

Unbundled and Pro-Bono Advice for Litigants in Person: One Study

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This paper highlights selected findings from a research project conducted by Sefton et al into unbundled advice being given to litigants in person in one court. The study on which this report is based was commissioned by the RCJ (Royal Courts of Justice) Citizens' Advice Bureau in London. Field work took place between October 2011 and April 2012.²

The principal aims of the original study were to establish whether the legal advice service offered by The RCJ Advice Bureau represented value for money, and to identify potential benefits in terms of ultimate savings in court time and costs to the public purse. This paper concentrates on what that project suggests is the impact of the provision of unbundled advice, often delivered through pro bono advisers (volunteer solicitors from London firms). The value for money findings are not reported here.

The study looks at two advice clinic services. One provided advice and limited assistance to clients with problems in civil cases and another did the same for family cases.

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² Sefton, Sidaway, Fox and Moorhead (2012) RCJ Advice Bureau Legal Advice Service: Value for Money Study, forthcoming, 2013. The study was funded by the Cabinet Office, Office for Civil Society Transition Fund 2011.

The legal advice service

The RCJ Advice Bureau is a Citizens Advice Bureau (CAB). At the time of the study,³ it operated from three locations in London, and provided a range of services.⁴ The legal advice service, with which this study was concerned, had two elements:

- the civil law service, based at the Royal Courts of Justice in London (the major civil Centre for the High Court and Court of Appeal in London); and,
- the family law service, based at the Principal Registry of the Family Division (PRFD); part of the High Court, conducting family work.

The advisory work conducted by these two services were not confined to the RCJ and PRFD, but also related to other courts including the Court of Appeal.

Both elements were delivered by a mix of solicitors employed by the Bureau (three in the civil law service and one in the family law service) and Honorary Legal Advisers (HLAs). There was one full-time receptionist and one telephonist (both based at the RCJ but who deal with access to both the civil and family appointments). A majority of the advice sessions were delivered by Honorary Legal Advisers (HLAs); but a substantial proportion were delivered by employed solicitors.

The service is available to any self-representing litigant. Commonly, clients self-represented and sought advice because they did not have access to Legal Aid and were unable to afford a lawyer, but this was not the only reason. Civil clients were permitted as many appointments as they required; family clients were allowed a maximum of three appointments each.

³ Since the study, we are advised that the service has undergone reorganisation.

⁴ The Bureau also provides a Bankruptcy service, a Miscarriage of Justice service, and an Employment & Discrimination service (all at the RCJ) as well as a wider CAB service (which operates from the offices at the Principal Registry of the Family Division). Since April 2011, the Bureau has also incorporated Islington CAB.

HLAs were solicitors in private practice, who provide their services to clients of the Bureau pro bono. At the time of the study, approximately 50 or 60 firms provided HLAs (approximately 30 and 20 firms for the civil and family law services respectively).

The civil and family law services are similar in a number of respects, in that both:

- offer free advice and assistance, which is not means-tested;
- are aimed at self-represented litigants, i.e. individuals involved in court proceedings who do not have legal representation;
- focus on the provision of procedural advice rather than advice on merits.

Neither service involved Bureau solicitors or HLAs going on the court record as representing clients, or acting as advocates at court hearings. The aim was to support litigants in representing themselves in proceedings. However, both civil and family clients may be referred to the Bar Pro Bono Unit (BPBU) for further pro bono advice on the merits of their cases and/or for representation at hearings by a barrister.

Both services were appointments-based. At the time of the study, an average of approximately 90 appointment slots per week were on offer: approximately 50 civil (over five days) and approximately 40 family (over four days). Slots were of 45 minutes duration.

Clients could have one appointment in any one week. Family clients were restricted to a maximum of three appointments in total. Casework was not generally done for clients outside of the appointments.

Outline of research methodology

Researching the impact of legal advice is conceptually and operationally difficult. It has not been undertaken often, still less successfully. The optimal strategy in theory, a randomised controlled trial (RCT), is a costly approach, as are similar alternatives such as quasi-experimental approaches.⁵ Both of those approaches involve

⁵ **Pleasence, P.** and Balmer, N.J. (2007) Changing Fortunes: Results from a Randomised Control Trial of the Offer of Debt Advice in England and Wales, 4(3)

comparing groups receiving a service (in this case clients of the Bureau) with a control group (here, self-represented parties more generally) who do not receive the service. This was not an option in this instance. There was no readily identifiable population from which a control group could be drawn; nor were the resources available for (say) a RCT.

This study thus has limitations in terms of its ability to identify outcomes, and to derive quantitative measures of impact. There is a particular problem with the counterfactual, i.e. an estimate of what would have happened without an intervention. Similarly, partly because the service focuses on procedural advice rather than advice on the merits, which the litigants then use (or not) in the handling of their case, identifying links between the advice and ultimate outcomes on cases is difficult.

Our approach was therefore limited to:

- obtaining qualitative data via observations of advice sessions, and follow up interviews with clients;
- collection of mostly quantitative case-level data;
- advisers' assessments of what the most likely impacts of their advice would be; and,
- a survey for involving independent family law practitioners in an assessment of the likely impact of advice.

68 individual appointments were observed: 32 civil and 36 family.⁶ Notes of observations captured the client's 'story'; the issues involved and nature of any relevant proceedings; the advice and any practical help given; the next stage in any proceedings; and any subsequent action to be undertaken by the client. Unless it was inappropriate (e.g.

Journal of Empirical Legal Studies, pp.651-674. Moorhead et al have employed quasi-experimental approaches, for example, R. Moorhead et al (2001) *Quality and Cost: Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot* (Stationery Office, Norwich).

⁶ On the civil side, three clients who had already taken part in the study attended for repeat appointments in respect of the same matters, on days when a researcher was at the RCJ again. The opportunity was taken to sit in on these repeat appointments, which helped with getting a sense of what had happened since the last occasion. The 32 civil observations therefore involved 29 clients.

due to their being particularly vulnerable), clients were asked for a follow up interview at a later date. Between one and three months was built into the process, to allow some time to have elapsed and so suggest some sort of outcomes on the case.

Follow up, semi-structured interviews were carried out with 11 civil and 15 family clients by telephone.⁷ Topics covered included: what had happened since the advice appointment; whether the client had been able to act on the advice; whether they felt the advice had helped them to understand the legal process and to deal with the court/any other party; what they thought they would have done without the advice; any adverse impacts that being involved in their case had had on their physical or mental health, and whether receiving advice had helped to alleviate any such effects. Clients were also asked what had led to them being self-represented and for their assessments of the service received from the Bureau.

Bureau staff and advisers (employed solicitors and HLAs) completed a data collection form in respect of each appointment during a two month period of our fieldwork, to provide data on what it was that advisers did for clients, and the potential impact of their advice and assistance. Data was collected in respect of 353 civil and 163 family law appointments.

