

NOT TO BE CITED

Needs Assessment and Community Legal Services in England and Wales

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Overview of Paper

This paper provides an overview of recent developments in needs assessment in England and Wales. It describes the origins of the Legal Services Commission, the Community Legal Service and Community Legal Service Partnerships, and how changes to the civil legal aid system in England and Wales reflect a new emphasis on targeting legal aid funds on the basis of 'need'. It argues that effective targeting within a context of limited resources requires proper knowledge of populations vulnerable to the experience of 'justiciable' problems, the impact of problems, the strategies that are used to deal with problems, and the effectiveness of different strategies. It describes the methods that are being used by the Legal Services Commission to assess 'need' and sets out some key findings of the first LSRC Periodic Survey of Justiciable Problems, which illustrate how the legal aid system in England and Wales might evolve to best meet government objectives.

The Community Legal Service

Origins of the Community Legal Service

The 1998 White Paper 'Modernising Justice'¹ spoke of a new Community Legal Service (CLS) being the 'cornerstone of the Government's pledge to protect everyone's basic rights' (Lord Chancellor's Department, 1998). It spoke of the CLS being focused on the issues that affect the everyday lives of the disadvantaged and socially excluded, and, as part of the service, how legal aid spending would be targeted towards these groups. The CLS would be a part of the broad government programme to tackle social exclusion and build an inclusive society². Following on from the White Paper, the Access to Justice Act 1999 established a Legal Services Commission for England and Wales (LSC), and gave it responsibility for establishing and developing a Community Legal Service (CLS) and Criminal Defence Service (CDS).

The LSC, which came into being in April 2000, has taken over the administrative functions of the Legal Aid Board (LAB) and Lord Chancellor's Department (LCD) in

¹ Lord Chancellor's Department (1998) *Modernising Justice*, London: HMSO (Cmd. 4155)

² Buck A, Pleasence P, Balmer NJ, O'Grady A, Genn H (2003) *The Experience of Justiciable Problems: Implications for the Social Exclusion Agenda*, forthcoming; Stein J (2001) *The Future of Social Justice in Britain: A New Mission for the Community Legal Service*, London: Centre for the Analysis of Social Exclusion, London School of Economics

respect of both civil and criminal legal aid, and these are now performed in the context of the CLS and CDS. The LSC has also taken on a range of additional functions; an educational function, a strategic function, a service provision function, and a developing regulatory function. All the LSC's functions are performed 'within the resources made available and priorities set'³ by the Lord Chancellor, and together they comprise the core functions of the CLS and CDS.

As well as having different and broader functions than the LAB, the LSC operates in a different political world to the LAB. Legal aid expenditure is under increasing pressure and the role of legal aid is continuing to shift from the deontological (concerned with equality of access to law) to the teleological (concerned with the benefits of accessing legal services and processes)⁴. Thus, the LSC forms a crucial part of the British Government's plans to 'modernise justice' through facilitating access to justice by securing better *value for money* in the delivery of legal services. As the Chairman of the LSC recently observed,

"[The continuing] changes reflect our continuing change from an organisation that processed applications and bills to one which is at the forefront of the plan to extend public awareness of rights and to put in place integrated, quality assured services based on identified priorities and local *needs*"⁵.

The Community Legal Service in Practice

The strategic development of the CLS is the responsibility of the LSC. However, the CLS extends well beyond the operations of the LSC. In doing so, the CLS operates as an inclusive network of an increasingly broad range of legal (and metalegal) services that are administered by a wide range of organisations (e.g. local government, charities, health authorities, etc.) and receive funds from a wide range of sources, including the CLS Fund (administered by the LSC, and equivalent to the old civil legal aid fund).

The principle of access to CLS services is of rapid and easy access to initial information and advice, with clear routes to specialist help for those people requiring it. The aim of the CLS is to promote improvements to the range and quality of services provided by it, and in the ways in which they are made accessible to those who need them (e.g. through the use of technology, as in the case of the CLS web-advice service – www.justask.org.uk). All services work to the standards of the CLS Quality Mark (QM), which aims to guarantee levels of competence and client care among legal and advice providers.

The key feature of the CLS is a network of Community Legal Service Partnerships (CLSPs)⁶. These constitute local networks of 'quality assured' providers of legal

³ Access to Justice Act 1999, Section 4(1)

⁴ See, further, Goriely T and Paterson A (1996) Introduction: Resourcing Civil Justice, in Paterson A and Goriely T (eds.) *A Reader on Resourcing Civil Justice*, Oxford: Oxford University Press.

⁵ Parenthesis added - Preface by the Chair of the Legal Services Commission, Peter. G. Birch, *Legal Services Commission Corporate Plan, 2002/03-2003/04*, p.4.

⁶ See, further, Moorhead R (2000) *Pioneers in Practice*, London: Lord Chancellor's Department

services, supported by co-ordinated funding and based on the needs of local people⁷. This emphasis on taking account of local levels of need is a reflection of a general movement in Britain to delegate critical choices about the nature and level of service and means of revitalization in local areas towards local institutions and communities (see e.g. also health services⁸). CLSPs now extend across more than 99 per cent of the population of England and Wales.

Assessing Need in England and Wales

Introduction

The government's commitment to evidence-based policy, and an increasing emphasis placed on measuring policy effectiveness, mean interest is inevitably growing in the civil justice field in the assessment of law related needs and the quantification of improvements made in, and by, services that address such needs. The adoption by the Lord Chancellor's Department of Public Service Agreement (PSA) targets relating to levels of legal need⁹ and the method of resolution of legal disputes¹⁰ means there is a requirement for regular, reliable, and consistent information to be obtained on the type and quantity of law-related problems people experience, the forms of help they obtain and the procedures adopted in resolving them. Similarly, the existence of a statutory duty requiring the CLS to develop forms and networks of legal services that most effectively meet the needs of the population, necessitates the development of a detailed understanding of the legal needs of different population groups, the accessibility of advice and other legal services, and the strategies that are currently adopted by people who are 'in need'. Without such an understanding, it would not be possible to effectively prioritise funding, target vulnerable groups, explore information gaps that people face as to where and when to seek advice, and ensure that people can access the services they require and in a manner that is appropriate; it would not be possible to deliver the 1998 vision of the CLS.

