC, Children’s Rights Alliance for England (CRAE) has in its general recommendations stated that “the Legal Services Commission should conduct an urgent assessment of the impact on children of the current reforms to the legal aid system. Legal aid policy and planning should recognize and take far greater account of the specific needs for information, advice and representation of vulnerable children, including separated asylum seekers, care leavers, children in conflict with the law and children who are homeless and in housing need. This should involve meaningful consultation with children about their access to justice.”

(In footnotes: Balmer NJ, Tam T, Pleasence P (2007). Young People and Civil Justice: Findings from the 2004 English and Welsh civil and social justice survey. Youth Access. The Guardian (7 January 2008) Solicitors shunning legal aid work as pay rates fall, survey reveals exodus of experts is acute in child cases. State of Children’s Rights in England—Review of UK Government’s implementation of the Convention on the Rights of the Child—2008. Annex C Full list of Recommendations. Rec.10. P55)

EV93 - Background to the Proposal for Maintaining Independent Socio-Legal Services for Children in Private Law Proceedings

Elena Fowler
Chief Executive
National Youth Advocacy Service
May 2009

The need for a “joined up” policy that puts children first

Despite the consistent policy recognition of the vulnerability of children caught up in private law proceedings, and a stated commitment to legal advice for children, there has been a complete disregard for this position in the current proposals for change. The LSC proposal to remove social work expertise from their funding scope will have a disproportionate impact on the welfare of children and young people and takes no account of their needs as a separate stakeholder group. It also reflects a dangerous inconsistent disconnect between departmental and organisational policies which risks leaving children tragically vulnerable. There is mounting evidence that children cannot get the advice they need from the civil justice system to claim their rights. Research by Youth Access with the Legal Services Research Centre reveals that the majority of children and young people who have complex problems are far more likely to have tried and failed to get advice than adults. Many experience health problems or become homeless as a result of their unmet needs. There are also currently 200,000 children who live in households where there is a known high-risk case of domestic abuse and violence. As HIMICA highlighted in its inspection of Private Law front line service in CAFCASS in 2006, the

children involved may also be children in need or at risk of significant harm.

(In footnotes: Balmer N J, Tarn T, Pleasence P (2007). *Young People and Civil Justice: Findings from the 2004 English and Welsh civil and social justice survey*. Youth Access. Co-ordinated Action against Domestic Abuse based on their work to date on Multi Agency Risk Assessment Conferences.)

120 Her Majesty's Inspectorate of Court Administration (HMICA) August 2006. Private law front line practice in CAFCASS. Inspection Report. London. HMICA.

Justice Select Committee – Government Proposed Reform of Legal Aid 2011

Research was referred to in 23 paragraphs of the report, though there was only a single paragraph making use of Paths to Justice related research.

The reference was in the context of Citizens Advice evidence warning of the cost to the public purse of removing legal aid. It refers to secondary analysis of CSJS data/findings by Citizens Advice setting out the potential savings to the public purse of advice for housing, debt, employment and benefits problems.

The separate 'written and oral evidence' document contained a further 9 paragraphs referencing Paths to Justice related research. A number of these were in evidence supplied by Citizens Advice.

The first instance, from evidence supplied by Citizens Advice cited CSJS findings on problem clusters to support their disappointment in proposals to remove social welfare law from the scope of legal aid.

The second reference, from evidence supplied by Citizens Advice, again referred to the removal of social welfare law from the scope of legal aid. In particular they challenge the Government assumption that scope changes will result in 'behavioural change', using CSJS findings to warn that people frequently give up seeking advice where it is hard to access (i.e. referring to referral fatigue).

The third reference, from Citizens Advice evidence, cites their secondary analysis on the potential savings to the public purse of providing advice (already discussed above).

The fourth reference, also from evidence from Citizens Advice, also uses their secondary analysis (on the potential savings resulting from providing advice). In this case it is used to provide a case for funding advice while presenting their view that the reform programme will result in burden on the court/tribunal systems and other public services, as well as leaving people unable to access justice.

The fifth reference, from Shelter's written evidence, sets out their concerns about the ability of vulnerable clients to represent themselves. It cites CSJS analysis commissioned by PLENET to demonstrate that disadvantaged groups are less likely to have knowledge of their legal rights and less likely to try and handle problems alone.

The sixth reference, also from Shelter's evidence, refers to their objection to the Government's proposals to instigate a mandatory telephone gateway for advice, and their support for a multi-channel approach to advice provision. CSJS research is cited to illustrate that clients currently take a multi-channel approach to advice seeking.

The seventh reference was in a question to Citizens Advice, asking them to explain how they derived the cost savings from CSJS data (used in the main report reference and the third and fourth references in the written and oral evidence above). The reply briefly sets out how CSJS data was used.

The eighth reference was also a question to Citizens Advice, and again referred to their secondary analysis of the potential savings stemming from advice, and the underlying methodology used.

The separate 'additional evidence' document also contained an additional 12 paragraphs or sections referring to Paths to Justice related research. A number of these were in evidence supplied by Youth Access.

The first refers to Youth Access's concerns over the lack of evidence supporting the proposed move of advice provision to the telephone (from face-to-face services) and the fact that they feel such a policy would disadvantage vulnerable groups. CSJS research, some of which was commissioned by Youth Access is cited extensively to support their arguments. References include findings suggesting young people demonstrate a preference for face-to-face provision and have difficulties with other modes (and particularly with the Internet).

The second reference, again from Youth Access's evidence, uses CSJS findings to show the importance of advice for young people in particular. They cite findings suggesting that the discrepancy in successful outcomes between those handling alone and those obtaining advice is greater for young people than for older people.

The third reference, again from youth access, provides a list of 11 research reports developed with the LSRC (i.e. using CSJS data) which support their arguments and which together provide a 'comprehensive evidence base on young people's needs for legal advice, the impact of social welfare problems on young people, young people's advice-seeking behaviour, barriers to access to advice services and the impact of advice received by young people'.

The fourth reference, from Youth Access evidence, sets out some of the implications of failing to provide advice to vulnerable young people. They use CSJS findings to describe the amount of problems young people experience and how often they fail to obtain advice. As with previous evidence from Citizens Advice, they also attempt to calculate the knock-on cost of problems (where advice was not obtained) to society.

The fifth reference, from Youth Access evidence, cites a range of CSJS findings to present the particular problem experience and advice needs of young people, primarily to argue that disadvantaged young people will be hit particularly hard by the (then) proposed reform of legal aid. They cite findings demonstrating that young people have different types of problems (particularly problems hit hardest by the reforms) and are more prone to multiple problems. They also refer to the wider context of legal problems and their tendency to also impact on health, relationships, drug/alcohol abuse and education.

The sixth reference also develops Youth Access's arguments on the particular experience of young people, by presenting CSJS findings on barriers to advice. For example, the tendency of young people to use 'non-mainstream' advice providers and their low awareness/knowledge of rights.

The seventh reference sums up Youth Access's arguments, with a number of CSJS findings again cited. For example, they point to the failure of the legal aid system to meet the needs of young people, citing supporting CSJS findings on high levels of social welfare law problems and decreased tendency to obtain advice. They also reiterate objections to the proposed telephone gateway, citing CSJS findings on young people's tendency toward face-to-face provision. They also use CSJS findings to reinforce their conclusion that failure to obtain advice disproportionately impact upon young people while providing advice has the greatest potential economic benefits.

The eighth reference appears in evidence provided by Professor Richard Moorhead. In a discussion of the risks of cutting advice for social welfare law, he cites CSJS and Paths to Justice research. Research findings on the tendency of problems to cluster together are referred to, as well as CSJS findings on the knock-on costs of problems. Finally he suggests that research should be conducted to look specifically at the potential financial impact of the reform programme (using CSJS data).

The ninth reference is from evidence from the Money Advice Trust. Again, it adds to the argument that telephone advice should complement rather than replace face-to-face services, using CSJS findings to describe the vulnerability of debt clients and their unsuitability for (solely) telephone services.

The tenth reference is from written evidence provided by the Advice Network and Advice Centres for Avon. They set out the view that the reforms will leave ‘thousands of poor and vulnerable individuals and families without access to justice’, and cite CSJS findings (from both the LSRC and secondary analysis by Citizens Advice) to again point to the knock-on cost of problems to individuals and society.

The eleventh reference was in written evidence from Riverside Advice. They express the view that there is no advice capacity to soak up the demand created by the decreased scope of the reforms, and use CSJS findings to set out the potential knock-on costs to other Government services, and particularly the NHS. Specifically, they cite findings from the second edition of ‘Causes of Action: Civil Law and Social Justice’ setting out the extent to which people report health problems stemming from legal problems, and the extent to which they make subsequent use of health services.

The twelfth reference was in evidence provided by the Advice Services Alliance. As with Riverside Advice’s evidence, they point to the lack of alternative sources of advice post reform and cite CSJS findings on the adverse health consequences of legal problems.

References to Paths to Justice tradition research:

Paragraph 134

Expanding upon this point, Citizens Advice told us of a cost-benefit analysis they have carried out, using data from the Civil and Social Justice Survey on the adverse consequence costs of legal problems and the Legal Services Commission’s outcomes data from legal advice work which they state “sets off legal aid expenditure against the savings achieved from early advice (legal help) interventions. This analysis estimates that:

- For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34.
- For every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98.
- For every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80.
- For every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.”¹⁴¹

Written evidence from Citizens Advice (AJ 18) – Ev95

We are therefore disappointed in the proposals contained in the Green Paper on legal aid reform which seeks to remove legal aid funding for advice on “social welfare law” matters, as in our experience, these services are vitally important in order to stop peoples’ legal problems spiralling out of control. As evidenced by LSRC’s civil justice surveys, those seeking legal aid tend to have multiple social welfare and legal problems. Timely intervention by debt and welfare benefit advisers—currently funded through the legal aid system—can help prevent the consequences of vulnerability family breakdown and homelessness, or even avoid consequences in the criminal justice system. For example: Mr M is 80 years of age and has dementia and heart problems. He lives in a probation hostel. His probation officer asked a Staffordshire CAB to advise on his benefit entitlements prior to him moving to a supported living unit. The bureau helped Mr M apply for attendance allowance, and contacted the Pension Service with evidence of his release to reinstate his state pension. They also helped him apply for housing and council tax benefits, so that he could pay his rent and council tax at his new home. The bureau also found that he was entitled to an occupational pension with the local authority,. Later Mr M’s probation officer told the bureau that he had moved into supported housing, a positive transition to living back in the community, was awarded attendance allowance, and has a support worker, to assist him with any further help he may need.