A survey of the impact of advice in private law family cases was conducted. Family was chosen due to acute policy interest in family cases and the greater homogeneity of family cases compared to civil proceedings involving litigants in person. Two practitioner organisations, Resolution and the Family Law Bar Association (FLBA) enabled us to identify and contact family law practitioners to obtain views on the likely impact of advice provided.

A web-based survey was designed⁸ that presented five case studies, based on our observation of advice sessions in the family law service. Respondents were asked to estimate the likely impact of the advice on the trajectory of the case and on certain outcomes. 105 and 164

⁷ A £20 shopping voucher was offered to each client who took part in these interviews.

⁸ Two slightly different versions were developed one for each organisation.

responses were received from members of Resolution and the FLBA respectively.⁹ As far as we are aware, this approach has not been applied previously as a measure of impact.

The work of the civil law service

This section profiles the Bureau's civil clients and cases, and identifies the advice and assistance given by advisers (employed solicitors and HLAs). Quantitative findings are based on collection of case data by advisers on 353 appointments which involved 242 unique clients. Qualitative findings are based on observations of advice sessions and interviews with clients.

Profile of civil clients

A little under half of civil clients (45%) were new to the Bureau. Just over a quarter of civil clients (28%) were recorded as being vulnerable in one or more of the following ways: having mental health problems and/or being emotionally vulnerable (10%); having physical disabilities or health problems (8%); having difficulties with spoken and/or written English (11%); being accompanied by somebody from the Personal Support Unit (6%).¹⁰ Perhaps reflecting the location of this court, the client base was ethnically diverse.

Often, civil clients were instigating rather than defending proceedings. Only a minority appeared to have had, or were expected to have, legal representation at some point. 93% of clients were expected to be self-represented from that point onwards.

Almost all of the civil clients observed presented as having considerable personal interests in the outcomes of their cases. What

⁹ Response rates are uncertain because of the way the surveys were disseminated via the member networks. Web-based surveys are unlikely to give rise to large response rates, and this proved to be the case here. However, this approach enabled the collation of a more sizeable body of evidence of professional opinion on the likely impact of the Bureau's advice than would otherwise have been possible;

¹⁰ The PSU describe their service as follows: "Our two hundred fully trained volunteers provide practical and emotional support to people who are representing themselves in court. We do not give legal advice." <http://the PSU.org/about-us/how-we-help/>, downloaded 15th May 2013

was at stake included: handling of child protection issues; the death of loved ones; significant personal injuries; familial conflict; occupation and/or enjoyment of homes; livelihoods; reputations; and alleged discrimination by state-sponsored authorities. In several cases, significant amounts of money were involved, either in absolute terms, or relative to the clients' financial means.

Several of these clients appeared to have invested a significant amount of time and effort in quests for *'justice'*, sometimes over the course of many years. For them – but also for some others whose problems were more recent, pursuit of their cases involved *'a matter of principle'*. Several appeared determined to take things as far as they possibly could, and unwilling to let go if decisions went against them. In a small number of instances, one of the first questions clients asked of advisers was whether they could bring an appeal if the next decision in their case was not in their favour.

Most of the clients appeared to genuinely believe that their cases had merit, or wished to find out if they did. A small number however appeared to adopt a somewhat laissez-faire approach to merits and their prospects of success. This appeared to be because they were buoyed by a previous experience of civil litigation, in which they had been successful. A striking example was a client whose response, when the adviser pointed out that a High Court judge had described their case as *'totally without merit'*, was, *'they all say that, it's a standard phrase'*. Later on, the client repeated their assertion: *'It's a matter of opinion really, which way it goes, whether I've got any...or they say there's no merit, absolutely no merit, then that means there isn't much merit, that's terminology.'*

In contrast, some clients appeared to adopt a much more measured approach to proceedings, which involved putting their own feelings to one side. They included a claimant who was frustrated by the way in which the defendants' solicitors were conducting their case, but who was nevertheless fairly easily persuaded to co-operate in the disclosure of a document which they thought the defendants could obtain for themselves. The client acknowledged that emotions had been playing a part in how they viewed matters, and that they should not be *'childish'*.

A minority of civil clients appeared to be organised, focused, and dealing with the procedural aspects of their cases reasonably well. In a small number of cases they were mostly looking for reassurance that they were doing the right thing. A majority of those observed however

appeared to be unsure how to proceed, and/or to have previously come unstuck. In several cases, clients were also having difficulties dealing with the other party, the other party’s representatives, and/or the court.

The most prevalent cases involved debt, housing possession, breach of contract and judicial review. Proceedings were generally ongoing. About a third involved appeals or applications for permission to appeal. Although, including where previous rulings had been made by various tribunals, around two thirds of observed clients had previously lost their case at some stage (either as a result of a hearing or by default when they had not attended). About three quarters of cases were against businesses, organisations or individuals acting in an official or business capacity. A large majority of opposing parties were believed to be represented.

Advice and assistance in civil cases

Table 2 summarises quantitative data on the frequency of acts of advice and assistance. These were time-limited appointments, at which clients commonly sought help with specific aspects of their cases.

TABLE 1: CIVIL CASES, ASPECTS OF PROCEEDINGS DEALT WITH BY ADVISERS

Advice & assistance provided on	% of appointments in which aspect featured
Procedural and evidential matters (applications, directions and compliance with directions, witness statements and other evidence, disclosure, correspondence, excluding issues to do with hearings)	30.3
Referral/signposting to legal advice, including referrals to BPBU, eligibility for legal aid/alternative methods of funding	27.0
Appeals, setting aside, enforcement action (criteria/grounds for and/or procedure)	26.4
Statements of cases (including skeleton arguments for appeals)	21.1
Hearings (preparation for/conduct of, including listing issues)	19.3
Pre-action matters (pre-action behaviour, limitation period, forum)	17.2
Costs and court fees	16.6
Negotiation, settlement and referral/signposting to mediation/ADR	15.1

Where clients were advised on sources of legal advice and/or funding, this often reflected a need for advice on the law and merits, in diverse and what quite often appeared to be complex cases, which advisers were unable to provide themselves.¹¹ About half of these included advice on referrals to the Bar Pro Bono Unit, and/or help with completing parts of the relevant application form.

Our observations indicated that key tasks for advisers were to help bring clarity, focus and organisation to clients' conduct of proceedings. Advisers also tried to persuade clients to adopt sensible approaches towards litigation, and to be realistic regarding the prospects of success. Sometimes the focus was on protecting clients' interests in respect of enforcement. Some appointments resulted in limited or no obvious progress, for reasons discussed below.

Often clients appeared unsure of and/or to be acting under a misapprehension as to the state of play regarding proceedings. One defendant thought he had asked the court to '*throw the case out*' when he really wanted simply to defend. Another did not realise he was the respondent to an appeal from a tribunal decision; he thought he was a witness. A third, had filed an affidavit for an extension of time but did not understand she would still have to make a case for the extension at the hearing.