In consequence of these many and converging information needs, it is not surprising that considerable effort has been made over recent years to develop a strategic knowledge of legal needs and advice seeking strategies, and the Legal Services Commission has led much of this effort through: the initiatives of CLSPs; the commissioning of large-scale evaluations of, for example, Family Advice and Information Networks (FAINs)¹¹; the development of small area legal need models¹²; (national) liaison with civil justice, social service and government bodies¹³; and the work of the Legal Services Research Centre (LSRC) in its Legal Need Research

⁷ See e.g. <http://www.legalservices.gov.uk/partners/issue-one.pdf>; Legal Services Commission, *Legal Services Commission Corporate Plan, 2002/03-2003/04*.

⁸ Oakley, P. & Greaves, E. (January 1995) Restructuring the Organisation, In *Health Service Journal*.

⁹ 'By 31 March 2004 increase the number of people who receive suitable assistance in priority areas of law involving issues of fundamental rights or social exclusion' (PSA 6).

¹⁰ 'To reduce the proportion of disputes which are resolved by resort to the courts' (PSA 3).

¹¹ See <http://www.legalservices.gov.uk/fains/downloads.htm> and <http://www.legalservices.gov.uk/fains/index.htm>.

¹² See, further, Pleasence P, Buck A, Balmer NJ, O'Grady A (2002) *Summary Findings of the LSRC Survey of Justiciable Problems, Part 2*, London: LSRC (downloadable: www.lsrc.org.uk/publications)

¹³ See Community Legal Service Strategy Unit, Legal Services Commission.

Programme – particularly its centrepiece, the national periodic survey of ‘justiciable’¹⁴ problems.

In the remainder of this paper are set out brief details of the types of need assessments conducted by CLSPs, the LSC’s small area models of legal need, the CLSP oriented annual telephone survey of justiciable problems, the basic findings of the first LSRC periodic survey of justiciable problems¹⁵, and examples of practical innovations that are stemming from the LSC’s developing strategic knowledge.

Local Research Initiatives

The different approaches to local research conducted by CLSPs are detailed in CLSP Strategic Plans¹⁶. The Partnerships see these plans as “the starting point for developing a clear framework for the Community Legal Service locally. [They] should give funders and providers a better understanding of current supply and allow identification of gaps in provision”¹⁷.

Local research initiatives conducted by CLSPs have been varied¹⁸. As a starting point, CLSPs routinely begin by using the small area need models described in the next section. Though the models do not provide an exact overview of legal and advice service needs, they do ‘provide a useful starting point for discussion about priority geographical areas for advice services’ (Derby CLS Partnership Strategic Plan 2001-2004). This applies the more so when they are coupled with other regional socio-economic statistical data.

CLSPs also routinely analyse local supply data (generally drawn from suppliers with an LSC Contract or Quality Mark) to contrast with the legal need data. In many cases, a ‘gap’ analysis of need and supply is carried out. However, the usefulness of this gap analysis is sometimes limited by methodological problems. Much of this is due to CLSPs having often to rely on anecdotal evidence provided by service providers, leading to inconsistencies in measuring the volume of service. Also, it is difficult to take account of the fact that advice seekers travel into CLSP areas from outside their boundaries. Despite these problems, however, gap analysis can still be useful as a

¹⁴ Genn H (1999) *Paths to Justice*, Oxford: Hart

¹⁵ For further information see, for example, Pleasence P, Genn H, Balmer NJ, Buck A, and O’Grady A (2003) Causes of Action: First Findings of the LSRC Periodic Survey of Justiciable Problems, *Journal of Law and Society*, 30(1):11-30; Pleasence, P, Balmer NJ, Maclean M, Buck A, O’Grady A and Genn H (2003) Family Problems: What Happens and to Whom: Findings from the LSRC Survey of Justiciable Problems, *Family Law*, June 2003; O’Grady A, Pleasence P, Balmer NJ, Buck A and Genn H (2003), forthcoming in *Disability and Society*, Swales K (2001) *Measuring Legal Needs: Technical Report*, London: National Centre for Social Research; Pleasence P, Buck A, Balmer NJ, O’Grady A and Genn H *Causes of Action: Civil Law and Social Justice*, forthcoming.

¹⁶ A more detailed description of the format and content of Strategic Plans can be found in Annex F of the Guidance for CLSPs (see <http://www.legalservices.gov.uk/partners/issue-one.pdf>). The aims of a Strategic Plan can be summarised as follows: to act as the first step towards co-ordinated funding by CLS Partners; to bring together and summarise the results of data-gathering and analysis; to ensure and record agreement on the way forward, priorities and the plans; to provide a document which can be put to bodies outside the partnership and hence influence their funding (e.g. regional or national funding or umbrella groups); to record material against which future variance analysis can be done.

¹⁷ Warrington Community Legal Services Partnership Strategic Plan 2002/2003, pg 5

¹⁸ Moorhead R (2000), *supra.*, n.6

starting point for discussion and also for identifying areas where further information is required.

Some CLSPs carry out substantial research exercises to generate a more detailed local knowledge base; for example, an exercise carried out by Colchester CLSP to measure need, supply and access to advice services. As well as relying on the CLS Directory and established needs models, Colchester CLSP carried out a ‘monitoring’ exercise. The monitoring exercise “was conducted locally to determine levels of access to, and the demand for, advice services as a one off”¹⁹. The exercise involved the participation of more than 30 member agencies. During a one-month period they completed a monitoring form for every new client. In addition to information about clients (e.g. address, ethnicity), the monitoring forms also detailed all the areas of law advised on and the level at which advice was given, the contact method and, importantly, the difficulties clients had in accessing advice. The monitoring exercise generated data from 1,547 people. In its final report, Colchester CLSP supported findings from its monitoring exercise using a range of quantitative (e.g. Indices of Multiple Deprivation²⁰) and anecdotal evidence. Valuable contributions were made to the final report by the supplier agencies involved, lending their unique experiences and local knowledge to the project.