(In footnotes: Causes of Action: Civil Law and Social Exclusion, LSRC, 2008)

Written evidence from Citizens Advice (AJ 18) – Ev95

In withdrawing funding for social welfare law advice, the Ministry of Justice is taking away a key route to redress. The Justice Committee needs to look not just at the short term impact in terms of loss of legal aid providers, but rather the long term social policy impact of withdrawing such a vital publicly funded service. The proposition that the proposals will lead to “behavioural changes” in the way people address their disputes needs to be tested. The research and analysis undertaken by LSRC and others suggests that people give up trying to obtain help where this is hard to access. Clients in the social welfare categories are amongst the most vulnerable in society, they are affected by changes in the economy, labour markets, public services reform and policy initiatives impacting on rights and entitlements (e.g. welfare reform). We predict a significant increase in advice demand in coming years, but with far fewer advice services available.

Written evidence from Shelter (AJ 34) – Ev106

Recent research into the challenges people face when dealing with civil justice problems has brought to light important findings. Disadvantaged groups (lone parents, those with a long term illness or disability, mental ill health, those renting publicly, in receipt of welfare benefits, those with no academic qualifications) were less likely to have knowledge of rights and legal processes than more affluent and educated groups and were less

likely to handle their problems alone. The research demonstrated low levels of knowledge relating to welfare benefits, rented housing and homelessness. A previous research study had already highlighted that young people's lack of knowledge of their rights and entitlements, legal processes or where to go for help impeded their ability to recognise that they were dealing with an issue with legal elements. This in turn would affect their ability to plan how to resolve the issue. The findings in both these studies are borne out by Shelter's experience. We do not believe that such clients would be able to represent themselves or find alternative specialist advice.

(In footnotes: Balmer, N., Buck, A. et al *Knowledge, capability and the experience of rights problems* Plenet/LSRC, 2010. *Measuring young people's legal capability*, Plenet, 2009)

Ev24

Q120 Chris Evans: Ms Guy, looking at your submission here, your evidence states that for every £1 of legal aid expenditure on advice, somewhere between £2 and £9 is "potentially saved" to the state. Can you explain how these figures were calculated, please?

Gillian Guy: I can certainly give you our methodology. I referred to it slightly earlier. The first thing we took was the Legal Services Commission outcomes data that they require as part of their performance management of the contracts. We then get an understanding of where there are positive outcomes to the legal help that is given and where there are not positive outcomes, so that either disappears or goes into the court process. We then took the Legal Services Research Centre research, which looked at the adverse consequences and costs of those cases that did not reach, and would not reach, positive outcomes. We took those two and put them together through an economic model which looked at the kind of costs in terms of housing and health that ensue, and indeed court cases that ensue, as a result of that early advice not being successful, and then multiplied that up. That gave us a figure of a £1 investment bringing forth between £2 and £9 saving to the state.

Written evidence from Citizens Advice (AJ 18) - Ev97

Consequently we consider that there is a very poor business case for pursuing the proposals to take social welfare law out of scope. Using data from the Civil and Social Justice Survey on the adverse consequence costs of legal problems, and the Legal Services Commission's outcomes data from legal aid work, Citizens Advice have developed a cost benefit analysis which sets off legal aid expenditure against the savings from early advice (Legal Help) interventions. This estimates that:

- For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34.
- For every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98.

- For every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80.
- For every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.

Written evidence from Shelter (AJ 34) - Ev107

Implications of the Telephone Gateway

Shelter is in favour of a multi-channel approach to advice delivery. Telephone helplines can make it easier for those with problems to reach an advice provider promptly. However, many vulnerable clients prefer to walk in to their local advice office. Research shows that in 52% of cases where people seek advice, they do so initially via the telephone. However in around 37% of cases, people make a direct approach in person to an agency. Different people benefit from different approaches in different circumstances. Under the MOJ's proposals, even those with mental ill health or with language difficulties would be expected to use the telephone line in the first instance. Shelter's experience is that those who need translation, those who have papers which need to be considered and those with sensitive and difficult stories to tell benefit from a face-to-face interview with a local adviser who has knowledge and expertise in local services.

(In footnotes: *Report of the 2006–09 English and Welsh Civil and Social Justice Survey*)

Ev21

Q106 Karl Turner: In your answer to an earlier question you touched upon the early intervention. How important is that? Would I be right to suggest that it saves money long term?

Gillian Guy: It is certainly in our evidence, because we have done some research on this, that for every £1 spent in that early intervention and advice we can save the state generally between about £2 and £9. That is based on the data given on performance to the Legal Services Commission on positive outcomes and then the work that is done by research on what the adverse impacts are of cases not being resolved at that stage and going on into court. If we extrapolate those two things and multiply them up, we can come to that figure quite robustly as a saving to the state as a result of early intervention.

Written evidence from Citizens Advice (AJ 18) - Ev97

There is a significant risk that restricting legal aid for social welfare matters could fill the court and tribunal system with unprepared cases, adding public cost, delay and difficulty in decision making. Many clients will be completely unable to pursue their case and will have no access to justice. Some may revert to other public services, such as health or adult services, or arrive at the surgeries of local politicians. Indeed there is a significant body of evidence on the types of problems which the Government intends to take out of scope, demonstrating that early

intervention by effective legal help, can save public services money. A recent research paper by Citizens Advice analysing the LSC's survey, costs and outcomes data has found that for key categories of social welfare law, the state saves between £2 and £8 for every pound invested, owing to the avoidance of adverse consequences which engage other public services.⁴

Written evidence from Professor Richard Moorhead (AJ 20) - EvW55

The Risks Involved in Cutting Social Welfare Law

The policy of seeking to maintain decent levels of social welfare law provision is a policy carefully established against rigorous research evidence showing that justiciable problems cluster. One legal problem can trigger another which will lead to another. A crucial point is that the research creates a prima facie case that tackling such problems early is beneficial to the exchequer. The Legal Service Commission's Legal Services Research Centre has been the main source, along with Professor Dame Haze Genn, of this evidence and I assume that the Committee is seeking evidence from them. Justiciable problems lead to expenditure in housing, benefits, health and criminal justice budgets in particular. An education law practitioner made this point to me recently: ensuring that a child gets appropriate special educational needs provision is likely to have a significant impact on the likelihood of that child staying out of prison in later life.

The LSRC's research was used as the basis of an estimate of the cost of (then) unmet legal need. It suggested that unmet legal need had a cost of £13 billion over three years. I was hoping that the impact assessments that accompanied the Green Paper would also contain assessments of the impact of the cuts on other budgets and broader, quantifiable social costs. Of course, such estimates are based on assumptions and data which mean they must be treated with a degree of caution but they also form an important tool for policy makers to assess their decisions and for stakeholders to hold them to account. That the LSRC were able to produce an estimate previously is evidence that it can and should be done for this programme of changes. I would hope the Committee encourages them to do so.

Written evidence from the Money Advice Trust (AJ 26) - EvW57

A Legal Services Research Commission (LSRC) survey showed that the incidence of justiciable problems is significantly higher for people with long standing health or disability problems, lone parents and single people and those on very low incomes. It is evident that the demographic profile of people who currently access debt advice through face-to-face agencies with legal aid contracts is often different from the profile of many NDL clients. In many cases, clients who are classed as "vulnerable" and require a degree of handholding through the advice process are signposted by NDL to a face-to-face service in their local area. Typically this would also include clients with literacy, language or certain mental health problems.

We have always taken the position that telephone advice should complement and not replace face-to-face advice services.

(In footnotes: *Causes of Action: Civil Law and Social Exclusion* LSRC 2007)

Written evidence from Youth Access (AJ 36) - *EvW89*

The likely impact of shifting resources from face-to-face to telephone delivery

3.12 Our understanding from the Green Paper is that the “vast majority” of clients will access civil legal aid services through a “simple, straightforward telephone service” that will act as a single gateway to civil legal aid services. Face-to-face advice will only be available where cases are too complex to be dealt with by telephone or where the client’s specific needs would not be met.

3.13 We share the view of the Advice Services Alliance in its submission that the proposed shift to telephone services will impact severely on access to justice for many vulnerable groups and that there is a lack of evidence to support the MoJ’s justification for the shift on financial grounds.

3.14 Our own evidence indicates that young people are very likely to be adversely affected by the changes to an even greater extent than many other vulnerable groups. (We note that the MoJ’s Equalities Impact Assessment (EIA) states that it has taken account of evidence from the CSJS conducted by the LSRC, including work with Youth Access to examine data on how young people use different channels to get advice, but, oddly, the EIA does not then make any comment about the likely impact of the proposals on young people.)

3.15 Our research found that:

— Young people are far more likely to access advice face-to-face than other age groups. Data from the CSJS indicates that, whereas people aged 25 and over were more likely to make initial contact by telephone than face-to-face, the opposite was true for young people.

— Young people’s preference for face-to-face advice relates to trust, confidence and communication skills. The evidence suggests that remote mediums, such as email and the telephone, are not as conducive to building the trust with an adviser which is necessary for young people to open up about their social welfare problems.

— Disadvantaged young people, who experience the most severe problems, are considerably less likely to have access to telephones and the internet than their better-off peers.

— Cost, deprivation and communication skills are barriers to accessing advice by telephone. Many young people simply cannot afford the cost of a potentially lengthy phone call. The cost of calling (even some “free”) helplines can be prohibitively expensive for young people, who tend to use mobile phones with text-focussed call packages.

— Those least likely to benefit from telephone advice services include young men and those with lower levels of education, language difficulties or lower incomes.

— Young people tend to say they would prefer face-to-face advice for more complex problems. Successful helplines for young people tend to

focus on sensitive personal, emotional and health issues rather than legal or practical issues.

— Young people are less likely to use the internet for information and advice than other age groups. Although they are major users of the internet overall, young people mainly use the internet for entertainment and social networking and appear to be significantly less likely than other age groups to use it for formal information gathering and for getting advice. This was particularly true for disadvantaged young respondents to the CSJS; almost none of this group had used the internet to get advice about a legal problem.

Written evidence from Youth Access (AJ 36) - *EvW90*

CSJS data indicates that 18–24-year-olds are twice as likely to meet their objectives where they do manage to obtain advice in comparison to when they handle their problems alone. By contrast, older adults meet their objectives only slightly more often where they obtain advice.