The prevalence of observed cases involving appeals, potential appeals, and potential applications to set aside judgments meant advisers spent time explaining and emphasising the courts' powers and criteria in these areas. Often these were for cases which were formally out of time.

Clients who had launched appeals found it hard to clearly identify and articulate grounds. Here, advisers' efforts tended to revolve around helping clients to clarify what their grounds and produce skeleton arguments that were relevant.

In a few cases of yet to be launched appeals advisers indicated in strong terms that they did not think clients would be able to challenge decisions.

¹¹ Although advisers recorded that in a handful of appointments (3%) they did offer some help on the law and/or advice on the merits.

Where clients needed to make other court applications advisers drafted the relevant application and statement in support, and/or explained how clients how to do so.

Advisers generally attempted to improve the presentation and content of any client drafts of documents by: encouraging clients to get them typed up (if handwritten); advice on structure; and, encouraging concision and clarity about key points (such as grounds of appeal). Templates were sometimes provided.

Advice on hearings covered basic matters such as the type of room that hearings would be in, the format that they would take, and what to call judges. Advice was sometimes given on creating a favourable impression (e.g. arriving early, having their papers in good order, being as concise as possible when addressing the judge).

Clients were also advised on presenting arguments orally: being concise and to the point; preparing properly, so they knew their key points; being prepared for questions from the judge; and, taking their lead from the judge.

Advisers were usually not experts in the areas of law this diverse group of civil clients had problems in and generally sought to provide some general assistance as clients proceeded in the direction in which they wanted to take their cases. That said, in several cases advisers did test clients' commitment to litigation and get them to think about the wisdom of pursuing certain courses of action in practical terms (that is in cost benefit rather than predominantly legal terms).

Advice on settlement was relatively rare but advisers explored the possibilities in some cases.

As noted above, there were cases in which limited or no progress appeared to be made. Time was taken up simply establishing the position and what clients needed from advisers in complex cases; or clients were vague about key matters; or had not brought a relevant judgment or other key document. Some clients found it hard not to dwell on issues which appeared peripheral. Occasionally, client came with very detailed legal points which were beyond the knowledge of the advisers.

Potential impact of the civil law service

This section discusses the potential impact of the civil law service based on qualitative data from observations and client interviews. Given the nature of their cases, the Bureau's interventions would most

frequently involve potential for influencing the conduct and trajectory of existing proceedings.

What might the likely impact of such work be?

Based on observation and file data, advice ought to reduce the likelihood of clients pursuing inappropriate courses of action, and/or failing to take appropriate action. Thus reducing demands on the time of court staff, judges, and other parties/their legal representatives in many cases. The likelihood that the content and presentation of paperwork, and advice on preparation for and conduct of hearings, ought to have similar impacts. When protecting clients' positions regarding enforcement action, the Bureau's interventions would potentially increase the time spent by all involved where applications which might otherwise not have been made resulted.

Advice on negotiation/settlement and referral/signposting to mediation/ADR might also reduce the involvement of the courts but our observations also suggested that civil clients could be determined to pursue matters through the courts as far as possible – sometimes, with little regard to the merits. This may reflect the unusual case load of the RCJ which included the Court of Appeal.

Similarly, signposting and referrals to legal advice and free representation (where available) could reduce the likelihood of unmeritorious cases being pursued, and increase the prospects of success in meritorious ones.

Case data collected by advisers suggested any such positive impacts on the courts would potentially be felt in approximately half of the cases dealt with. Whether or not the potential impacts outlined above would materialise in practice would depend on a number of factors, including the extent to which clients were inclined and able to follow through and act on the advice received; it would also depend on how other parties and/or their representatives approached matters.

The eleven civil clients interviewed reported mixed outcomes following their advice appointments. A majority had acted on the advice received. Beyond that, though, progress in their cases were quite varied, often for reasons which were outside of clients' control.

Two clients reported substantial progress in their cases. One commented that *'this has really changed things...it's developed things.'* (because their opponent had started to file and disclose necessary documents to progress the case). In the other case, the clients had obtained a stay on a substantial enforcement action, and

been given time to apply for permission to appeal against judgment. They had also been given the confidence to *'say [their] piece'* at the hearing. They also commented that, *'we wouldn't be where we are today without [the Bureau]'*.

In both these cases, the clients had had more than one appointment and the outcomes appeared due to the cumulative effect of advice received on different occasions.

Three other clients felt they had acted improved their documentation and/or presentation of arguments. Whilst there was no evidence of positive outcomes (either because they had lost their cases or had not yet finished their cases), they felt more comfortable and less confused with the handling of their own cases. In one of these a judge had nevertheless adjourned the hearing to give the client time to address essential issues which they had still left out. The client here appeared to be struggling still.

The remainder either had cases resolve themselves independently of advice or had carried on with cases where the advice appointments had not made much difference (these clients were ones where little or no progress was made in the advice session). Some of these indicated ongoing intentions to appeal decisions, one to the European Court of Human Rights.

Many clients spoke of health problems attributed to their worries about the personal and financial consequences if they lost their cases and uncertainty about the process. Clients who reported physical or mental health problems as a consequence of dealing with their legal problems tended to feel that receiving advice and assistance from the Bureau had helped to alleviate the health problems, notwithstanding the fact that in most cases, proceedings had not yet concluded. Clients felt supported, and that the Bureau's intervention had helped them to make progress towards achieving a resolution.

Quantifying impacts of the civil law service

For each appointment, employed solicitors and HLAs were asked to give their assessments of the likely impact of their advice and assistance in three respects:

1. whether they expected the client to do something differently as a result of seeing them;
2. how they thought what they had done for the client was most likely to affect how much time would be spent on the next step in the proceedings;

3. how they thought what they had done for the client was most likely to affect the nature of the proceedings generally from that point onwards.

It was anticipated that estimating likely impact based on a single appointment could be difficult; also, that the scope for certain forms of impact might be limited in any particular instance. Advisers therefore had the option of stating that they could not give an opinion, and in respect of 2) and 3) the options also included ‘neutral’.

Advisers expected 55% of civil appointments to result in clients doing something differently. They expected 32% not to, and were unable to say either way in respect of 13% of appointments.

There were indications that advisers may have quite often interpreted the question they were asked here strictly, and the figures above may therefore underestimate the frequency with which clients would do something differently.

As shown in Table 3, advisers thought that between around one third and two fifths of civil appointments would lead to a reduction in time spent on the next step by court staff, the judiciary, or clients, and that around one in five would lead to less time being spent by other parties/their legal representatives. Increases in time spent were anticipated in small minority of instances; in the remainder, advisers either thought that the effect of their advice would be neutral or could not express a view.