In addition to relying on more quantitative studies, qualitative studies have also been employed by CLSPs. For example, the Brighton and Hove Community Legal Service Partnership conducted focus groups with different sections of the Black and Minority Ethnic Community throughout January 2001. The purpose was to discuss the nature of services they would like to have access to, and the problems experienced with accessing services. The findings indicated that there is a “cultural tradition for many minority ethnic communities to try to resolve problems within the family and not consult local services”²¹. There was further a low level of awareness of the availability of local advice services, and some misconceptions regarding the way some services operate (e.g. CABs were viewed as interdependent with local authorities and therefore not seen as a confidential advice service). Analysis of the focus groups also showed that many people from the Black and Minority Ethnic Community require an interpreter and do not feel confident about approaching a service unless an interpreter is available.

Also, of course, CLSPs rely on anecdotal and ‘informal’ information and feedback. This can address issues that may arise in relatively short spaces of time which could not be taken into account by more ‘historic’ statistical models, or longer-term quantitative or qualitative projects. A recent feedback example of note is that of the Hillingdon CLSP²², located in South-West London and close to Heathrow airport. Advisers operating within its boundaries have noticed that employment related enquiries have increased dramatically as the tourist (and airport) industry have

¹⁹ Colchester Community Legal Service Partnership, *Advice Services Review Report* (2002), pg 3.

²⁰ Department of the Environment Transport and the Regions (2000), *Indices of Deprivation 2000*, Regeneration Research Summery, Number 31 or <http://www.urban.odpm.gov.uk/research/summaries/03100/pdf/rrs03100.pdf>.

²¹ See Brighton & Hove Community Legal Service Partnership (2002) *Outline Strategic Plan January 2002*, Community Legal Service, p.25.

²² Hillingdon Community Legal Service Partnership (2002) *Strategic Plan for Advice Services*, Community Legal Service/Hillingdon London Borough: London, p.3.

sustained heavy financial losses and job cuts due to the current international climate (terrorist attacks, war in Iraq).

Small Area Legal Need Models

The CLS small area predictive legal need models have been developed to provide a starting point for local legal need analysis. The models are statistical models based on socio-economic data, which can be produced at various geographical levels (e.g. ward, local authority). They aim to identify the need for legal services in England and Wales. The basic approach in designing the models has been to identify the constituent elements of the problems faced by people requiring particular categories of legal service and adopt measures of those elements (or functions thereof) as proxies, or partial proxies, for need for such services. For example, the housing model has three main components: unfit households, overcrowded households and homelessness. The three components are weighted according to the proportion of work conducted in each problem area.

As part of the LSRC's Legal Need Research Programme an evaluation was carried out in 2002 of the LSC's small area legal need models. This evaluation, conducted in collaboration with the Civil Policy Team at the LSC and the Social Disadvantage Research Centre, Department of Social Policy and Social Work, University of Oxford, concluded that whilst a potentially useful starting point for local needs analysis, the models were only weak predictors of levels of legal need. Furthermore, doubt was raised as to the possibility that future development of the models, in their current form, would see them improved substantially. Therefore, the LSRC is now exploring whether another form of model can be developed that would more effectively allow levels of need to be predicted.

Two suggestions arising from the evaluation were that more narrowly defined models be tested to see if effectiveness improved, and that the potential of supply-based models be explored.

It seems likely that the current model subject-matter definitions embrace problem types that have distinct and contrary socio-demographic associations²³. If these problem types were to be separated into separate models, then more effective predictors might be expected to emerge. Data from the LSRC Periodic Survey of Justiciable Problems will be used to produce a new set of narrower models. Their effectiveness will be compared with that of the current models.

As regards the potential of supply based models, it is not intended that models of supply be developed, but that supply be the starting point for the development of needs models. If an effective map of supply could be produced, and the factors that influence supply patterns could be modelled, then the pattern of underlying need might potentially be established. This, of course, assumes that there is some relationship between supply and need. The purpose of modelling will be to remove the distortions that arise in the translation of need into supply.

²³ For example, within the LSRC survey, more than 13 distinct forms of rented housing problem were identified, and the socio-demographic associations vary between them.

To explore the potential of supply-based models, the LSRC will be conducting a review of developments in supply-based needs modelling²⁴. For example, though there are clearly differences between health and legal services supply, work such as that conducted by Smith, Rice and Carr-Hill²⁵ on capitation funding in the health sector suggest supply based models can be effectively constructed. The review will also include an investigation of whether any similar developments have taken place in other fields or jurisdictions. On the basis of this review, the Legal Services Commission will ascertain to what extent these developments can be utilised in the legal services field.

Annual Telephone Survey of Justiciable Problems

The annual telephone survey of justiciable problems has been designed to track legal need in a cross section of Community Legal Service Partnership areas. Eleven CLSPs are included in the telephone survey. These areas have been chosen to represent a cross-section of CLSP regions – with a balance of unitary and multi-authority CLSPs, a broad mix of deprivation profiles (including exclusively deprived CLSP areas, non-deprived CLSP areas, and mixed CLSP areas, which encompass both deprived and non-deprived areas), a mix of levels of urbanisation, and ‘representative’ areas from each LSC region.

The telephone survey was designed to be as similar as possible to the LSRC Periodic Survey of Justiciable Problems (described in the next section), both in content and approach. However, there are a number of significant differences between the two surveys. The telephone survey asks a substantially reduced set of questions of all respondents. Also, the national periodic survey relies on an extensive fieldwork force and the interviews are conducted in person in people’s homes, with extensive use of ‘showcards’ containing large number of example answers to questions. The telephone is much simpler in form, and being conducted at more of a distance is less likely to yield accurate responses in relation to sensitive matters. The telephone survey also involves fewer than half the number of respondents that partake in the national survey (2,480 as compared to 5,611). Finally, of course, because the CLSPs have not been randomly selected the sample is not nationally representative.

As a result of these differences, the information from the telephone survey is considerably less comprehensive than that available from the national survey. However, one of the advantages of the telephone survey is that it is conducted on an annual basis (rather than on a 3 or 4 years basis, as with the national periodic survey) and therefore provides a useful indication of trends over shorter time-periods. Thus it lends itself more easily to time-series analyses, and provides important interim performance information in relation to LCD and LSC PSA and SDA (Service Delivery Agreement) targets.