Written evidence from the Advice Network & Advice Centres for Avon (AJ 24) – *EvW63*

The proposals as they stand will therefore leave thousands of poor and vulnerable individuals and families without access to justice, resulting in huge costs for them personally, for the state financially, and for society morally. Even ignoring the moral case for the state offering support to citizens when they most need it the financial case is unanswerable. The Government's own Legal Services Research Centre has concluded that “The average cost per debt problem to the public and in lost economic output can be estimated at over £1000, with more serious problems involving costs of many times this amount.” This shows the fixed-fee for a debt matter (currently £200) is money well spent. Similarly research by Citizens Advice found that legal aid-funded welfare benefits advice saves the state up-to £8.80, and housing advice up-to £2.34 for every pound spent on advice in these areas.

Written evidence from Youth Access (AJ 36) – *EvW87*

2.5 Over recent years we have worked with the Legal Services Research Centre, amongst others, to develop a comprehensive evidence base on young people's needs for legal advice, the impact of social welfare problems on young people, young people's advice-seeking behaviour, barriers to access to advice services and the impact of advice received by young people.

2.6 This work has resulted in the publication of a series of influential reports, including:

— Young People's Access to Advice—The Evidence, Kenrick, J, Youth Access, 2009.

— The Advice Needs of Young People—The Evidence, Kenrick, J, Youth Access, 2009.

- With Rights in Mind: is there a role for social welfare advice in improving young people’s mental health, Sefton, M, Youth Access, 2010.
- The Youth Advice Workforce, Youth Access, 2009.
- The impact of the recession on young people and on their needs for advice and counselling services, Youth Access, 2009.
- Under Strain: how the recession is affecting young people and the organisations which provide advice, counselling and support to them, Youth Access, 2010.
- Rights Within Reach: developing effective outreach legal advice services in youth settings, Verma, P and Wilkins, M, Youth Access/Law Centres federation, 2009.
- Young People’s Social Welfare Needs and the Impact of Good Advice: Issues Paper, Youth Access, 2007.
- Locked Out: Young people’s housing and homelessness needs and the impact of good advice, Kenrick, J, Youth Access, 2007.
- Young People and Civil Justice: Findings from the 2004 English and Welsh Civil and Social Justice Survey, Balmer, N J, Pleasence, P and Tam, T, Youth Access, 2007.
- Rights to Access: meeting young people’s needs for advice, Kenrick, J, 2002.

Written evidence from Youth Access (AJ 36) – *EvW88*

3.2 The evidence of this failure is starkly clear. Research has shown that each year⁶¹:

- 16–24-year-olds will experience at least 2.3 million rights-related problems requiring advice.
- More than a quarter of these problems will be experienced by young people who are not in employment, education or training (NEETs).
- As many as 200,000 problems will result in young people trying, but failing, to obtain advice, often because there is no service able to help them.
- In all, considerably fewer than half of all young people with serious social welfare problems will actually manage to obtain advice.
- At least one million young people are left to cope with their problems unassisted.

3.3 The cost of the country’s collective failure to provide this vulnerable group with the legal advice services it needs is likely, based on existing research, to amount to at least several hundred million pounds a year.

Evidence of young people’s needs for advice

3.4 Young people have very particular needs for legal advice and ways of seeking help. Youth Access has worked with the Legal Services Research Centre to analyse and interpret data relating to the 18–24 year age group from the Civil and Social Justice Surveys. The data shows that:

- **Problem incidence:** Approximately one-third of 18–24-year-olds had experienced at least one civil justice problem in the previous three and a half years. While broadly similar to the population as a whole, it is likely that CSJS data significantly under-estimates the relative prevalence of young people’s problems.

- **Subject areas:** The pattern of young people’s problems differs markedly from that of other age groups. Young people are much more likely to experience problems relating to rented housing, homelessness, employment, discrimination and problems with the police.
- **Relevance to the proposed Legal Aid reforms:** Young people increasingly account for a disproportionate number of all people with problems in the key subject areas of social welfare law that fall within the remit of the Community Legal Service and that are proposed for exclusion or restriction from Legal Aid.
- **Multiple problems:** Young people, particularly the 22–24 age group and disadvantaged young people, are prone to multiple problems. As people experience multiple problems, they are increasingly likely to experience problems, such as homelessness, that play a direct role in social exclusion.
- **Interrelated needs:** Reflecting the complexity of the adolescent transition, young people’s social welfare problems rarely develop in isolation from inter-connected practical, emotional and personal issues—concerning for example, relationship breakdown, stress, depression, abuse, drugs and alcohol or education—pointing to a need for legal advice to be closely integrated with other services that young people use. Disadvantaged young people typically present to services with multiple problems, including a range of social welfare problems, as well as health, personal and emotional issues.

Evidence of barriers to access to legal advice for young people

3.5 Youth Access has consistently demonstrated for a number of years that there are significant barriers which make young people less likely to obtain advice. The evidence shows that:

- Young people are considerably less likely to obtain professional advice than other age groups; are much more likely to do nothing about obtaining advice; and are more likely to try but fail to get advice.
- In 2001 young people were seven times more likely to have experienced a homelessness problem than adults over the age of 25, but eleven times less likely to have obtained advice.
- Young people are reluctant to access mainstream advice services established predominantly for the adult population.
- There is a low awareness among children and young people that they have rights at all, let alone knowledge of what those rights might be. This is matched by a low awareness of advice services, a lack of belief that anything can be done to help them and a fear of or reluctance to access advice services.
- Many young people feel disconnected from the legal system, feeling it is something that is “done to them” rather than something which conveys them rights. All this is particularly true of the most disadvantaged young people.
- Only 0.4% of advisers and solicitors practising social welfare law in the private sector report that young people are one of the client groups they target.

(In footnotes: These figures have been calculated by Youth Access using data from the 2006–08 Civil and Social Justice Survey. The calculations have been checked by the Legal Services Research Centre and are deemed to under-estimate the extent of young people’s unmet needs for advice. Ministry of Justice economists have used CSJS data to estimate that over a three-and-a-half-year research period, unresolved law-related problems cost individuals and the public purse at least £13 billion. *The advice needs of young people—the evidence: Key research evidence on young people’s needs for advice on social welfare issues*. Kenrick, J, Youth Access, 2009. *Transitions: Young Adults with Complex Needs: A Social Exclusion Unit Final Report*, Office of the Deputy Prime Minister, 2005. *Young people’s access to advice—the evidence: Key research evidence on young people’s access to advice on social welfare issues*, Kenrick, J, Youth Access, 2009. *Young people and civil justice: findings from the 2004 Civil & Social Justice Survey*, Balmer et al, Youth Access, 2007. For an analysis of data on young people and homelessness in the Legal Services Research Centre’s Civil & Social Justice Surveys see *Locked Out: The prevalence and impact of housing and homelessness problems amongst young people, and the impact of good advice*, Kenrick, J, Youth Access, 2007. According to data analysed by Youth Access from the Workforce Survey conducted by the LSRC for the National Occupational Standards for the Legal Advice Sector project.)

Written evidence from the Riverside Advice (AJ 31) – EvW79

It is certainly not the case that capacity exists to soak up demand spilled by reducing legal aid scope. In the half-million cases cut loose, people may well find no alternative source of legal advice. The knock-on effect of this will be felt by other Government funded services, like the Health Service. Research published in 2006 found that adverse physical and mental health consequences follow over a third of civil justice problems and that 27% of civil justice problems led to stress-related illness. Nearly a quarter of the people affected by stress sought medical treatment, with an average of nine visits each to a general practitioner. (*Causes of Action: Civil Law and Social Justice* (2nd edition) Pleasence P, 2006, page 60, TSO). Indeed, a range of professionals including GPs, Social Workers and Advocates, plus Members of Parliament, are likely to feel the impact of the reduced availability of free face to face legal advice.

Written evidence from the Advice Services Alliance (AJ 44) – EvW116

Summary

We conclude that, for many people, there will be no realistic alternative sources of legal advice. Research published in 2006 found that adverse physical and mental health consequences follow a third of civil justice problems and that 27% of civil justice problems led to stress-related illness. Nearly a quarter of the people affected by stress sought medical treatment, with an average of 9 visits each to a general practitioner.

(In footnotes: *Causes of Action: Civil Law and Society Justice* (2nd edition) Pleasence P, 2006, page 60–61, TSO)

Written evidence from Youth Access (AJ 36) – EvW86

1.3 We conclude that:

— The current legal aid system fails to meet young people’s needs. Civil and Social Justice Survey (CSJS) data indicates that young people have

very high levels of need in the core areas of social welfare law (housing, benefits, debt), yet are far less likely to get advice under current arrangements than other age groups.

— However, the proposals restricting the scope of Legal Aid to exclude the bulk of social welfare law cases will lead to an increased number of people from all categories of vulnerable clients (including young people) being denied access to justice. This will lead to far higher costs to other public services in the longer term.

— The proposals must be viewed in the context of other advice and support services for young people (including Connexions and VCS youth advice agencies) being severely cut back by other central and local government cuts.

— We are extremely concerned at the proposals to shift resources away from face to face services and towards a Single Gateway telephone service. The evidence suggests that this will have a disproportionately detrimental impact on certain vulnerable groups, not least young people. CSJS evidence indicates that young people are far more reliant on face to face services than other age groups and are less likely to get advice through the telephone or online.

— There is a strong case for targeting legal aid investment where it can have the greatest impact. We believe this should involve reconfiguring services to be more client-centred and targeting services better at those client groups for whom getting advice has the greatest beneficial impact.

— Civil justice problems have a disproportionate adverse impact on young people; whilst getting advice has a disproportionately beneficial effect on this client group. This evidence points to potential economic benefits from targeting legal aid far better at young people.