TABLE 2: CIVIL APPOINTMENTS, MOST LIKELY IMPACT ON TIME SPENT ON NEXT STEP

Most likely effect on time spent on next step	Court staff	Judiciary	Other party / their legal representative	The client
	%	%	%	%
Reduce	38.5	36.9	21.7	32.9
Neutral	40.6	44.6	51.7	33.2
Increase	6.5	3.7	11.5	21.6
Can't say	14.5	14.8	15.2	12.2
Total	100.1	100.0	100.1	99.9

Advisers appeared to find it harder to predict impacts of their advice and assistance beyond the next step in proceedings. Nevertheless, where advisers did provide estimates, they anticipated that slightly more than half of appointments were likely to lead to an increase in clarity of the issues, facts, and/or evidence, and that approaching half were likely to lead to a reduction in clients pursuing inappropriate action and/or not taking appropriate action.

Other positive impacts were expected to arise from between one in six appointments (a reduction in the likelihood of contested proceedings, and in overall complexity of proceedings), to around one in three (increased prospects of success for the client). A fifth of appointments were expected to lead to fewer court hearings being required, and approaching a quarter to a reduction in overall hearing times.

The family law service

Reporting of figures in this section is based on appointments and not case file data as it was not possible to identify unique family clients and cases from the quantitative data collection exercise.

Approximately three quarters of family appointments were attended by clients who were new to the Bureau. 55% were women. Just over a quarter were recorded as being vulnerable in one or more of the following ways: having mental health problems (2%); having physical disabilities or health problems (6%); having difficulties with spoken and/or written English (6%); or being accompanied by somebody from the Personal Support Unit (14%).

As with civil cases, there was diversity in terms of ethnicity and nationality and sometimes brought an extra international dimension to the advice sought in some cases, as clients mentioned partners who lived in another country or who were not British.

Several clients had been subjected to domestic violence.

About three quarters of family clients were instigating or had instigated proceedings. Most, about two thirds, had not previously had representation. Most expected to remain self-represented.

Client's ability to present their case within the time constraints of an advice session varied. Some were very articulate and firm in their views, but not able to present their cases in a coherent manner – offering accounts which were disjointed and contradictory. Not uncommonly clients presented with responses to their situation which an air of fragility, being overwhelmed and tearful. This meant advisers

could struggle to understand what the client wished to achieve from the appointment and then to keep the appointment focused on the issue in hand.

Table 7 summarises the types of matters which featured most frequently overall.¹²

TABLE 3: FAMILY CASES, MOST FREQUENT MATTER TYPES

Matter type	% of appointments in which matter featured ¹³
Divorce	51.5
Ancillary Relief	20.9
Children Act: Contact	16.0
One or more of above	71.8

The workload of the family law service was less diverse than that of the civil in terms of subject matter and the HLAs who conducted these appointments were experienced family solicitor. Nevertheless, appointments involved a variety of issues including: abduction; adoption; care proceedings; civil partnership dissolution; claims arising from cohabitation; domestic violence; and other private law children matters (parental responsibility, prohibited steps, residence and specific issues). A handful of cases involved costs orders or enforcement.

In half the cases, proceedings had not yet been issued. Just 5% involved appeals or prospective appeals. In contrast with the civil clients, only about half of the clients' opponents were believed to be represented.

As with civil cases, advisers were asked to record the nature of the advice and assistance provided at each appointment.

¹² Based on quantitative data collection not on observations.

¹³ Based on 163 appointments.

TABLE 4: FAMILY CASES, ASPECTS OF PROCEEDINGS DEALT WITH BY ADVISERS

Advice & assistance provided on	% of appointments in which aspect featured
Pre-action matters (pre-action behaviour, limitation period, forum)	50.0
Petition, application, acknowledgement, response ¹⁴	28.4
Procedural and evidential matters (applications, directions and compliance with directions, witness statements and other evidence, disclosure, correspondence, excluding issues to do with hearings)	25.0
Negotiation, settlement and referral/signposting to mediation/ADR	18.2
Hearings (preparation for/conduct of, including listing issues)	15.5
Referral/signposting to legal advice, including referrals to BPBU, eligibility for legal aid/alternative methods of funding	14.2
Appeals, setting aside, enforcement action (criteria/grounds for and/or procedure)	8.1
Costs and court fees	7.4

The negotiation etc. figure appears low but 35% of the appointments on which Table 8 is based, were reported to involve only divorce proceedings. By way of contrast, 38% of appointments in which the only matters dealt with were private law children issues, were recorded as involving advice on negotiation, settlement and mediation/ADR.¹⁵

Some appointments were fairly straightforward, helping the client to fill in a court form such as the divorce petition; offering wording for

¹⁴ As the majority of clients attending family appointments were petitioners or applicants, the majority of these involved petitions and applications.

¹⁵ There were 26 cases which involved only contact, residence, prohibited steps, specific issues, or parental responsibility. Advice on negotiation, settlement or ADR was recorded in 10 of these.

sections they were unsure about; and, correcting forms which had been returned to the client by the court.

Advice here frequently involved explaining the relevant facts which might be relied on to establish entitlement to a divorce, and checking which was most appropriate in individual cases. Similarly, advice was given on procedural steps and likely timescales.

Advice also included attempts to increase clients' understanding and to soften attitudes. This included advising clients on which approach to their cases was likely to be least contentious and phrasing documents without '*going for the jugular*'. Similarly, the desirability of trying to agree the contents of the statement of arrangements (which sets out the plans for arrangements with the children) with the client's spouse was emphasised.

Where time permitted, advisers checked statements that clients had attempted to prepare, advised on wording and excising unnecessary material. Advice was provided on the format and content of letters, and in some cases advisers either drafted a letter or provided bullet points to help the client in drafting their own.

It was difficult to advise on concision in the abstract. Advice was expressed in general terms: *get your ducks in a row* or *paint a picture for the judge* 'avoid a novel', and the more definite advice to give examples rather than list everything. Similarly general advice was given on clients keeping their own file of documents and evidence or diaries where clients were subject to a chain of behavior (such as harassment or non-cooperation).

More specifically, clients were also advised to prepare schedules of the arrangements they wished to achieve in contact and residence disputes.

Advisers also urged clients to focus on the immediate issues and to delay or avoid raising others.

Advice was also given on substantive law. Advisers explained concepts and practicalities around matters such as parental responsibility, contact, residence, non-molestation orders, the requirements under the Matrimonial Causes Act regarding financial provision, and how penalties in family law often do not work. Such explanations also included comments on what the courts expect, and what judges are likely to do and will not like to do.

Some advisers strove to encourage clients to treat issues about children and finance separately. The same was sometimes true of dealing with allegations of violence. Overwhelmingly, the best interests of the child was emphasized repeatedly as being the paramount consideration. Similarly, there were attempts to prepare the client for cooperation with their former partner, explaining what the court would like to see notwithstanding acrimony and sometimes harassment, such as: a channel of communication between the parents; proposals for how children would be cared for and supported; and an ability to work together in the children's interests. Advisers did not underplay the difficulty of achieving this. They warned clients that they were in a long haul situation or had, '*an uphill struggle*' and that relationships between former partners would evolve over time, as would contact arrangements for the children.