As regards targets, for each CLSP area the data generated allows the proportion of the sample with ‘met’ need to be calculated. This shows the extent to which effective service delivery is increasing and how far this is keeping up with any increase in need

²⁴ The LSRC is working in collaboration with Peter Smith, University of York, on this review.

²⁵ See P. Smith, N.Rice and R.Carr-Hill, Capitation funding in the public sector, In *Journal of the Royal Statistical Society*, (2001), 164, Part 2, pp. 217-258.

which is occurring. The data permit the calculation of likely baselines on legal need for differing CLSP types. It is also possible to explore the existence of systematic area differences in levels of legal need across CLSPs.

The results of the first telephone survey show that 529 people (unweighted 21.3%) of the 2480 respondents reported experiencing one or more justiciable problems in the period January 2000 to November 2002. In aggregate, 529 people reported 804 separate problems in the 2 years and 11 months reference period. Each of these respondents was asked about their advice seeking behaviour in respect of one randomly chosen problem and the extent to which they were successful in obtaining assistance. Provisional analysis shows that suitable assistance was obtained in respect of 31.2% of problems.

The First LSRC Periodic Survey of Justiciable Problems

Introduction

The first LSRC survey was conducted over the summer of 2001 (the first follow-up survey will be in 2004). Fieldwork for the first survey was conducted by the National Centre for Social Research. All interviews took place in respondents' homes, using Computer Assisted Personal Interviewing (CAPI). The methodology of the first LSRC survey was developed from that of the ground-breaking Paths to Justice study (Genn, 1999) and many questions from the earlier study were therefore included. Some important refinements were made, though, to ensure that the LSRC survey provides an appropriate basis for government target monitoring, addresses limitations of the Paths to Justice survey (e.g. the absence of comprehensive social and demographic information) and focuses in greater detail on the pivotal early stage when respondents are making decisions about their problems.

The LSRC survey adopts Genn's approach in simply seeking to map the incidence of problems for which there is a potential legal remedy (so called "justiciable problems"), and explore people's responses to them and the success of any procedures adopted to resolve them. Respondents to the survey were specifically not asked about 'legal' problems they had experienced: rather they were asked if they had 'any problems that were difficult to solve' in different categories, such as housing, family or debt. The categories were, though, carefully defined to reflect problems that have potential legal solutions. No assumption was made that particular responses to problems are necessary or always appropriate.

Two distinct surveys made up the first LSRC periodic survey: a 'main' standard national random household survey, and an additional survey of people living in temporary accommodation. Those living in temporary accommodation, due to their very circumstance of having no fixed housing, are often excluded from large-scale surveys. However, people making up these populations will often be among the most vulnerable and socially excluded.

The main LSRC survey was of 5,611 adults, drawn from 3,348 households. The temporary accommodation survey was of 197 adults, drawn from 170 households. The questionnaire used for all respondents consisted of two parts: a general screen

section, asked of all respondents; and a main section, asked only of those reporting a justiciable problem. Eighteen problem categories were used in the first LSRC periodic survey: consumer, neighbours, money/debt, employment, personal injury, housing (rent), housing (own), post-relationship, welfare benefits, divorce, children (mostly education), domestic violence, homelessness, immigration, unfair treatment by the police, discrimination, mental health, and clinical negligence. A further three *residual* legal action oriented categories were also included. These were legal action against the respondent, threatened legal action against the respondent, and consideration of legal action by the respondent.

The screen section recorded problem incidence and basic strategies adopted, as well as comprehensive demographic and social information for each respondent. The main section focused only on one problem, and recorded in-depth data relating to advice-seeking behaviour. This included questions on the type of adviser respondents went to, the nature of advice given and general awareness in relation to advice services. At each stage an attempt was made to encourage respondents to articulate their reasons for actions taken or not taken and decisions made. The main section also covered the type of funding respondents obtained and the costs incurred, as well as objectives in trying to resolve the problem. The survey covered all problems people had experienced between January 1998 and summer 2001.

Results

(a) Vulnerable Groups

36% of the 5,611 main survey respondents reported one or more non-trivial justiciable problem (and 37% if trivial problems are included). The average number of problems reported per respondent during the survey period was about two. However, certain 'vulnerable' population groups were found to more often report experience of one or more justiciable problems than the general population. Further, these vulnerable groups report multiple problems more often than the general public as a whole.

As Figure 1 illustrates, respondents living in temporary accommodation reported many more problems and a very different pattern of problems than respondents in standard accommodation. Of the 197 respondents to the temporary accommodation survey, 83% had experienced one or more problems in the reference period between January 1998 and summer 2001. These socially excluded respondents also reported on average having experienced more problems each during the reference period.

Respondents with a disability or long-term illness were also more likely to experience justiciable 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. Again, people on a very low income were more likely to experience justiciable problems.

Lone parents were significantly more likely than other types of family (couple with children, couple without children, single households) to have experienced a justiciable problem. In fourteen of eighteen problem types, lone parents reported problems more often than respondents living in other types of family. Lone parents also reported the highest incidence of children related problems, such as problems with choice of

school, the appropriateness of education or school exclusion, or difficulties fostering or adopting children.

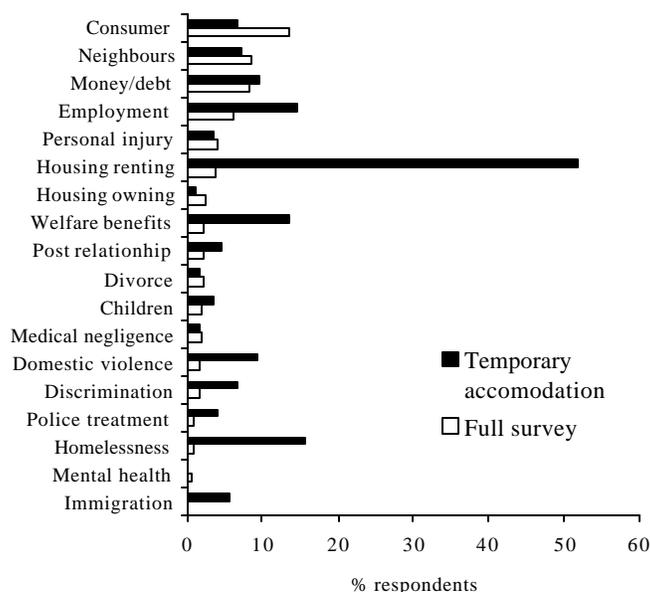


Figure 1 - Incidence of Justiciable Problems Among the All Survey Respondents and Temporary Accommodation Survey Respondents

An overview of example justiciable problems and socio-demographic characteristics can be found in table 1.