Appendix 3:

Annotated Bibliography

Publications Stemming From Post 1990 National Legal Need Surveys (By country and in order of publication)

Australia

- Coumarelos, C. et al (2012) *Legal Australia-Wide Survey: Legal Need in Australia*. Sydney: Law and Justice Foundation of New South Wales.
Full report of the 2008 Australian survey, including a review of broad methods and findings of previous surveys, including regional Australian surveys. Also contains a review of the concept and meaning of 'legal need'. Chapters included on the prevalence of legal problems, the nature of problems (including a distinction between 'substantial' and other problems), responses to problems, advice for legal problems, outcomes, and implications. The technical report and questionnaire are included in appendixes.
- Coumarelos, C., Pleasence, P. and Wei, Z. (2013) *Law and Disorders: Illness/Disability and the Experience of Everyday Problems Involving Law*. Sydney: Law and Justice Foundation of New South Wales.
Paper exploring the relationship between the experience of justiciable problems and morbidity/disability, with a particular focus on morbidity/disability type and severity. Problem prevalence and incidence were both found to increase with severity of morbidity/disability, particularly psychiatric morbidity/disability (or, even more, the combination of psychiatric and physical morbidity/disability), though differences were also seen between types of physical morbidity/disability. The paper concluded that associations are context specific, and urged continued development and evaluation of integrated legal and health services.
- Iriana, R., Pleasence, P. and Coumarelos, C. (2013) *Awareness of legal services and responses to legal problems in remote Australia: A working paper*. Sydney: Law and Justice Foundation of New South Wales.
Paper setting out new findings from the Legal Australia-Wide (LAW) Survey that suggest that, overall, the use of legal advisers decreases with remoteness. In very remote areas, respondents who were not aware of various free legal services were less likely to use legal advisers. These findings raise questions about the coverage of legal services in very remote areas, particularly in the context of public understanding of legal resources.
- Coumarelos, C. and People, J. (2013) *Home is where the heart of legal need is: A working paper on homelessness, disadvantaged housing and the experience of legal problems*. Sydney: Law and Justice Foundation of New South Wales.
Paper setting out preliminary findings from the Legal Australia-Wide (LAW) Survey indicate that homeless people are an especially disadvantaged group who have increased vulnerability to a wide range of legal problems. The findings suggest that addressing the legal and non-legal needs of homeless people should be a priority and may require a holistic or client-focused approach, involving an integrated response from legal and broader human services.
- McDonald, H.M. and Wei, Z. (2013) *Concentrating disadvantage: a working paper on heightened vulnerability to multiple legal problems*. Sydney: Law and Justice Foundation of New South Wales.

Findings showing how the Legal Australia-Wide (LAW) Survey found that some demographic groups, including many disadvantaged groups, had heightened vulnerability to multiple legal problems. New analyses of the LAW Survey national data set using new measures of multiple disadvantage show that as disadvantage becomes increasingly ‘concentrated’, vulnerability to multiple legal problems ‘compounds’. Respondents with multiple disadvantage reported a greater number of legal problems and substantial legal problems. Importantly, each additional indicator of disadvantage was found to have an ‘additive effect’ that increased the average number of legal problems and substantial legal problems reported. The findings further underscore the importance of more intensive and integrated legal service provision for people with heightened vulnerability to multiple legal problems, and particularly for people with multiple disadvantage. They also indicate that the use of diagnostic instruments, such as a ‘legal health check’, is likely to enhance the systematic diagnosis, triage and referral of client legal problems in a range of service settings.

Bulgaria

Gramatikov, M. (2008) *Multiple Justiciable Problems in Bulgaria*. TISCO Working Papers Series on Civil Law and Conflict Resolution Systems 08/2008. Tilburg: Tilburg University.

The paper reports results from the 2007 Bulgarian national survey. 45% of the respondents in the sample experienced one or more serious and difficult to resolve problems with potential legal solutions. Consumer related issues are the most frequently occurring problem category, followed by problems with the neighbors. 18.5% of the respondents who had one problem reported experience with two or more problems. Problem experience was found to have an additive effect. Occurrence of multiple legal problems is strongly correlated with criminal victimization rate and the level of distrust in the justice system. Problems were frequently reported to be handed over to a public authority to resolve (particularly in relation to, e.g., welfare benefits)

Canada

Currie, A. (2005) *A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incidence and Patterns*. Ottawa: Department of Justice.

Main report of the 2004 Canadian survey, looking at problem incidence (including multiple problem experience and associated demographics (younger, single parents, visible minorities, on welfare benefits), problem clusters and outcomes. Family problems looked at in isolation. Analysis included around problem persistence and worsening over time. Family and discrimination problems were found to be more likely to occur early in problem sequences. Money and debt problems were more likely to occur later on in problem sequences.

Currie, A. (2007) "Civil Justice Problems and the Disability and Health Status of Canadians," in Pleasence, P., Buck, A. and Balmer, N.J. (eds.) *Transforming Lives: Law and Social process*. Norwich: TSO.

Analysis, based on the 2004 National Survey of Civil Justice Problem in Canada, demonstrating that ill-health and disability are related to a higher incidence of thirteen out of fifteen types of civil justice problems. People with health and disability problems are more likely to perceive the resolutions to problems as being unfair than rest of the population, to indicate that the situation has become worse where problems are unresolved and to experience persistent problems defined as problems that have remained unresolved for at least three years. The research suggests that people suffering health and disability problems experience a relatively high degree of social exclusion.

Currie, A. (2007) *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*. Ottawa: Department of Justice.

Main report of the 2006 Canadian survey. Includes an overview of the theory and method of the survey, including the definition of unmet need. Chapters are included on incidence, problem seriousness, multiple problems, and problem resolution strategies, outcomes, the health consequences of justiciable problems, and perceptions of the fairness of the justice system.

Currie, A. (2009) "The Legal Problems of Everyday Life," in Sandefur, R.L. (ed.) *Access to Justice*, Bingley: Emerald.

This paper examines the prevalence of justiciable problems experienced by Canadians, the ways in which people respond to them and the consequences of experiencing these kinds of problems. The results show that experiencing justiciable problems is a nearly normal feature of the everyday lives of a large proportion of the population in a modern society. Particularly, important features of justiciable problems are the prevalence of multiple problems, the clustering of justiciable problems and the linkages between justiciable, health and social problems. The results suggest that justiciable problems may be a part of broader patterns of social exclusion. One implication of this research is that access to justice services may not only address legal problems but, by doing so, may have the effect of forestalling processes of social exclusion of which civil law problems are a part.

Currie, A. (2009) "A Lightning Rod for Discontent': Experiencing Justiciable Problems and Attitudes Toward the Laws and the Justice System," in Buck, A., Pleasence, P. and Balmer, N.J. (2009) (eds.) *Reaching Further: Innovation, Access and Quality in Legal Services*, Norwich: TSO.

This paper shows that respondents who experience justiciable problems, who experience unfavourable outcomes to those problems and who have difficulty

obtaining assistance they consider satisfactory have a greater tendency than others to feel that the laws and the justice system are essentially unfair. This is true even though the vast majority of these individuals do not have any contact with the formal justice system in their attempts to resolve their problems. The conclusion drawn from this finding is that the political-legal culture of Canadians places a high value on justice. In the commonsense justice of everyday life, justice is fairness. A sense of unfairness felt toward the legal problems of everyday life is transferred to the formal justice system, which is the symbolic repository of those important cultural values. The formal justice system becomes the lightning rod for discontent arising from people's experiences with the legal problems of everyday life

Currie, A. (2009) *The Incidence of Problems in Civil Matters in Canada: Three National Surveys in 2004, 2006 and 2008*. Ottawa: Department of Justice. Report setting out incidence related findings from the 2004, 2006 and 2008 Canadian surveys, with an introduction exploring the theory and method of research on justiciable problems (especially around the use of threshold language and the importance of problems).

England and Wales

Genn, H. (1997) *Paths to Justice: What People Do and Think About Going to Law*. Oxford: Hart.

Full report of the original *Paths to Justice* study, highlighting the 'ubiquity' and pattern of experience of justiciable problems, the capacity and structural barriers to obtaining advice, the use of formal and informal processes, and perceptions of the justice system. Contains a chapter 'Paths to Justice: Which Way Now?' setting out the implications of the findings. Also contains the survey technical report and questionnaire, along with the outputs of multivariate analyses.

Swales, K. (2001) *Measuring Legal Needs: Technical Report*. London: National Centre for Social Research.

Full technical report of the 2001 English and Welsh Civil and Social Justice Survey (CSJS), known then as the LSRC periodic survey of justiciable problems. The report includes the 2001 CSJS questionnaire.

Plesence, P., Genn, H., Balmer, N.J., Buck, A. and O'Grady, A. (2003) "Causes of Action: First Findings of the LSRC Periodic Survey," 30(1) *Journal of Law and Society*, pp.11-30.

This paper reports the first findings of the 2001 CSJS, with a focus on problem experience and vulnerability, problem resolution strategies and barriers to advice. Cost is identified as not being a barrier to initial advice, in a context of formal process being rare.

Plesence, P., Balmer, N.J., Maclean, M., Buck, A., O'Grady, A. and Genn, H. (2003) "Family Problems: What Happens and to Whom?" 33 *Family Law*, pp.497-501.

This paper explores the pattern of experience of family law problems using data from the 2001 CSJS. It points to clear evidence that family problems affect particular sub groups of the population. Those most affected by such problems experience them not in isolation, but in combination, and at the heart of the experience of multiple problems is domestic violence. The paper exposes a deeply troubled sub group within the population where family problems are played out against a background of violent behaviour.

Pleasence, P., Balmer, N.J., Maclean, M., Buck, A., O'Grady, A. and Genn, H. (2003) "Family Problems: Who Does What and When?" 33 *Family Law*, pp.822-827.

This paper focuses on when and how people go about resolving family justiciable problems. It finds that in contrast to a high rate of inaction among people with a domestic violence problem, most individuals with a divorce problem seek help, from often only one solicitor, and the advice is frequently rated as very helpful. Clearly, people regard solicitors as being the most appropriate source of advice in relation to divorce. With problems ancillary to divorce or other relationship breakdown, the pattern of advice-seeking becomes more diverse, and for problems relating to children individuals go to a particularly broad range of advice-givers. Where a first choice of adviser sometimes seems inappropriate and unpromising and the range of second advisers is equally diverse, the role of effective systems of referrals and 'problem noticing' becomes pivotal.

Pleasence, P., Balmer, N.J., Genn, H., Buck, A. and O'Grady, A. (2003) "The Experience of Clinical Negligence within the General Population," 9(6) *Clinical Risk*, pp.211-217.

This paper explores clinical negligence in the context of uncertainty as to the *potential* volume of clinical negligence claims within the National Health Service (NHS). While many thousands of claims are brought against English NHS hospitals each year, the number of adverse events is much higher. Findings from the 2001 CSJS suggest that across England and Wales around 215,000 adults each year believe themselves to have adversely suffered through negligent or wrong medical or dental treatment. The majority take no subsequent action, although they regret this more often than in respect of the other problem types. Although 'successful' clinical negligence actions typically result in monetary awards, just 3% of respondents reported any monetary objectives.

Pleasence, P., Buck, A., Balmer, N.J., O'Grady, A., Genn, H. and Smith, M. (2004) *Causes of Action: Civil Law and Social Justice*. Norwich: TSO.

Book setting out the broad findings of the 2001 CSJS. Contains extensive analysis of patterns of vulnerability to different types of justiciable problem across the population, with a particular focus on problem clustering. Chapters are also included on problem resolving behaviour (including an analysis of referral fatigue), and objectives and outcomes. A final chapter explores the policy implications of the survey's findings.

Pleasence, P., Buck, A., Smith, M., Balmer, N.J. and Patel, A. (2004) "Needs Assessment and the Community Legal Service in England and Wales," 11(3) *International Journal of the Legal Profession*, pp.213-232.