Explanations here appeared geared towards providing clients with a different perspective, by placing issues in context and paving the way for discussions that aimed to help them to see beyond their immediate distress and any sense of grievance. By doing so, advisers also aimed to manage expectations and give advice which concentrated on reducing conflict and using the courts only where necessary. This approach was taken in almost half of the appointments observed.

Such advice involved managing client expectations and responding to their perceived emotional reactions. They encouraged constructive communication between the client and their former partner. Clients were frequently told about mediation, though emphasis and approach differed.

Urgent, complex matters, those involving particular power imbalances with the other party or domestic violence harassment tended to prompt recommendations that the client seek further advice and legal assistance. This was routinely suggested in relation to financial matters before finalising any settlements reached by negotiation or via mediation.

There were two family appointments at which little appeared to be achieved. One because the client had not brought any papers, and was unable to explain what had already happened in her case accurately. In another, the adviser was unable to suggest a solution to the client's long running problem which the client had not already tried.

Potential impact of the family law service

Outcomes and benefits or potential benefits for clients and others are identified based on qualitative data from observations; client interviews; case data by advisers and a survey of family lawyers based on case studies derived from our observations.

In assisting with paperwork and advising on the procedure for divorce, advisers provided clients an overview of what needed to be done – and how and when it should be done. Observations and interviews suggested that advice here was especially useful in aiding understanding when clients or their partners were not of English origin and/or where partners were resident overseas. This should have reduced the likelihood of clients pursuing inappropriate courses of action; reducing demands on the time of court staff, judges, and other parties/their legal representatives in many cases.

Helping to bring clarity and focus to case documentation, and preparation and presentation more generally in divorce and other types of family cases, and explaining the principles and operation of family law, ought to have similar impacts.

Linked to this, encouraging willingness to negotiate and to use mediation where possible had the potential to save court time, and costs. However, if mediation failed, and further legal action was required, then it is likely that the overall costs would have increased due to the additional step of attempting mediation.

As with civil cases, whether the potential impacts outlined above would materialise in practice would depend on a number of factors, including the extent to which clients were inclined and able to follow through and act on the advice received. It would also depend on how other parties and/or their representatives approached matters.

Outcomes reported by family clients

As with civil cases, whether the potential impacts outlined above would materialise in practice would depend on several factors, including the extent to which clients were inclined and able to follow through and act on the advice received. It would also depend on how other parties and/or their representatives approached matters.

The 15 family clients interviewed reported mixed outcomes following their advice appointments. Almost all had acted or attempted to act on the advice received. Overall, around half had been able to take positive steps forward with their cases by the time of interviews. In

some instances in which they had not done so, this appeared to be for reasons which were outside of clients' control.

Some of the clearest impacts were reported by two clients who had acted on advice to try mediation in respect of contact which had helped significantly. Neither of these clients suggested that the situation (regarding contact) was yet ideal but sufficient progress had been made to halt court action over contact for the foreseeable future. Conversely, another client who had initially considered that mediation would be suitable for dealing with financial provision on divorce had changed her mind on the basis of her experience of *'how things have gone with my husband.'* Litigation or negotiation through solicitors looked likely.

Sometimes assistance with documents appeared to lead to their successful acceptance by courts, though this could require more than one advice session whilst clients checked their documents drafted on the basis of prior advice. Another had had their petition returned by the court *'a couple of times ...for very minor things'* before being issued. A third client had made a successful application to dispense with service of the petition, after acting on advice to attach relevant evidence. She reported that in the end, it had been *'pretty straightforward'*.

Three clients had gone on to obtain further advice and/or representation and made progress with their cases.

Another client had represented himself at a hearing of contested applications for contact and parental responsibility against his represented former partner. An interim contact order had been made. The client said that the advice from the Bureau had been useful, and that he had been able to follow it, but he felt at a disadvantage in the proceedings.

Three of the family clients interviewed had hit procedural obstacles in progressing divorce proceedings and were stuck. One would be likely to go back to get further advice. A second had exhausted his three appointments and so could not go back. For a third client, despite reportedly following advice to keep the particulars as mild as possible, his wife had reacted badly to the petition and was refusing contact.

Four other clients also reported having made little substantive progress by the time of interviews. Letters they had been advised to send to other parties had apparently been ignored; or it appeared they

had not been as proactive as they might have been; or events had overtaken the advice.

Whether or not they had managed to make substantive progress by the time of interviews, most of the family clients said that the advice received had helped them to better understand the legal system that they were dealing with. However, as indicated above, it appeared that several clients had needed or would need advice on more than one occasion in order to benefit fully from it.

Most of the family clients interviewed felt that their problems had affected their physical and/or mental health, commonly increasing in mental stress, anxiety or depression. A majority of those who reported such problems, also reported the advice had some positive (and probably modest) impact on those problems. A recurring theme was feeling less stressed or worried, because they felt supported, and had made make progress towards achieving a resolution.

Quantifying impacts of the family law service

The advisers in the family law service were asked to give their assessments of the likely impact of their advice and assistance in three respects:

1. whether they expected the client to do something differently as a result of seeing them;
2. how they thought what they had done for the client was most likely to affect how much time would be spent on the next step in the proceedings;
3. how they thought what they had done for the client was most likely to affect the nature of the proceedings generally from that point onwards.

Estimating likely impact based on a single appointment is difficult; also, that the scope for certain forms of impact might be limited in any particular instance. Advisers therefore had the option of stating that they could not give an opinion, and in respect of 2) and 3) the options also included 'neutral'.

Advisers expected 48% of appointments to result in clients doing something differently. They expected 30% not to, and were unable to say either way in respect of 22% of appointments.

As shown in Table 9, advisers thought that around half of family appointments would lead to a reduction in time spent on the next step

by court staff, the judiciary, or clients, and that a quarter would lead to less time being spent by other parties/their legal representatives.

Increases in time spent were anticipated in small minority of instances; in the remainder, advisers either thought that the effect of their advice would be neutral or could not express a view.

TABLE 5: FAMILY APPOINTMENTS, MOST LIKELY IMPACT ON TIME SPENT ON NEXT STEP

Most likely effect on time spent on next step	Court staff	Judiciary	Other party /their legal representative	The client
	%	%	%	%
Reduce	52.2	49.4	25.0	51.3
Neutral	29.9	32.3	49.4	24.7
Increase	4.5	4.4	9.0	11.4
Can't say	13.4	13.9	16.7	12.7
Total	100.0	100.0	100.1	100.1

Advisers appeared to find it harder to predict impacts of their advice and assistance beyond the next step in proceedings. Nevertheless, they anticipated that slightly more than half of appointments were likely to lead to a reduction in clients pursuing inappropriate action and/or not taking appropriate action, and an increase in clarity of the issues, facts, and/or evidence.