Table 1: Examples of the Association Between Justiciable Problems and Components of Social Exclusion

Justiciable Problem	Most Likely Person to Report Problem
Welfare Benefits	Young economically inactive low-income person on benefits and with a long-term illness or disability
Discrimination	Young ethnic minority person with a long-term illness or disability
(Rented) Housing	Female, on benefits and with a long-term illness or disability
Neighbours	Unemployed person living in a public rented terraced house or flat, with a long-term illness or disability
Domestic Violence	Low income early 30's female lone parent, with a long-term illness or disability
Any	Mid-20's unemployed lone parent, on benefits and living in a rented flat and with a long-term illness or disability

(b) Clustering and Triggering

The LSRC survey revealed that experiencing one justiciable problem greatly increases the likelihood of experiencing further problems, showing that problems do not occur in isolation. Socially excluded groups were the most likely in the survey to report having experienced multiple problems.

Certain types of justiciable problems tend to “trigger” further justiciable problems, and may lead to ‘cascades’ of justiciable problems (see Table 2). Major ‘trigger’ problem types include divorce, domestic violence, problems ancillary to divorce or relationship breakdown, homelessness, immigration, mental health and personal injury.

Table 2 Examples of Justiciable Problems that Follow ‘Trigger’ Problems

Trigger Problem Type	Problems Triggered
Domestic Violence	Divorce Housing Money / Debt Welfare Benefits Education Neighbours Consumer
Divorce	Housing Homelessness Employment Money / Debt Welfare Benefits Education Neighbours Consumer
Personal Injury	Clinical Negligence Welfare Benefits Housing Employment

It has been possible to use the LSRC Periodic Survey of Justiciable Problems to identify problem clusters (i.e. groups of problems that are likely to have occurred together where multiple problems are reported). Five problem clusters were found (see Table 3).

Table 3 Identified Problem Clusters

Cluster Description	Problem Types Within Cluster	Most likely to Report
Family	Domestic Violence Divorce Relationship Breakdown Children (e.g. Education)	25-34 year old person, living in private rented sector and in receipt of benefits
Low Income Housing	Rented Housing Homelessness Unfair Police Treatment Action Against the Respondent	Young male living in public rented sector, with a low income and on benefits
Welfare Benefits	Welfare Benefits (and one other of) Mental Health Clinical Negligence Immigration	Ill/disabled person Minority ethnic person
Consumer	Consumer Owned Housing Money/Debt Action Against the Respondent	Higher income white lone parent, living in the private rented sector, and with a long-term illness or disability
Employment Sector Dichotomy	Consumer Neighbours (or) Employment Personal Injury	(Service sector) ill/disabled, unemployed and with academic qualifications (Industrial/agricultural sector) full time employed person

(c) Advice-seeking Behaviour

The LSRC survey data was used to identify five different groups of respondents, based on advice-seeking strategy: those who did nothing to attempt to resolve their problem; those who handled their problem alone from the start without seeking advice; those who tried to obtain advice, failed, and then gave up; those who tried to obtain advice, failed and then continued to attempt a resolution alone; and, those who successfully obtained advice about their problem

Overall about one in five respondents did nothing to attempt to resolve their problem, about one-quarter handled their problem alone without any help, about one in ten tried to get advice but failed, and just over half of respondents obtained advice to try and resolve their problem. Among those who obtained advice, the majority went to one

adviser only, but a significant and determined minority went to more than one adviser in an attempt to achieve a resolution of their problem.

Although the vast majority of respondents had taken some sort of action to attempt to resolve their problem, a significant and important minority said that they had done nothing at all. In common with *Paths to Justice*, it was found that the likelihood that some action would be taken was highly dependant on the type of problem being experienced and to some extent on the type of person experiencing the justiciable problem. So, for example, the problems about which respondents were most likely to do nothing were those relating to mental health, medical negligence, unfair treatment by the police, discrimination, personal injury, and domestic violence (see Figure 2).