This paper provides an overview of recent developments in needs assessment in England and Wales and sets out some key findings of the 2001 CSJS to illustrate how the legal aid system in England and Wales might evolve to best meet government objectives.

O'Grady, A., Balmer, N.J., Pleasence, P., Buck, A. and Genn, H. (2004) "Disability, Social Exclusion and the Consequential Experience of Justiciable Problems," 19(3) *Disability and Society*, pp.259-271.

This paper examines the experience of justiciable problems by people with a disability in the context of social exclusion. The paper defines 'disability' and then examines how this fits within the wider dialogue on social exclusion issues. Using data from the 2001 CSJS, the paper finds that disabled respondents were not only more likely to experience a problem, they also experienced more problems. Increased likelihood of a problem was observed in the majority of problem categories and particularly those relating to issues of social exclusion,

such as housing and welfare benefits.

Buck, A., Pleasence, P., Balmer, N.J., O'Grady, A and Genn, H. (2004) "Lone Parents and Civil Law: Their Experience of Problems and Their Advice Seeking Behaviour," 38(3) *Social Policy and Administration*, pp.253-269.

The percentage of dependent children living in lone parent families more than tripled in Britain over the 30 years to 2001. Though there is much diversity within this lone parent population, there are common experiences and characteristics. Lone parent families tend to be headed by women, to be poor, on benefits and experience problems with ill-health and disability. This paper uses 2004 CSJS data, examining lone parenthood in the context of the experience of justiciable problems (problems for which there is a potential legal remedy (Genn, 1999)), drawing upon a large-scale survey of 5,611 people representative of the population of England and Wales. The survey included 223 lone parents, who were likely to be female, to be living in rented accommodation, to be on a low income, to be economically inactive and to be in receipt of benefits. Lone parents were significantly more likely than other family types to have experienced a justiciable problem. Lone parents sought advice for their problems more often than other family types, particularly from solicitors, even after controlling for problems experienced. Lone parents were more likely than other family types to receive legal aid funding. Lastly, lone parents found trying to resolve problems particularly stressful, though they tended to believe that their life had improved as a consequence of doing so.

Pleasence, P., Balmer, N.J., Buck, A., O'Grady, A. and Genn, H. (2004) "Multiple Justiciable Problems: Problem Clusters, Problem Order and Social and Demographic Indicators," 1(2) *Journal of Empirical Legal Studies*, pp.301-330.

Justiciable problems do not always occur in isolation. This in-depth analysis of problem clustering draws on the 2004 CSJS to identify common clusters of problems, their extent and those who experience them.

Pleasence, P., Balmer, N.J., Buck, A., O'Grady, A. and Genn, H. (2004) "Civil Law Problems and Morbidity," 58(7) *Journal of Epidemiology and Community Health*, pp.552-557.

Using 2004 CSJS data, this paper explores the links between justiciable problems and ill-health. It reports significant associations between illness/disability and thirteen of 18 problem types studied. Moreover, experience of greater numbers of problems increased the likelihood of reported illness/disability. In attempting to resolve problems respondents' health also frequently suffered. The paper highlights the contribution that public legal education and legal advice can make to the promotion of public health, and the importance of further integration of health and civil justice initiatives.

Buck, A., Balmer, N.J. and Pleasence, P. (2005) "Social Exclusion and Civil Law, The Experience of Civil Justice Problems Among Vulnerable Groups," 39(3) *Social Policy and Administration*, pp.302-332.

Drawing on 2004 CSJS data, this paper assesses whether socially excluded groups within the general population are more likely to suffer justiciable problems and whether such groups differ in their problem resolution strategies and advice-seeking behaviour. Five vulnerable groups are investigated: survey those with a long-term illness or disability, the young and elderly, those on low incomes and those living in temporary accommodation. The paper identifies how some of these vulnerable groups have a high likelihood of experiencing justiciable problems. The paper also looks at which advisers were typically contacted by vulnerable people seeking advice.

O'Grady, A., Balmer, N.J., Carter, B., Pleasence, P., Buck, A. and Genn, H. (2005) "Institutional Racism and Civil Justice," 28(4) *Ethnic and Racial Studies*, pp.620-638.

This paper investigates the utility of the term 'institutional racism', using a study of the experiences of Black and Minority Ethnic [BME] people within the civil justice 'system' in England and Wales. The study is based on findings from the 2004 CSJS. The article concludes that although disparity of experience between white and BME people does exist in the civil justice system, it is not clear whether, or to what extent, this is the result of racism. It also suggests that a notion of 'institutional racism' is unhelpful in interpreting these results and gives rise to difficulties in identifying relevant sources of social agency. The article argues for an alternative concept of 'institutionalized' racism, applied only when evidence is found of the existence of racist beliefs or practices, as opposed to disparity of experience/outcome.

Pleasence, P. (2006) *Causes of Action: Civil Law and Social Justice*. 2nd edition. Norwich: TSO.

Updated version of the 2004 book, incorporating findings from the 2001 CSJS and 2004 CSJS.

Balmer, N.J., Pleasence, P., Buck, A., Walker, H. (2006) "Worried Sick: The Experience of Debt Problems and their Relationship with Health, Illness and Disability," 5(1) *Social Policy and Administration*, pp.39-51.

This paper uses 2004 CSJS data to examine the social and demographic predictors of debt problems, whether debt problems tend to occur in combination with other problems and which people tend to experience long-rather than short-term debt. Being in receipt of benefits and long-term illness or disability were the strongest predictors of debt, with long-term ill or disabled respondents also being more susceptible to long-term debt. The paper highlights the importance of advice interventions that recognise the link between civil justice problems and health, illness or disability.

Pleasence, P. and Balmer, N.J. (2007) "Mental Health and the Experience of Housing Rights Problems," 2(1) *People, Place and Policy*.

This paper draws on data from first year of the 2006-9 continuous form of the CSJS to explore the extent to which housing justiciable problems and mental illness co-occur, and the causal connections between them. The paper reports significant associations between housing rights problems and mental illness. It also reports that housing rights problems are often reported to lead to stress related illness. It is argued that effective co-ordination of mental health and housing rights advice services is likely to improve both health and justice outcomes.

Kemp, V., Pleasence, P. and Balmer, N.J. (2007) *The Problems of Everyday Life*. London: Centre for Crime and Justice Studies.

This paper explores the nature and degree of connection between social exclusion, criminal victimisation and the experience of civil justice problems.

Age Concern (2007) *Civil and Social Justice Needs in Later Life*. London: Age Concern.

Report setting out findings from the 2004 CSJS as they relate to older people.

Balmer, N.J., Tam, T, and Pleasence, P. (2007) *Young People and Civil Justice*. London: Youth Access.

Report setting out findings from the 2004 CSJS as they relate to young people.

Patel, A., Balmer, N.J. and Pleasence, P. (2008) "Geography of Advice Seeking," 39 *Geoforum*, pp.2084-2096.

Despite limited research on access to advice services, it has long been assumed that access to advice is related to geographic proximity. This paper uses data from the first years of the 2006-9 CSJS to examine the impact of proximity to mainstream advice services on awareness and utilisation of services. In general, proximity of advice services had a relatively modest impact on both awareness and advice seeking. However, proximity did impact upon mode of contact and there was some evidence of change in strategy (particularly more inaction) for isolated individuals without use of motorised transport. The suitability of different modes of advice provision for particular demographic groups are discussed, as well as implications for service delivery.

Pleasence, P., Balmer, N.J. and Buck, A. (2008) "The Health Cost of Civil Law Problems: Further Evidence of Links Between Civil Law Problems and Morbidity and the Consequential Use of Health Services," 5(2) *Journal of Empirical Legal Studies*, pp.351-374

This paper uses data from the first years of the 2006-9 CSJS to examine the links between civil law problems and morbidity. It also details the reported consequent use of health services. Having controlled for a range of other social and demographic predictors, a significant association between age-standardised illness/disability and civil law problems was found; one that increases with illness/disability severity. Adverse health consequences were reported to have followed over one-third of problems, and some problem types in particular. This led to significant use of health services.

Buck, A., Pleasence, P. and Balmer, N.J. (2008) "Do Citizens Know How to Deal with Legal Issues?" 37(4) *Journal of Social Policy*, pp.661-681.

Drawing on data from the first years of the 2006-9 CSJS, this paper explores whether there is a lack of awareness and confidence among citizens in England and Wales in regard to legal issues. The results illustrate the case for targeted as well as general public legal education initiatives.

Pleasence, P. and Balmer, N.J. (2008) "Understanding Advice Seeking Behaviour: Findings from New Zealand and England and Wales," in Huang, K.C. (ed.) *Empirical Studies in Judicial Systems*. Taipei: Academia Sinica.

This paper draw on data from the 2006-9 CSJS and the 2006 New Zealand Survey on Unmet Legal Needs and Access to Services to explore the factors that play a role in people's advice seeking behaviour. The paper confirms that problem type is the most influential factor guiding advice seeking behaviour. It also finds that that young people are less likely than others to obtain advice (particularly non-legal advice) and that income and ethnicity are linked to use of lawyers. Using the CSJS data the paper finds that prior personal and household advice seeking behaviour influence later advice seeking, with strategies becoming entrenched over time. It is observed that problems for which people obtain legal services are those in which there is a large legal advice market.

Pleasence, P., Balmer, N.J. and Tam, T. (2009) "Failure to Recall: Indications from the CSJS of the Relative Severity and Incidence of Civil Justice Problems," in Sandefur, R. (ed.) *Access to Justice*. Bingley: Emerald (*Sociology of Crime Law and Deviance* series)

Using data from the 2006-9 CSJS, this paper takes a different approach to exploring the severity of justiciable problems. It explores how a seeming 'defect' of the survey, failure of autobiographical memory, may shed some of the clearest light on not just the issue of problem severity, but also problem incidence.

Miles, J., Pleasence, P. and Balmer, N.J. (2009) "The Experience of Relationship Breakdown and Civil Law Problems by People in Different Forms of Relationship," 47(1) *Child and Family Law Quarterly*, pp.47-64.

This paper used using data from the 2006-9 CSJS to compare the characteristics of spouses and cohabitants, and examines how relationship type influences the experience of justiciable problems generally and problems associated with relationship breakdown in particular. Socio-economic differences between married and cohabiting respondents were found to be largely a function of age. Little difference in stability of relationships was evident from these data once age, in particular, was accounted for. The presence of children tended to increase the stability of relationships regardless of form. Cohabitants, particularly those with children, were more likely to report family-related problems, though there was evidence that many of these problems concerned earlier relationships. Problems associated with relationship breakdown routinely resulted in adverse consequences, such as ill-health, loss of income, loss of a home or domestic violence. Adverse consequences were especially common for those without resident children, particularly stress-related ill-health; but lone parents experienced more adverse consequences than parents with care who had re-partnered. The findings prompt discussion about various issues, including the relationship between marriage and family success.