Just over a quarter of appointments were expected to lead to increased readiness to negotiate on the part of clients, and a reduction in the complexity of proceedings; more than a third were expected to lead to a reduced likelihood of contested proceedings, a reduction in the length of any proceedings, and an increase in the client's prospects of success. A quarter of appointments were expected to lead to fewer court hearings being required, and a third to a reduction in overall hearing times.

Impact survey

Whilst the advisers appeared cautious in attributing positive outcomes to their advice, they may nevertheless have a natural tendency to overestimate the likely impact of the help they have given. In an

attempt to address this, an impact survey was conducted among family practitioners via Resolution (a largely solicitor-based body of family lawyers) and the Family Law Bar Association (FLBA, principally barristers) to address potential impact from the types of advice seen for family clients.

The survey involved five case studies, which were based on our observations of advice sessions in the family law service. The information presented was simplified somewhat to enable the cases to be anonymised and digestible within the context of the survey, whilst representing a fair summary of what actually happened in the observed appointments. Recipients of the survey were asked to estimate the impact of the advice, based on the facts as presented. They were encouraged to do so for at least two of the case studies, but could opt to end the survey at any point.¹⁶

In the survey, we emphasized our view that estimating impact in this way was not an easy or certain judgment, but explained that we sought to compile the views of a sample of family lawyers.¹⁷

A total of 269 responses were received (105 from Resolution members, who are referred to as ‘solicitors’ and 164 from FLBA members, who are referred to as ‘barristers’). However, overall response rates were very low.¹⁸ Therefore, whilst the survey responses indicate a significant body of expert opinion, they should not be regarded as *representative* of such opinion. Rather, by obtaining views

¹⁶ For the FLBA survey it was possible to randomise the order in which the case studies appeared. Technical difficulties prevented this in the Resolution survey.

¹⁷ The following statement was used immediately prior to respondents being presented with the first case study for assessment:

‘We understand that estimating these matters is difficult and is not an exact science. Please give a broad estimate only of what you regard as likely in the circumstance and your estimate will be compiled alongside the answers of other lawyers working in the family justice system.’

¹⁸ Further detail on the respondents are available in an Appendix to the research report.

from a reasonable number of practitioners we aimed to provide meaningful estimates of the likely impact of the Bureau's advice, based on their experience of family law cases.

We acknowledge and emphasise with some force that such estimates should be treated with a degree of caution. They are based on the limited information provided in the case studies, and even with perfect information (if such a thing exists in such cases), it would naturally be difficult to predict outcomes with any certainty. Nevertheless, the results give some indication of the likely impact of providing advice and assistance to self-represented parties in family cases through the Bureau model. The ability to compare across two professional groups also provides a cross-check on the results, to examine how consistent approaches to assessing impact were.

Lastly here, it should be noted that given the aims of the research, the case studies were not intended to equip respondents to assess the quality of the advice. (Indeed, in light of the exigencies of short-ish advice appointments, the ways in which clients told their 'stories', and that advice was provided in often quite difficult circumstances, a survey of this nature would not have been an appropriate vehicle for doing so.)

To minimise the risk of accidental identification of clients, the case studies are not published. However, they are briefly outlined below.

FIGURE 1: BRIEF OUTLINE OF CASE STUDIES USED IN THE IMPACT SURVEY

Case Study A

The client wished to vary contact arrangements, having recovered from mental health problems, and did not want to mediate. The case had previously been in court.

Case Study B

The client sought advice on starting divorce proceedings, contact and financial matters. The parties were in the early stages of negotiating post separation. The case was not in court.

Case Study C

The client who at the time was the resident parent, was seeking advice on contact and non-molestation issues. The case had previously been in court in respect of contact.

Case Study D

The client was the resident parent, and was seeking advice about contact arrangements for the non-resident parent (who had issued an application), plus non-molestation/harassment issues.

Case Study E

The client was the non-resident parent, and sought advice about a refusal of contact, despite there being a court order. There were intimations that the resident parent engaged in risky behaviour (drugs and alcohol use) and also had inappropriate social contacts.

For each case study, respondents were asked to estimate the impact of the advice, in terms of whether the likelihood of the courts becoming involved would increase or decrease, and whether each of the following was likely to increase or decrease:

- the time spent on the case by the court and by the other party;
- the time that the case would take to come to resolution;
- the well-being of any children and of the client.¹⁹

Table 13 summarises the results for each case study in response to the first question: whether the likelihood of the courts becoming involved was increased or decreased. It indicates a net position (i.e. the percentage of respondents indicating that they thought the likelihood was increased or significantly increased, minus the percentage who thought the likelihood was decreased or significantly decreased). A positive percentage indicates that the respondent group tended towards the view that the likelihood of the courts becoming involved had increased. A negative percentage indicates that the group overall believed that it had decreased. 'N' in the last column refers to the number of respondents, which varied from case study to case study. Subsequent tables in this section follow the same approach.

¹⁹ Respondents were encouraged to give estimates based on their professional experience but had the option of indicating that they did not know. This option was taken by a small number of respondents (of the order of 0-10% depending on the question and the case study).

TABLE 6: IMPACT SURVEY, LIKELIHOOD OF THE COURTS BECOMING INVOLVED

Case Study	Respondents	Net Position	N
A	Solicitors	40%	62
	Barristers	29%	55
B	Solicitors	-13%	55
	Barristers	0%	53
C	Solicitors	-26%	19
	Barristers	-8%	52
D	Solicitors	54%	13
	Barristers	38%	55
E	Solicitors	0%	10
	Barristers	33%	51

Respondents took the view that the advice given would increase the likelihood of the courts becoming involved in two cases (A and D). There was less agreement in respect of two cases (B and E), and for Case Study C there was overall agreement that court involvement was less likely.

Where court involvement was seen as more likely, this appeared to be because the parties' positions were quite polarised and/or court proceedings were imminent or ongoing (and the advice then related to the extent to which the client should engage with them). In this sense the advice was designed to encourage and facilitate, in so far as is possible within the timeframe of the advice, appropriate participation in court proceedings. Advice often encouraged mediation and negotiation prior to such steps, but respondents tended towards the view that taken together, the response of clients and the other parties was likely to increase the likelihood of court involvement.

Likely impact on time spent by the court on the case

In two case studies the practitioners agreed that the likely impact was increased court time spent on the case. In two there was thought to be a likely decrease and in one case study there was a difference of opinion between the two groups.