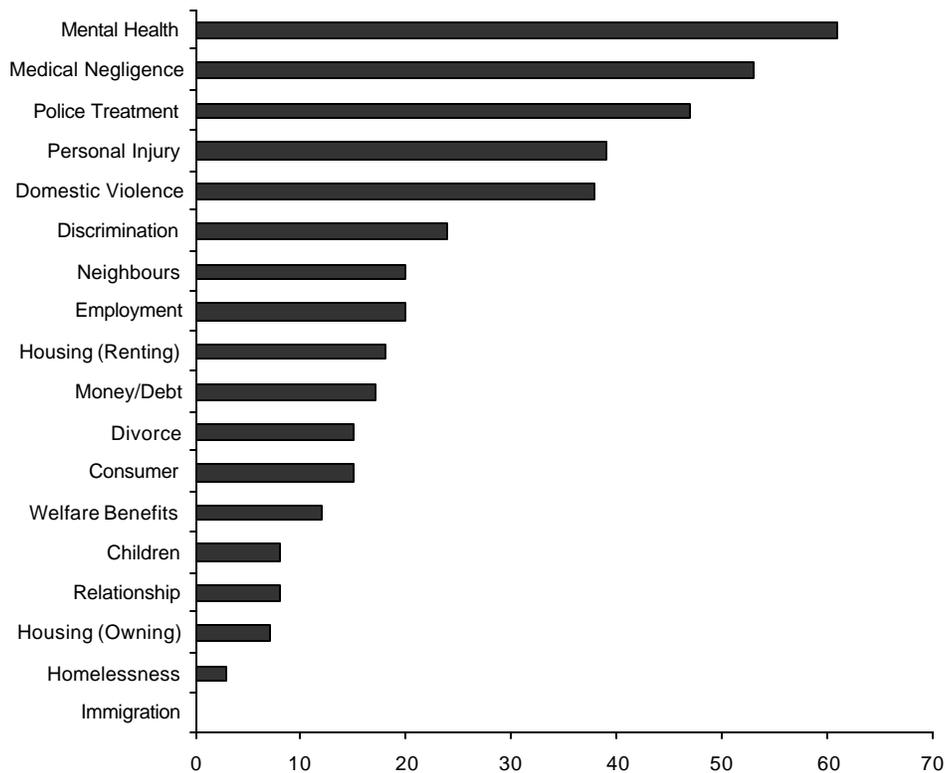


Figure 2: Percentage of respondents taking no action

Many of those issues disproportionately affect socially excluded groups and the suggested relationship between doing nothing at all to try and resolve a justiciable problem and social exclusion is reinforced by comparison between results from the main survey and the survey of respondents in temporary accommodation. While about one in five main survey respondents said that they had taken no action to seek a resolution of their justiciable problem, a significantly higher proportion of respondents in temporary accommodation did nothing to try and deal with their problem (28%, compared with 19%). In general, about 5% of those who had done nothing gave as their reason that they were “too scared” to do anything, but this rose to 25% for domestic violence. Among problems to do with neighbours around one-fifth of respondents thought that nothing could be done about the problem and a

similar proportion were concerned that taking action would damage the relationship further. About 12% of those experiencing neighbour problems said that they took no action because they were too scared to do anything. In contrast, among the high proportion of personal injury cases about which respondents had taken no action, the most common reason given was that the respondent did not believe that the accident was any one else's fault (30%). This is likely to be a highly unreliable judgement since the assessment has been made without the benefit of advice. Another common reason given by accident victims for not taking action was the belief that nothing could be done (19%).

In about one-quarter of all cases where respondents had taken no action to try and resolve their problem the reason given was that the respondent did not think that anything could be done about the problem. This explanation for inaction reflects both lack of information and knowledge about potential avenues for redress or resolution, and also a sense of powerlessness. About one quarter of respondents said that there *were* advisers that they had considered contacting, but in the end did not do so.

(d) Use of Advisers

Respondents to the LSRC survey made use of a wide range of types of adviser, some traditional legal advisers, others with little obvious connection to the law.

To understand the range and order of advice sources used by those trying to resolve justiciable problems, respondents were asked about first and subsequent contacts. For each adviser contacted information was obtained about the kind of advice offered, the type of help given, if any, and respondents' satisfaction with the information and help received.

A little over half of all respondents to the main survey succeeded on making contact with at least one adviser in order to obtain information or help with resolving their problem. A very wide range of advisers was used by respondents, but the choice and number of advisers used was heavily associated with the type of problem being experienced. Those reporting immigration problems, divorce, post-relationship problems, problems relating to owned property, domestic violence, homelessness, welfare benefits, children, personal injury and employment, were more likely than other respondents to have made contact with an adviser if they took any action at all to deal with their problem. The advisers they went to were often quite different though. So whereas people facing divorce invariably went to a solicitor, people dealing welfare benefits or children problems rarely did so. Questioning about why respondents chose their particular first adviser showed that personal networks and previous experience and knowledge were most important in leading respondents to approach one adviser rather than another.

Where respondents went on to contact a second adviser, a similarly wide range of advice sources was used. The most common second advisers by far were solicitors. Otherwise respondents went in roughly similar proportions to CABx, local councils, employers, the police, social services, welfare rights organisations etc. However, there was again significant variation between problem types in the nature of second advisers used with some notable changes in the type of adviser. So again, people facing welfare benefits problems rarely used solicitors.

All respondents who made contact with an adviser were asked whether or not that adviser had been a friend or relative. Overall about eight percent of first advisers were friends or relatives, about nine percent of second advisers were friends or relatives and about seven percent of third advisers were friends or relatives. Where a friend or relative used as first adviser referred a person on elsewhere this was overwhelmingly to non friend/relative advisers.

The broad range of advice sources being used both as first and second advisers raises issues about where resources are to be placed in order to deliver effective advice and assistance for the range of justiciable problems faced by members of the public. It also raises questions about how to increase the likelihood that members of the public will be able to make contact with an appropriate adviser at the earliest possible stage and before exhaustion with the process sets in.

(e) Referrals

The evidence from the LSRC survey shows that there are substantial differences between adviser types in their tendency to refer people on and also the adviser types to which referrals are made. So, for example, the advisers most likely to refer people on are the police, CABx, insurance companies, other advice agencies. When solicitors are the first adviser contacted, if they refer clients on elsewhere, they do so to a wide range of advisers, but most often to the broad category of ‘other advisers’. Trades unions, insurance companies, and CABx on the other hand are most likely to refer clients on to solicitors, reflecting a move from generalist to specialist adviser.

There were also differences in the likelihood that, having been referred on to another adviser, respondents would actually make contact with the person or organisation to whom they had been referred. While those referred on to other advisers by CABx and trades unions were very likely to make contact with the adviser to whom they had been referred, the majority of those referred by solicitors and “other” advisers did not make contact with the adviser to whom they had been referred (Figure 3). This may reflect respondents’ expectations in that CABx and the police might be viewed as generalist sources of *initial* advice – the place that you go when you cannot think of anywhere else to go. Solicitors, employers and many of the “other” advisers contacted might have been expected themselves to provide the help wanted. On the other hand, the failure to make contact with the suggested referral adviser might reflect the fact that the source of advice was too difficult to access, or that respondents felt that had been inappropriately ‘unloaded’ elsewhere.