Pleasence, P. and Balmer, N.J. (2009) "Job Loss, Divorce and Family Disputes," in 39 *Family Law*, pp.502-505.

This paper sets out initial findings from the 2006-9 CSJS. The paper confirms that job loss is associated with a substantial increase in divorce and disputes ancillary to relationship breakdown. However, paths of causation are unclear, and the paper is unable to confirm to what extent the recession will impact on family stability.

Pleasence, P. and Balmer, N.J. (2009) "Mental Health and the Experience of Social Problems Involving Rights: Findings from the United Kingdom and New Zealand," in 16(1) *Psychiatry, Psychology and Law*, pp.123-140.

As with general morbidity, psychiatric morbidity has been linked to an array of social problems, with interest in links heightened by the noted vulnerability of those with mental illness and the cost of mental illness to the economy. Legal rights have a bearing upon many social problems. This paper, based on data drawn from 2,628 respondents to the English and Welsh CSJS and 7,200 respondents to the 2006 New Zealand Survey of Unmet Legal Needs and Access to Services, examines links between rights problems and mental illness. It reports that there are significant associations between rights problems, in general and in the majority of types studied, and mental illness; both when experienced in isolation and in combination with physical illness. All problems were also reported to have led, on occasion, to stress related illness. Illness was less often reported as being the main cause of problems. It is argued that effective co-ordination of mental health and legal services is likely to improve both health and justice outcomes.

Pleasence, P., Balmer, N.J., Patel, A. and Denvir, C. (2010) *Civil Justice in England and Wales 2009: Report of the 2006-9 English and Welsh Civil and Social Justice Survey*. London: Legal Services Commission.

Report setting out overview findings from the 2006-9 CSJS, including chapters on the incidence of justiciable problems, the impact of problems, problem resolution strategies, the use of advisers, the outcome of problems, attitudes to the justice system and the experience of those eligible for legal aid.

Pleasence, P. and Balmer, N.J., (2010) "The Audacity of Justice: Recession, Redundancy, Rights and Legal Aid," in 9(4) *Social Policy and Society*, pp.475-488.

This paper argues that economic recession presents a double challenge to legal aid. Unemployment extends legal aid eligibility. It is also associated with

increased vulnerability to justiciable problems, feeding demand for legal services. Job loss, as distinct from unemployment, might be expected to increase vulnerability further still. The paper uses data from the 2006-9 CSJS to explore the relationship between job loss and the experience of justiciable problems. The likely scale of the recession's impact on the incidence of justiciable problems and demand for legal (and legal aid) services is set out.

Balmer, N.J., Buck, A., Patel, A., Denvir, C. and Pleasence, P. (2010) *Knowledge, Capability and the Experience of Rights Problems*. London: PLENET.

This report uses data from the 2006-9 CSJS to look at how people deal with justiciable problems and to assess the impact of a lack of legal capability.

Balmer, N.J., Pleasence, P. and Buck A. (2010) "Psychiatric Morbidity and the Experience of Problems Involving Rights," in 18(6) *Health and Social Care in the Community*, pp.588-597.

Drawing on data from the 2006-9 CSJS, this paper explores the relationship between psychiatric morbidity (using GHQ-12) and justiciable problems, and discusses the implications for the delivery of health and legal services. The paper reports that the prevalence of rights problems increased with psychiatric morbidity, as did the experience of multiple problems. It was also found that the likelihood of inaction in the face of problems increased with psychiatric morbidity, while the likelihood of choosing to resolve problems without help decreased. Where advice was obtained, psychiatric morbidity was associated with a greater tendency to obtain a combination of 'legal' and 'general' support, rather than 'legal' advice alone. The results suggest that integrated and 'outreach' services are of particular importance to the effective support of those facing mental illness.

Pleasence, P., Balmer, N.J., Patel, A., Cleary, A., Huskinson, T. and Cotton, T. (2011) *Civil Justice in England and Wales 2010: Report of the First Wave of the English and Welsh Civil and Social Justice Panel Survey*. London: Legal Services Commission.

Report setting out overview findings from the 2010 CSJPS, including chapters on the incidence of justiciable problems, the impact of problems, problem resolution strategies, the use of advisers, the outcome of problems, attitudes to the justice system and the experience of those eligible for legal aid. A full technical report is included as an appendix.

Denvir, C., Balmer, N.J. and Pleasence, P. (2011) "Surfing the web - recreation or resource? Exploring how young people in the UK use the Internet as an advice portal for problems with a legal dimension," 23(1) *Interacting with Computers*, pp.96-104.

Internet use and access in the UK has increased rapidly in the first 10 years of the 21st Century, with the concept of 'information superhighway' recognised as an axiom of Internet technology. With an increasing impetus in the public sector towards the provision of online delivery mechanisms for civic orientated activities, including advice provision, it is timely to better understand the appropriateness of online advice-seeking. Focusing on young people aged between 18-24 years, this paper uses data from the 2006-9 CSJS to explore how much the Internet was used to obtain information about justiciable problems, who used it, how it was used and how successful respondents were in searching for information online. Results revealed significant growth in the use of the Internet to obtain information about such problems, rising from 4% in 2001 to around 18% in 2008. The responses of the 18-24 year olds to the survey illustrated that despite having comparatively high levels of Internet access, this

age group utilised it to a lesser degree than similarly 'connected' age cohorts, and were less successful when doing so.

Pleasence, P. and Balmer, N.J. (2011) *On the Rocks: Recession-related Life Problems and Relationship Stability*, 24(1) *Child and Family Law Quarterly*, pp.39-59.

Using data from the 2010 CSJPS this paper explores the relationship between recession-related 'justiciable' life problems and relationship stability. Around 4% of such problems were reported to have brought about a family break-up. Often this was also accompanied by other life problems, such as stress-related illness. The risk of families breaking up was also observed to increase following the experience of recession-related problems, with the risk remaining high for a number of years. The findings point to the role of legal services in mitigating the impact of recession-related justiciable problems, as well as the family problems that can ensue. Of concern, those most likely to report a relationship breakdown as a consequence of a recession-related problem included those on low incomes. With another consequence of the economic downturn being a contraction of the legal aid scheme, this poses a real challenge to people's ability to access justice.

Pleasence, P. and Balmer, N.J. (2012) "Caught in the Middle: Justiciable Problems and the Use of Lawyers," in Trebilcock, M., Duggan, A. and Sossin, L. (eds.) *Middle Income Access to Justice*. Toronto: University of Toronto Press.

Paper exploring the incidence of justiciable problems and strategies used to resolve them by people in different incomes. The paper points to a legal aid effect, whereby those eligible for legal aid are more likely to access lawyers than those above the legal aid threshold, with lawyer use then increasing by income.

Pleasence, P. and Balmer, N.J. (2012) "Ignorance in Bliss: Modelling Knowledge of Rights in Marriage and Cohabitation," 46(2) *Law and Society Review*, pp.297-333.

In the context of opposite-sex cohabitation and marriage law, the paper explores, in detail, how many and which people are ignorant of the law, and what are the nature and origins of erroneous beliefs. It finds that people's beliefs about both cohabitation and marriage law are frequently wrong. They are also strikingly similar, and reflect the divergence of social attitudes from the law. It is argued that social attitudes and the intransigence of erroneous beliefs generally present significant challenges to public legal education initiatives.

Balmer, N.J. (2013) *Civil Justice in England and Wales: Report of Wave 2 of the English and Welsh Civil and Social Justice Panel Survey*. London: Legal Services Commission.

Report setting out overview findings from the 2012 CSJPS, including chapters on the incidence of justiciable problems, the impact of problems, problem resolution strategies, the use of advisers, the outcome of problems, attitudes to the justice system and the experience of those eligible for legal aid.

Hong Kong

Asia Consulting Group and Policy 21 (2008) *Consultancy Study on the Demand for and Supply of Legal and Related Services*, Hong Kong: Department of Justice.

Report including basic findings from the 2006 Hong Kong household survey. Details provided on the survey methodology, profile of respondents, the nature of problems faced, problem resolutions strategies and views on access to justice. Distinction between unimportant problems, important problems with action taken and important problems with no action taken.

Japan

Murayama, M. (2007) "Experiences of Problems and Disputing Behaviour in Japan," in 14 Meiji Law Journal, pp.1-59.

Paper setting out an overview of the results of the 2005 Japanese survey, including rates of problem experience, contact between parties, use and helpfulness of lawyers and costs. Grounded in the concept of the dispute pyramid.

Murayama, M. (2008) "Japanese Disputing Behavior Reconsidered," in Huang, K.C. (ed.) *Empirical Studies in Judicial Systems*. Taipei: Academia Sinica.

Drawing on the 2005 Japanese survey, this paper presents a basic structure of the Japanese disputing process. Problem types are a decisive factor in shaping the structure of the disputing process. Grounded in the concept of the dispute pyramid. The limited number of lawyers in Japan does not give a wide range of opportunities for getting advice, and the limited contact with lawyers restricts the use of court procedures.

Murayama, M. (2009) "Expanding Access to Lawyers: The Role of Legal Advice Centres," in Sandefur, R.L. (ed.) *Access to Justice*, Bingley: Emerald.

Paper setting out findings from the 2005 Japanese survey, centred on use of lawyers. The Use of a lawyer for legal services is not affected by income or a general knowledge of the law, but by the past experience of using a lawyer and personal connections with a legal professional. Both lawyers and people have anxieties about each other. Thus, a lawyer wants to accept a client who is introduced by someone that the lawyer knows personally. People who seek legal advice also worry about the cost and unapproachability of lawyers. Direct or indirect personal connections help to reduce such anxieties. This traditional pattern of legal access is found among visitors at law offices. However, visitors at legal advice centres do not have such experience or connections. Legal advice centres, rather than law offices, could expand access to lawyers more effectively.

Sato, I., Takahashi, H., Kanomata, N. and Kashimura, S. (2007) *Citizens' Access to Legal Advice in Contemporary Japan: Lumpers, Self-Helpers, and Third-Party Advice Seekers*. Paper presented at the Joint Annual Meeting of the Law and Society Association and the Research Committee on the Sociology of Law, Humboldt University, Berlin, 26 July 2007.