TABLE 7: IMPACT SURVEY, LIKELY IMPACT ON TIME SPENT BY THE COURT

Case Study	Respondents	Net Position	N
A	Solicitors	39%	62
	Barristers	5%	55
B	Solicitors	-13%	55
	Barristers	-9%	53
C	Solicitors	-16%	19
	Barristers	-10%	52
D	Solicitors	38%	13
	Barristers	24%	55
E	Solicitors	-20%	10
	Barristers	14%	51

In A and D, where it was agreed court time on the case was likely to increase, the advice was geared, in part, towards ensuring the clients participated in court proceedings in ways which would increase the likelihood of the courts hearing their side of the case. Here, proceedings were perceived as imminent or ongoing. This would be likely to increase the time taken by a court, especially – in the respondents’ views – given the likelihood that a self-represented party would participate less efficiently than a legal representative would.

Case Studies B and C were both cases where proceedings appeared neither imminent nor necessarily likely and the adviser concentrated more on mediated/negotiated solutions in their advice. The difference between solicitors’ and barristers’ assessments of Case Study E may be explained by a difference in their assessment of how successful initial advice to write a letter and see if the matter could be agreed was likely to be. In this case there was a potentially serious child protection issue, which may have split responses as to what was appropriate in the circumstances.

Likely impact on time spent by the other party on the case

The respondents tended to agree that the advice given was likely to increase the time spent by the other party in three cases. One commented that:

‘Litigants in person slow the process down, mean more court time as everything proceeds at a slower pace and add to the represented party's costs.’ (Solicitor, Case Study B)

However on two cases there was some disagreement between the two groups.

TABLE 8: IMPACT SURVEY, LIKELY IMPACT ON TIME SPENT BY THE OTHER PARTY

Case Study	Respondents	Net Position	N
A	Solicitors	37%	62
	Barristers	38%	55
B	Solicitors	-4%	55
	Barristers	17%	53
C	Solicitors	0%	19
	Barristers	17%	52
D	Solicitors	46%	13
	Barristers	24%	55
E	Solicitors	10%	10
	Barristers	35%	51

In relation to Case Studies A, D and E a main thrust of the advice was the client’s participation in proceedings and/or negotiations, leading to a likelihood that this would increase their participation in court proceedings and increase the extent of any negotiation that would take place. The situation in B appeared more inherently uncertain with the family breakdown relatively recent and court proceedings less imminent, if they were likely to occur at all. In Case Study C the advice was relatively specific about how to negotiate to avoid taking proceedings, and the difference in views may express different judgments about the likelihood that such an approach would succeed. It is perhaps unsurprising that barristers, who are more likely to see cases where negotiation has failed, took a somewhat less sanguine view than solicitors on the same set of facts here.

Likely impact on the time the case takes to come to resolution

In two cases (A and D) the respondents agreed that the time the case would take to come to resolution was likely to be increased. In two cases solicitors tended to think the length of time was likely to decrease (C and E) and there was a slim majority in favour of an increase being likely to occur in the remaining case (B). In two of these cases (B and C) barristers tended towards the view that there was likely to be little or no difference, and in one (E) they tended modestly towards the view that an increase was likely.

TABLE 9: IMPACT SURVEY, LIKELY IMPACT ON TIME CASE TAKES TO COME TO RESOLUTION

Case Study	Respondents	Net Position	N
A	Solicitors	39%	62
	Barristers	11%	55
B	Solicitors	11%	55
	Barristers	0%	53
C	Solicitors	-21%	19
	Barristers	0%	52
D	Solicitors	38%	13
	Barristers	33%	55
E	Solicitors	-20%	10
	Barristers	14%	51

As before, Case Studies A and D show likely increased time to resolution because the advice was essentially leaning towards ensuring the client's views and concerns were taken into account in imminent/ongoing proceedings. The position on Case Study B is less certain because of the inherent uncertainty as to whether or not there was likely to be significant dispute. This may also be the explanation for the results in Case Study C: the solicitors saw the detailed advice on how to deal with negotiating the problem as being likely to forestall the need for proceedings, the barristers as a group were less

convinced. Case Study E again split the two groups, we surmise for the reasons discussed above.

Likely impact on well-being of the children

The survey also addressed the impact of the advice on the well-being of children involved. The results here were more uniformly positive, with the advice in all but one case being indicated as likely to increase the well-being of the children. Case Study A was the scenario giving rise to a difference of view. Practitioner comments suggested this was due to the particular difficulties faced by a client who had had mental health problems which were felt likely to impact on her and, possibly, the child at the centre of the dispute:

‘Increased acrimony, knock on effect on health and likelihood mental health would be affected. Child aware in middle of conflict - emotional harm. Much longer needed for everyone concerned dealing with - with no detailed advice client will just proceed on what she thinks is right and not be at all realistic.’ (Solicitor, Case Study A)

TABLE 10: IMPACT SURVEY, LIKELY IMPACT ON WELL-BEING OF THE CHILDREN

Case Study	Respondents	Net Position	N
A	Solicitors	0%	62
	Barristers	35%	55
B	Solicitors	18%	55
	Barristers	32%	53
C	Solicitors	44%	19
	Barristers	27%	52
D	Solicitors	23%	13
	Barristers	17%	55
E	Solicitors	30%	10
	Barristers	31%	51

Likely impact on the well-being of the client

The well-being of the client was thought likely to be improved by the advice by both sets of practitioners in four out of the five scenarios.

Again, Case Study A gave rise to a difference of view, and practitioner comments suggested this was for the same reasons as above.

TABLE 11: IMPACT SURVEY, LIKELY IMPACT ON WELL-BEING OF THE CLIENT

Case Study	Respondents	Net Position	N
A	Solicitors	-10%	62
	Barristers	40%	55
B	Solicitors	7%	55
	Barristers	28%	53
C	Solicitors	26%	19
	Barristers	31%	52
D	Solicitors	15%	13
	Barristers	28%	55
E	Solicitors	30%	10
	Barristers	29%	51

Putting the findings into context

The survey allowed for the inclusion of additional comments, and we draw on these to help put the findings into context.

Whereas a key claim made for representation is that it may minimise unnecessary cost and delay in resolving legal matters, the survey findings suggest that in some cases, the advice given by the Bureau’s family law service may increase the involvement of courts; the time spent on cases by the other parties; and the time taken to reach resolution. The reasons why this was the view of respondents can be captured in these quotes:

‘[A] solicitor will control and manage the evidence and arguments the client puts before the court to save time for both the court and the other party. The dispute is therefore likely to be resolved in less time.’ (Solicitor, Case Study A)

‘The breakdown of a relationship inevitably leaves both parties with feelings of resentment and anger...A solicitor will listen to their client's perspective but will help them to identify the

issues that are truly relevant and look at the bigger picture. It is rare for couples to be able to do this themselves without assistance. Mediation is a useful way to narrow some of the issues between the parties but there is usually a large element of mistrust following the breakdown of a relationship. The parties therefore often want their own independent advice in addition to mediation, this provides some reassurance and often reduces the amount of time it takes for the settlement to be agreed. Timely legal advice also reduces the risk of the weaker party (usually the parent with care of the children) being taken advantage of and agreeing to a settlement which is ultimately disadvantageous to them and jeopardises the security of the children.’ (Solicitor, Case Study B)