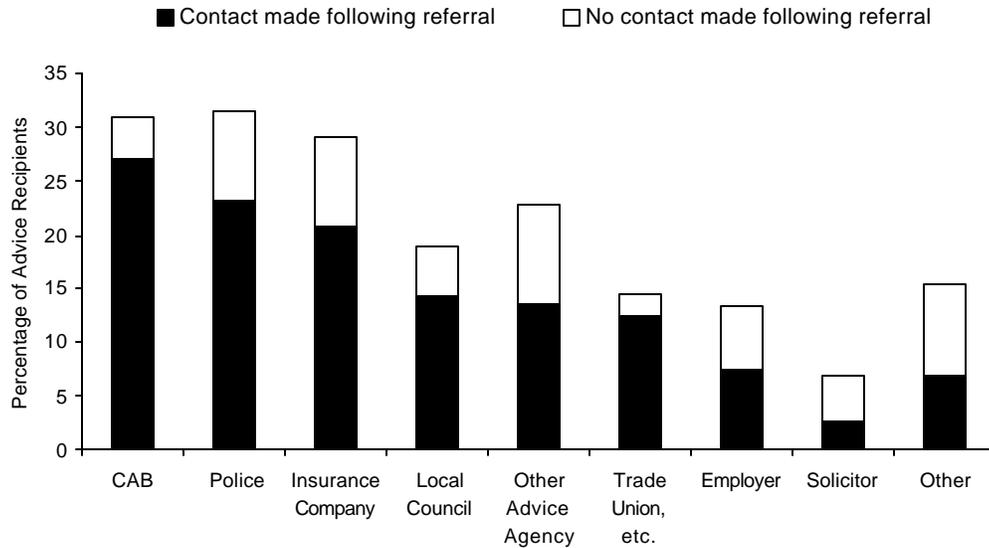


Figure 3: Propensity to refer people on to other adviser and whether subsequent adviser contacted

The more times people are referred on to other advisers, the less likely they are to act on a referral and visit another adviser: ‘referral fatigue’ sets in. The pattern of second sources of advice indicates that many people, when they do not receive the assistance they require from a first adviser, when they do not receive the assistance they require from a first adviser, give up seeking advice or turn to authority or community figures (e.g. employers, the police). Figure 4 shows how people are less likely to follow up a referral as the number of advisers in the sequence increases. However, first, second and third advisers all appear to refer cases on at roughly the same rates.

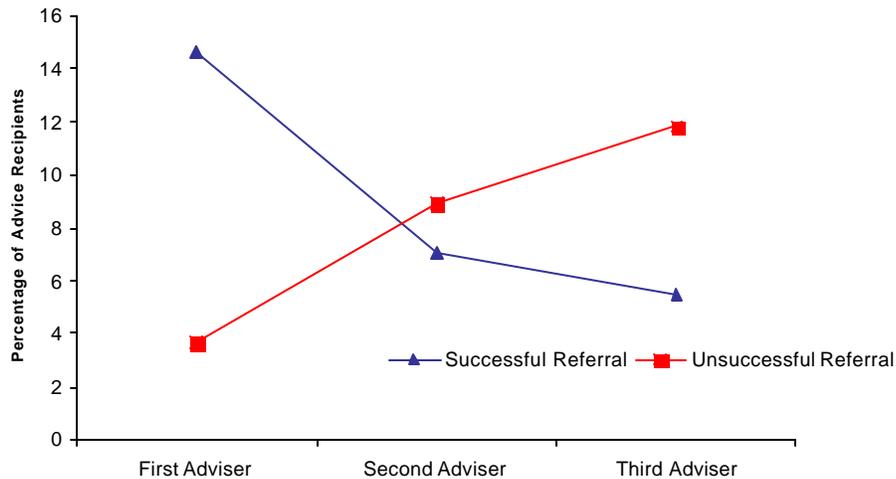


Figure 4: Percentage of people receiving advice referred on

(f) Funding

A number of questions in the LSRC Periodic Survey of Justiciable Problems asked respondents about the funding they received (for those who had a justiciable problem

and obtained advice). The results show a relatively clear pattern: legal aid funding still plays a substantial role in the funding of family cases.

Legal aid funding was used for around 35 per cent of family problems where advice was obtained. In over 60 per cent of family problems no financial assistance was obtained. For other justiciable problems, the data provide clear evidence of the emergence of other funding sources and mechanisms beyond legal aid funding. Indeed, legal aid funding is sometimes relatively rare. Where advice was obtained for Personal Injury problems, a broad spread of funding sources was found, ranging from Legal Expenses Insurance to 'No Win, No Fee' arrangements and trade union funding.

Innovations to Meet Legal Needs

Overview

As the findings from the LSRC Periodic Survey of Justiciable Problems show, there are both 'advice deserts' and 'advice mazes' which people face when dealing with justiciable problems.

The Commission has recognised this complexity of legal need and advice-seeking behaviour for a number of years. As a result, it has increasingly funded not-for-profit advice agencies. Also, it has funded a number of innovative services and pilot projects to increase access to justice, and address the advice deserts and mazes that prevent people getting the right help at the right time. Only innovative new ideas and services are likely to achieve success.

For example, the telephone advice pilot involves the LSC contracting with a mixture of national and local suppliers, to cover areas such as North Wales that lack accessible conventional advice providers. Another example is the Partnership Innovation Budget (PIB), a grant budget introduced in 2001 for the funding of local or regional initiatives to encourage innovation in advice services²⁶. For example, one PIB award in 2001 was for the 'Lewisham Telly Talk' project providing advice via a video link from 18 sites around Lewisham in South/East London. The advice is focused on welfare benefits issues and the PIB funding for was used to employ a full-time co-ordinator to staff the system and promote the service to potential clients. Another PIB example is the 'GP Link to Legal Services' Project in West Norfolk: this provides awareness training for all Primary Care staff to ensure they are able to identify those who may have legal problems and what help may be available for them. Having identified a problem, Primary Care staff are able to make the patient an appointment with a generalist advisor. An electronic appointments system enables direct referrals from GPs to legal advisors. A further example of an innovative PIB project is an on-line service for young people in Kent. This provides on-line advice to young people between the ages of 13 and 24 via an information website and an on-line advisor. A further PIB award was made to the 'Opening Doors Project' based in the Watford Women's Centre (Hertfordshire). This funds a support worker within the Centre to

²⁶ Of the £15M budget for the three years from the letting of contracts, £11.5M was committed by the first round of awards made in September 2001. One of the criteria for the scheme is that there should be match funding of at least 25%. Therefore, the total value of projects supported will exceed £20M. From this month the PIB budget is £2M per year.

identify the needs and wishes of a wide variety of women that go to the Centre. The support worker signposts these women to the appropriate agency, provides support in making appointments, arranges childcare at the Centre, and accompanies women to their appointments and helps them understand the detailed options being presented. S/he also provides training to individuals on using the Centre's confidential internet facility (particularly used by those experiencing domestic violence).