Overview of findings from the 2006 Japanese survey, setting out the design, rates of problem experience and strategies in a 'naming, blaming, claiming' framework. Detailed univariate analysis of association between strategy (lumping, handling alone, advice seeking) by problem and respondent characteristics, along with examination of type of adviser by problem type and barriers to advice.

The Netherlands

Velthoven, B.C.J. & Voert, M.J. ter. (2004). *Geschilbeslechtigingsdelta 2003*. Den Haag: WODC, O&B 219.

Velthoven, B.C.J., Voert, M. ter. (2004). "Rechters in de delta: over de rol van de rechtspraak in de beslechting van geschillen van Nederlandse burgers," *Rechtstreeks*, 2004, nr. 4, pp. 7-47.

Velthoven, B.C.J., Voert, M. ter. (2004) *Paths to Justice in the Netherlands. Looking for signs of social exclusion*. Leiden University, Department of Economics Research Memorandum 2004.04

Main report of the Dutch 2004 *Paths to Justice in the Netherlands* survey. Findings are presented on the incidence of problems, problem resolution

- strategies, problem outcomes and the public's perceptions of the legal system. Incidence findings placed in context of rational choice theory.
- Velthoven, B.C.J. en Voert, M. ter. (2008) *Paths to Justice in the Netherlands*. In: *Legal Aid in the Global Era*. International Legal Aid Group 2005. Glasgow, University of Strathclyde, pp. 231-254.
As Leiden University Research Memorandum.
- Krop, B, Velthoven, B. van, & ter Voert, M. ter. (2006). Over meten en samenloop van juridische problemen in de delta. *Recht der Werkelijkheid*, nr. 1, p. 19-46.
- Velthoven, B.C.J. & Klein Haarhuis, C. M. (2010). *Geschilbeslechtingdelta 2009*. Den Haag: WODC, O&B 283.
- Velthoven, B.C.J. & Klein Haarhuis, C. M. (2011) "Legal Aid and Legal Expenses Insurance, Complements or Substitutes? The Case of the Netherlands," 8(3) *Journal of Empirical Legal Studies*, pp.587–612.
Based on data from the second wave of the Dutch Paths to Justice Survey held in 2009, an empirical study of the interrelationship between legal aid and legal expenses insurance (LEI) in the Netherlands, with a focus on whether LEI can be a substitute for legal aid. The distribution of LEI policies is investigated, along with how the incidence of justiciable problems interrelates with the possession of LEI, and how LEI affects problem resolution strategies. People holding an LEI policy have on average 11 percent more justiciable problems than the noninsured. For high-income citizens, but not for low-income citizens, LEI lowers the threshold for obtaining legal assistance. For low income citizens LEI reduces the use of lawyer contacts outside of LEI staff. LEI lowers the threshold for starting court process. LEI outcomes better than legal aid outcomes for low income citizens. It is concluded that a shift from legal aid to LEI would increase problem incidence (moral hazard), shift advice from lawyers to LEI staff, increase court proceedings, and improve settlement rates.

New Zealand

- Maxwell, G.M., Smith, C., Shepherd, P.J. and Morris, A. (1999) *Meeting Legal Service Needs*. Wellington: Victoria University of Wellington.
Report of the 1997 New Zealand survey. Comprised of two sections. The first part sets out a framework for the research, both in terms of purpose and key concepts. The first section has sections on defining legal services and legal services needs, barriers to services, the needs of vulnerable groups, the rationale for the scope of the survey (in terms of problem types), and legal service innovations. The second part sets out the full range of survey findings, along with a comprehensive account of the methods used and the survey questionnaire.
- Ignite Research (2006) *Report on the 2006 National Survey of Unmet Legal Needs and Access to Services*.
Basic overview report of the findings from the 2006 National Survey of Unmet Legal Needs and Access to Services, including technical details.
- Pleasence, P. and Balmer, N.J. (2008) "Understanding Advice Seeking Behaviour: Findings from New Zealand and England and Wales," in Huang, K.C. (ed.) *Empirical Studies in Judicial Systems*. Taipei: Academia Sinica.
Details above in England and Wales section.
- Pleasence, P. and Balmer, N.J. (2009) "Mental Health and the Experience of Social Problems Involving Rights: Findings from the United Kingdom and New Zealand," in 16(1) *Psychiatry, Psychology and Law*, pp.123-140.
Details above in England and Wales section.

Northern Ireland

Dignan, T. (2006) *Northern Ireland Legal Needs Survey*. Belfast: Northern Ireland Legal Services Commission.

Full report of the 2005 Northern Ireland survey. The report has sections on the incidence, number and type of problems faced by respondents, the socio-economic profile of those respondents who had faced problems, responses to problems, and problem resolutions and outcomes. Report includes a separate statistical annex, setting out details of the statistical analyses undertaken.

Scotland

Genn, H. and Paterson, P. (2001) *Paths to Justice Scotland: What People in Scotland Do and Think About Going to Law*. Oxford: Hart.

Full report of the Scottish *Paths to Justice* study, with text mirroring that of the English study report (see above). Also contains the survey technical report and questionnaire, along with the outputs of multivariate analyses.

Slovakia

GfK Slovakia (2004) *Legal Needs in Slovakia II*. Bratislava: GfK Slovakia.

Final report of the 2004 Slovakian survey, presented by problem type. The report details incidence and response to problems. The problems included are: employment, property purchase, renting out property or land, renting an accommodation for living, purchase of goods and services, money, making business, family relations/inheritance, government and social services, health and injury, and others.

Taiwan

Chen, K.P., Huang, K.C. and Lin, C.C. (2012) *The Research Design and Methodology of the 2011 Civil Justice Survey in Taiwan*. Paper presented at the 2012 Law and Society Annual Conference, 8th July 2012.

Paper introducing the research design and methodology of the 2012 Taiwanese survey. The basic approach, following Genn's *Paths to Justice*, the English and Welsh Civil and Social Justice Survey and the 2005 Japanese survey, is set out, along with sampling design and methods. Details are provided of novel aspects of the survey, including further development of questions around legal consciousness (attitudes towards the legal system/judicial system, law abiding propensity, experience of litigation and experience of lawyers). Results of analysis around importance of problem resolution, amount at stake and seriousness index variables.

Chen, K.P., Huang, K.C., Huang, Y.L., Lai, H.P and Lin, C.C. (2012) *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Taiwanese*. Paper presented at the 2012 Law and Society Annual Conference, 8th July 2012.

Details of incidence and associations with respondent characteristics. The most common problem types were neighbour, consumer and employment. Overall, the most likely respondents to report problems were well-educated younger males with an aggressive personality type living downtown. Findings on problem seriousness also presented. Consumer problems found to be least serious/important to resolve. Family and employment problems were among the most serious/important to resolve.

Chen, K.P., Huang, K.C., Huang, Y.L., Lai, H.P and Lin, C.C. (2012) *Exploring Advice Seeking Behaviour: Findings from the 2011 Taiwan Survey of Justiciable Problems*. Paper presented at the 2012 Law and Society Annual Conference, 8th July 2012.

This paper discusses the general patterns of advice-seeking behaviour of Taiwanese citizens confronted with justiciable problems. The types of advice providers used for different categories of problems are investigated, and typical paths of advice seeking for specific problem categories are identified. The determinants of advice-seeking behaviour are then explored. The findings indicate that dispute resolution behaviour depends on demographic characteristics, problem type, and the gravity of problems. More specifically, there is a higher likelihood to seek advice from an expert person/organization when the monetary amount of damage is larger or the seriousness score is higher. Finally, the paper investigates how outcomes change with resolution strategies, demographic, socio-economic background of respondents, and problem types. Regression results show that (1) advice-seekers are more likely to reach agreement or to resolve problems through litigation and (2) outcomes are significantly related to the problem types. However, 35.19% of “the latest problems” are not settled yet. “Long-run” problems, such as family, neighbour, and loan/credit, are less likely to be settled.

Chen, K.P., Huang, K.C., Huang, Y.L., Lai, H.P and Lin, C.C. (2012) *Legal Consciousness and Public Attitudes Towards Judicial System: Case of Taiwan*. Paper presented at the 2012 Law and Society Annual Conference, 8th July 2012.

This paper explores aspects of legal consciousness within the 2011 Taiwan survey. These include: perceptions of the purpose of laws; attitudes and responses to legal scenarios; attitudes to the legal system; legal knowledge.

United States

American Bar Association (1994) *Legal Needs and Civil Justice: A Survey of Americans. Major Findings from the Comprehensive Legal Needs Study*. Chicago: ABA.

Summary of main findings of the Comprehensive Legal Needs Study.

Cantril, A.H. (1996) *Agenda for Access: The American People and Civil Justice. Final Report on the Implications of the Comprehensive Legal Needs Study*. Chicago: ABA.

Sets out major findings: most people faced with situations with a legal dimension do not turn to the civil justice system for help; substantial proportions of low- and moderate-income people may need additional help to resolve problems; the problems of low- and moderate-income households are more alike than different; especially disadvantaged are those with incomes just above or below the eligibility threshold for public legal services; the bar only serve a small proportion of legal needs. Then sets out eleven steps that would make the civil justice system more responsive: increase flexibility of the civil justice system; better information on options when facing legal situations; increase attraction of personal services law within profession; increase pro bono services; increase availability of affordable legal services for less affluent moderate-income people; affirm crucial role of legal aid; encourage flexibility among legal aid services in selecting cases; expand the tracking and dissemination of information about innovations in service delivery; evaluate programmes that may be strong candidates for adoption by others; draw on the experience with the Comprehensive Legal Needs Study to improve the methodology of legal needs

surveys and identify important topics for further study; take concrete steps to implement this agenda.

Eldred, C.A. and Reese, R.W. (1994) *Legal Needs Among Low-Income Households: Findings from the Comprehensive Legal Needs Study*, Chicago: ABA.

Full report of the low-income respondent findings of the Comprehensive Legal Needs Study. Patterns of problem incidence/prevalence are set out (including associations with household characteristics. Responses to problems are primarily concerned with use of the legal/judicial system, with the categorisation of responses making comparison with later survey findings difficult. Included in full study report.

Eldred, C.A. and Reese, R.W. (1994) *Legal Needs Among Moderate-Income Households: Findings from the Comprehensive Legal Needs Study*, Chicago: ABA

Full report of the moderate-income respondent findings of the Comprehensive Legal Needs Study. The report structure as for low-income respondents. Included in full study report.