Through projects such as the telephone advice pilot and PIB, advice and legal services are now provided in a wide variety of ways, ranging from face to face in offices to telephone and the Internet. Internet advice is also provided through the 'Just Ask' website. This is a new role for the Commission as a direct provider of legal information and advice. The website is designed for service users and provides access to the CLS Directory for service providers and links to legal and advice websites.

Across the CLS, therefore, there is a realisation that many of the people who do not access existing services are in need of advice and legal services supplied through 'non-traditional ways'. Services need to be developed and supported that meet the priority needs of excluded groups – for example, by funding suppliers to provide support to identified community organisations which are the first port of call for users who would not go to mainstream services at all.

Future

The above discussion suggests that in developing of policies aimed at securing access to justice a number of key issues must be addressed:

1. Problem noticing

We have seen that in trying to obtain help with their problems, members of the public go to an extensive range of advice-givers. Sometimes the choice seems logical and apposite. Sometimes the choice seems desperate and unpromising. The position of these first points of contact or 'problem-noticers' in the fluid structure of advice-seeking and advice-giving is absolutely pivotal.

There is, therefore, an important role to be played in the 'noticing' of problems by people and organisations that have routine contact with populations vulnerable to specific problems (e.g. health and social services, employment services). This role also encompasses the provision of basic information (both literature and sources of advice). It means that the Quality Mark needs to be adapted to address the specific task of 'problem noticing'. In addition, given that people turn to a very broad range of organisations and people for help, the role of problem noticing should extend to a wide range of potential 'helpers' (from GPs to MPs, libraries to police stations, some of which are already Quality Marked). This is especially important given that people do not always go to the information points one might expect.

2. 'Joined-up' Government for 'joined-up' problems

It is now becoming clear the extent to which some vulnerable groups in the population experience justiciable problems more often than the general population. For 'joined-up' solutions and policies to be effective, links between low income, unemployment,

poor housing, poor health, family breakdown *and* justiciable problems need to be properly understood. This knowledge needs then to be acted upon by a range of Government departments and other organisations. This is especially important for those least able to act on their own behalf (e.g. people with a domestic violence problem who are often too scared to act, and require support from social services, the police, shelters, etc.).

3. Co-ordination of funding mechanisms

Due to the recent reforms to the justice system in general, as well as the legal aid system, the funding landscape of legal services is beginning to change dramatically. Legal aid still plays a central role in the resolution of family problems, but this is not the case for most justiciable problems. In relation to those other problem types the LSC's role is more of a strategic and regulatory one, and though 'legal aid' may not be central, the LSC, CLS and CLSPs still are. This does not mean that legal aid is not important outside family problems, but that it needs to be carefully targeted to redress deficiencies of the legal services market, support the efforts of the not-for-profit sector, and thereby help effect broad access to justice.

Our survey findings on advice-seeking and choice of advisers illustrate that the services currently funded through legal aid do not fully reflect the services to which people turn when faced with a problem. Again, this does not mean that legal aid funds should be spread across an ever increasing range of suppliers, but it does mean that the CLS should continue to strive to embrace all the organisations people turn to (and problem noticers too), and through initiatives such as PIB, even reach beyond them. Access to justice policies should be founded on principles of fairness – and fairness requires that people not be excluded from using publicly funded legal services simply because they have the misfortune to look for advice in an advice desert, or are defeated by the complexity of an advice maze.

4. Value for money

Both the totality and constituent parts of the Community Legal Service in England and Wales are increasingly becoming judged not just on the volume (or even quality) of services provided, but also on whether services offer 'value for money' in a context of limited resources. The CLS sits alongside the National Health Service (NHS), the education service, and all the other great institutions of state, as a means to an end – an end of social justice and social inclusion. The impact of the services provided must therefore be shown to be effective in bringing about such ends (and more effective than other means). It is therefore crucial that a greater understanding of the impact of problems on both individuals and society in general, and the economic value of intervening to prevent, ameliorate or resolve justiciable problems, be developed. Our analysis of problem triggers and clusters contributes to this understanding. The strategic knowledge being developed by CLSPs, especially where arrived at in collaboration with e.g. health, education authorities, also contributes. Much needs to be done, though, to demonstrate and quantify the extent to which public funding of civil justice initiatives improves people's lives and the society we live in²⁷.

²⁷ The LSRC has recently commenced a project on 'Value for Money' to inform this development.

5. Education

Our findings also confirm the importance of knowledge and education. Individuals may not act because they do not know what to do or do not think anything can be done. On the other hand, they may act precisely because they are told that something can be done. These findings indicate that the role of education, information and support are crucial in addressing people's awareness of their needs and what they can do about their problems. In some cases, this is also about 'empowerment'. As shown earlier, most of the justiciable problems where people are too scared to seek advice involve power relationships (e.g. domestic violence between couples).

Conclusion

In conclusion then, this paper has illustrated the crucial part needs assessment needs to play in developing the Community Legal Service in England and Wales. It has demonstrated that the development of the Community Legal Service requires evidence-based policy in order to take account of the complex nature of legal need and advice behaviour. People's different needs must be met in a variety of ways. The response has to be multi-faceted, based on high visibility and accessibility of advice services, on locality, public education, and a range of options for dispute resolution. Lastly, the LSRC Survey findings provide powerful evidence for showing that civil justice is not about isolated legal problems that occur in a vacuum. Instead, it is about *everyday* problems and disputes, affecting many people, with different implications, at various points in their lives.