Appendix 4: Research Instruments

Stakeholder Interview Topic Guide

1. Current work and past career
 - a. Could you tell me about your work here at X? What is your role? What do you do?
 - b. What kinds of work did you do before coming here? Have you had other positions in the access to justice sector? In other kinds of NGOs? In service delivery? In government or civil service?
2. Understanding and evaluation of evidence-based policy-making
 - a. In the United States, people sometimes talk about “evidence-based policy.” Is there something like that here?
 - b. What does it mean here? How is it different from other ways of making policy that people pursue here?
3. Use of empirical research in current work
 - a. Do you use any kind of empirical research in your work?
 - b. What kinds? Where from? For what purposes?
 - c. What about your colleagues?
 - d. Has your use of empirical findings changed over time?
4. Familiarity with Paths to Justice stream of research
 - a. Have you heard of the Paths to Justice surveys? How about the England and Wales Civil and Social Justice Surveys?
 - b. What do these surveys do? What do you know about them?
 - c. Do you know of anybody who works with you who uses these surveys or their findings in their work?
5. Use of Paths to Justice stream of research
 - a. Have you used anything from Paths to Justice or the EWCSJS in your work?
 - b. If yes, what? How?
 - c. Has P2J/EWCSJS shaped or changed thinking? How? Specific example?
 - d. Thinking over your time in access to justice work, can you think of a policy decision that was explicitly informed by P2J/EWCSJS?
 - e. Thinking over you time in access to justice work, can you think of a policy decision that seemed to go against what would be recommended by the findings of P2J/EWCSJS or other empirical research?
6. Evaluation of P2J stream of research
 - a. Do you think these studies have made any contributions? What contributions do you think these studies have made?

- b. Is there something you wished EWCSJS/P2J had done or produced that you would have found useful?
- c. What are your research needs going forward? What are the research gaps you see?

Online Survey of Governmental Policy Stakeholders

Thank you for participating in this international survey.

Its purpose is to explore the use and utility of nationally representative legal need surveys conducted since the 'Paths to Justice' survey in England and Wales.

By 'legal need survey', we mean large-scale surveys of the general population designed to explore people's experience of and response to a range of civil legal problems. Examples of such surveys which you may be familiar with, will be presented as part of this questionnaire.

Your views are important, whether or not you are familiar with such surveys and whether or not you have made reference to them in your work.

You have been selected since you work in a jurisdiction in which legal need surveys have been conducted, or in a field in which such surveys may be of relevance.

The survey should take no more than 15 minutes to complete, and provides opportunity for elaborating on your views about the surveys and related research.

*Pascoe Pleasence and Nigel Balmer
Faculty of Laws, University College London*

Q1: What is the name of the organisation you work for?

OPEN TEXT BOX

Q2: What type of organisation is it?

MULTICODE

Federal/national Government department

Federal/national legal aid administration

State/provincial government department

State/provincial legal aid administration

Research organisation

Legal services organisation

Other (please specify)

If you have chosen "other", please specify:

Q3: Where is your organisation based?

SINGLE CODE

Australia

Canada

Netherlands

New Zealand
England and Wales
Scotland
Northern Ireland
Hong Kong

Q4: How would you best describe your role?

SINGLE CODE

Organisational head
Policy maker
Project/operations manager
Lawyer/advisor
Researcher
Other (please specify)

If you have chosen "other", please specify:

Q5: What is the focus of your role (area of work)?

MULTICODE

Legal aid (all)
Legal aid (criminal)
Legal aid (non-criminal)
Access to justice
Legal/advice services (all)
Legal/advice services (criminal)
Legal/advice services (non-criminal)
Non-legal public service
Civil justice system
Criminal justice system
Other (please specify)

If you have chosen "other", please specify:

Q6: How long have you been working in the Access to Justice field (years)?

NUMERIC

Q7: Legal need surveys have been conducted across the world in recent years, with the main studies set out in the table below.

Please indicate which surveys you have personally used in your work and which are more generally used in you field.

MULTICODE (OPTIONS FOR PERSONAL USE AND USE IN FIELD)

| Country | Survey | Year | Used (personally) | Used (in your field) |
|------------------|---|--------------------|-------------------|----------------------|
| Australia | Australian Survey of Legal Needs | 2008 | | |
| Bulgaria | Access to Justice and Legal Needs Bulgaria | 2007 | | |
| Canada | National Survey of Civil Justice Problems | 2004, 2006, 2008 | | |
| England & Wales | Paths to Justice | 1997 | | |
| England & Wales | Civil and Social Justice Survey | 2001, 2004, 2006-9 | | |
| England & Wales | Civil and Social Justice Panel Survey | 2010 | | |
| Hong Kong | Demand and Supply of Legal and Related Services | 2006 | | |
| Japan | National Survey of Everyday Life and the Law | 2005 | | |
| Japan | Access to Legal Advice: National Survey | 2006 | | |
| Japan | Everyday Life and Law | 2007 | | |
| Netherlands | Paths to Justice in the Netherlands | 2003, 2009 | | |
| New Zealand | Unmet Legal Needs and Access to Services | 2006 | | |
| Northern Ireland | Northern Ireland Legal Needs Survey | 2005 | | |
| Scotland | Paths to Justice Scotland | 1998 | | |
| Slovakia | Legal Needs in Slovakia | 2004 | | |
| Taiwan | Legal Needs in Taiwan | 2011 | | |

Q8: How familiar are you with the findings of any of the legal need surveys?

SINGLE CODE

- Very familiar
- Quite familiar
- Not very familiar
- Not at all familiar

Q9: How much use have you made of the findings of one or more of the legal need surveys?

SINGLE CODE

- A great deal

Quite a lot
Not very much
None at all

Q10: How important are findings from legal need surveys to your work?

SINGLE CODE

Very important
Quite important
Not very important
Not at all important

Q11: In general, how important do you think it is that legal need surveys are conducted regularly?

SINGLE CODE

Very important
Quite important
Not very important
Not at all important

Q12: Can you briefly set out how you, personally, have used findings from legal need surveys?

OPEN TEXT BOX

Q13: And can you set out how your organisation as a whole uses findings from legal need surveys?

OPEN TEXT BOX

Q14: Can you think of a policy/operational development that legal need survey findings have influenced?

(For example, in design of advice services or in informing allocation of funding for legal services)

SINGLE CODE

Yes
No

Note: if you have NOT answered/chosen item [1] in question 14, skip the following question

Q15: What policy/operational development have legal need survey findings influenced?

OPEN TEXT BOX

Note: if you have NOT answered/chosen item [1] in question 14, skip the following question

Q16: Do you feel that this policy/operational development would have been the same without findings from legal needs surveys?

SINGLE CODE

Definitely

Probably
Probably not
Definitely not
Unsure

Note: if you have NOT answered/chosen item [1] in question 14, skip the following question

Q17: Do you agree with how the legal need survey findings were used?

SINGLE CODE

Definitely
Probably
Probably not
Definitely not
Unsure

Note: if you have NOT answered/chosen item [1] in question 14, skip the following question

Q18: And has there been any controversy about the way the legal need survey findings have been used in this case?

SINGLE CODE

Yes
No
Unsure

Note: if you have NOT answered/chosen item [1] in question 14, skip the following question

Q19: Can you think of another policy/operational development that legal need survey findings have influenced?

SINGLE CODE

Yes
No

Note: if you have NOT answered/chosen item [1] in question 19, skip the following question

Q20: What other policy/operational development have legal need survey findings influenced?

OPEN TEXT BOX

Note: if you have NOT answered/chosen item [1] in question 19, skip the following question

Q21: Do you feel that this policy/operational development would have been the same without findings from legal needs surveys?

SINGLE CODE

Definitely

Probably
Probably not
Definitely not
Unsure

Note: if you have NOT answered/chosen item [1] in question 19, skip the following question

Q22: Do you agree with how the legal need survey findings were used?

SINGLE CODE

Definitely
Probably
Probably not
Definitely not
Unsure

Note: if you have NOT answered/chosen item [1] in question 19, skip the following question

Q23: And has there been any controversy about the way the legal need survey findings have been used in this case?

SINGLE CODE

Yes
No
Unsure

Note: if you have NOT answered/chosen item [1] in question 19, skip the following question

Q24: Finally, can you think of a third policy/operational development that legal need survey findings have influenced?

SINGLE CODE

Yes
No

Note: if you have NOT answered/chosen item [1] in question 24, skip the following question

Q25: What final policy/operational development have legal need survey findings influenced?

OPEN TEXT BOX

Note: if you have NOT answered/chosen item [1] in question 24, skip the following question

Q26: Do you feel that this policy/operational development would have been the same without findings from legal needs surveys?

SINGLE CODE

Definitely
Probably

Probably not
Definitely not
Unsure

Note: if you have NOT answered/chosen item [1] in question 24, skip the following question

Q27: Do you agree with how the legal need survey findings were used?

SINGLE CODE

Definitely
Probably
Probably not
Definitely not
Unsure

Note: if you have NOT answered/chosen item [1] in question 24, skip the following question

Q28: And has there been any controversy about the way the legal need survey findings have been used in this case?

SINGLE CODE

Yes
No
Unsure

Q29: From your perspective, what are the (up to) three most important findings from legal need surveys? (If there are none, please write "none")

THREE OPEN TEXT BOXES

Q30: What are the (up to) three most important unanswered questions that a legal need survey might answer? (If there are none, please write "none")

THREE OPEN TEXT BOXES

Q31: Do you feel there are any limitations of legal need surveys? If so, please describe them

OPEN TEXT BOX

Q32: Do you feel that legal need surveys continue to provide useful information for policy or should other methods/approaches be tried?

SINGLE CODE

Continue to provide useful information
Other methods/approaches should be used
Unsure

Q33: What other methods/approaches could be used?

OPEN TEXT BOX

Q34: And can you think of any ways in which legal need surveys could be amended to improve their relevance and increase their use?

OPEN TEXT BOX

Q35: Within your jurisdiction, how common is it for people to make use of findings from legal need surveys in each of these sectors?

SINGLE CODE PER ROW

| Area | Very common | Quite common | Occasional use | Never used | Unsure | Not applicable |
|--|-------------|--------------|----------------|------------|--------|----------------|
| National/federal legal aid administrator | | | | | | |
| State/provincial legal aid administrator National/federal government justice department | | | | | | |
| State/provincial government justice department | | | | | | |
| Bar association/ Law society | | | | | | |
| Other legal services representative groups | | | | | | |
| Legal services regulator | | | | | | |
| Other stakeholders | | | | | | |

Q36: Were a further legal need survey to be proposed in your jurisdiction in the near future, would you;

SINGLE CODE

Want it to be funded

Want the budget to be used for other research

Want the budget to be used for other purposes

Unsure

Thank you for you participation.

Should you have any questions about the survey, please contact Pascoe Pleasence (p.pleasence@ucl.ac.uk) or Nigel Balmer (nigel.balmer@ucl.ac.uk)