The comments indicated the natural limits of assistance for self-represented parties given via the Bureau’s model and how this could increase the likelihood of court involvement. A particular concern was that the process of negotiation and/or mediation had to be left to the self-represented litigant armed with the advice of the adviser. Respondents emphasised the *process* of advice and representation as one that leads to the narrowing of issues and the adjustment of party expectations so that they are in a position to settle:

‘The position of the parties at the outset of this dispute is clearly polarised. A solicitor will spend time with the client explaining and exploring the other party's position objectively in a way it is not possible for the client to do herself. This may have the effect of reducing or narrowing the issues between the parties. A solicitor can explain the benefits of mediation whereas without advice it may just be seen as a delaying tactic.’ (Solicitor, Case Study A)

A similar concern expressed by survey respondents was that the advisers sometimes had to discuss multiple strategies to deal with potential responses from other parties. So in one appointment, the adviser might need to discuss mediation, trying to negotiate, and issuing an application in the event that mediation did not work. Several practitioners commented on the way this sometimes compressed the three strategies together:

‘The advice given seems internally inconsistent, in that I would expect either a genuine try at mediation or a decision that child protection concerns and safety of unsupervised contact could only be established by running evidence in front

of a court – not both as this will only cause delay.’ (Solicitor, Case Study A)

‘Too early to be threatening court proceedings as this may make a negotiated outcome less likely and may give the client unrealistic expectations.’ (Solicitor, Case Study A)

An alternative interpretation is to see this as the adviser trying to map out the different scenarios, taking account of the unpredictability of the other party’s response:

‘This is a positive approach that is likely to take some selling to the client and depends a lot on the response and attitudes of the father, not least his ability to understand where his own views come [in] but also his ability to have a grown up debate about the issues.’ (Solicitor, Case Study A)

Another point made in comments by respondents is that the absence of representation on one or both sides makes the parties’ behaviour more unpredictable. This would impact on ability to predict the impact of advice:

‘The sensible advice received by the client is unlikely to have much effect on the outcome if the other party is not being similarly advised or is otherwise unreasonable. Therefore the advice on its own will only make a difference once the reaction of the other party can be judged.’ (Barrister, Case Study B)

It was noticeable that practitioners had sometimes quite different attitudes to advice given about mediation to self-represented litigants. Mediation was sometimes seen as likely to fail and sometimes (by different practitioners on the same case studies) as the first, sole and most productive focus for an adviser’s efforts. Sometimes respondents emphasised the need for mediation to be seen in context, as part of a process supported by representation:

‘As before I feel lawyer should take a view on whether mediation is helpful and if so promote it more positively. First bullet point is good, but fourth and fifth points seem guaranteed to provoke argument and reinforce husband's fears.’ (Solicitor, Case Study B)

‘Mediation is a good idea BEFORE things become difficult. Should say very general advice only and cannot go into specifics without more e.g. impact of new partner, short term

and long term finances and encourage formalising.’ (Solicitor, Case Study B)

It was noticeable that the use of mixed mediate/negotiate/litigate strategies in particular prompted critical comment from some practitioners, as did uncertainties about how clients would take away and use advice. Although critical quotes are included, we do not think it appropriate to dwell on criticism here, for a number of reasons. Firstly, the number of comments was quite low (a majority of respondents did not comment on the advice). Secondly, as noted earlier, the survey was not designed to test the quality of advice. Thirdly, critical comments were often countered by positive support for strategies adopted by advisers, suggesting interesting divergences of view within the practitioner community about what constitutes appropriate strategies for dealing with cases, especially when advice is one-off or episodic rather than provided through a relationship of representation. So for example, Case Study C led to the differences of opinion in the quotes below:

‘The couple have co-operated before and a firm approach from her combined with a clear indication of possible escalation is better than defaulting to court action at this stage. The strategy may work and is worth trying.’ (Barrister)

‘Most of the advice is completely wrong, which will significantly prolong proceedings and client's distress. She should seek non-mol[estation] or harassment order. She should seek a residence order. She should write to F[ather] setting out her proposals for contact. She should consider mediation, although this is unlikely to be appropriate given his psychological domination of her.’ (Barrister)

Overall, the results of the impact of advice survey suggest that, where practitioners thought clients had reasonable prospects of resolving their dispute through negotiation or mediation, advice from the Bureau would be likely to reduce the likelihood of courts becoming involved, the time a court would need to spend dealing with that case and the time taken to resolve the matter. That view needs to be tempered with a concern that self-represented litigants ordinarily would struggle to follow through on advice which required a sustained attempt to negotiate or mediate.

Conversely, where the advice was properly geared towards encouraging clients to bring, or participate more fully in, legal

proceedings the advice was likely to increase the likelihood that courts would become involved, increase the time spent on such cases (because self-represented litigants would take longer to deal with them) and increase the time spent by the other side dealing with a more assertive self-represented litigant. Again this view depended on clients being able to act on the advice given in the way the adviser envisages.

Other findings remind us that an increase in time taken by courts and the other side is not by definition a poor outcome. In general, these professionally experienced respondents predicted that the impact of the Bureau's advice would be beneficial on the well-being of the clients and their children. Whilst there are limitations to the nature of this impact assessment, this is important evidence of the potential benefit of advice services for clients facing sometimes very complex problems.

Finally, it is important too to acknowledge limitations to the support that this kind of service can provide. The limits on clients' capacity to follow and act on advice and to cope with unpredictable other parties are two reasons why episodic advice may be likely to have somewhat limited impact in some cases.

Clients' feedback on the civil and family law services

Overall, a clear majority of clients interviewed said that the service they had received had either met or exceeded their expectations. Responses among civil clients were more mixed, with several indicating that they had expected something more. There was some suggestion that civil clients had higher expectations. Furthermore, family clients were able to receive advice from specialists in the area, whereas civil clients more often received general procedural advice on problems where the advisor was not expert.

Some clients expressed trust in solicitors working through the Bureau in contrast to their perceptions of lawyers generally. Their working on a not for profit basis appeared to be a factor here. The ability to get face to face advice was contrasted with online and published guides to legal problems.

Conclusions

This study looks at the provision of unbundled and pro bono assistance to litigants in person. There are significant difficulties in providing useful assistance to this group, which has similarities but is also diverse. Whilst clients, advisers and our assessment by independent family practitioners suggests that beneficial impacts do accrue, these cannot be predicted with great confidence and are contingent on matters which lie beyond the control of both the advisers and the parties. Unforeseen events, the dynamics of disputes and court processes, the complexities of the clients' problems (legal and otherwise) mean expectations for the impact of limited, episodic advice – even with specialist advisers – are likely to be limited.

That does not mean the benefits are insignificant but other, more extensive, research would be needed to evaluate how significant (or insignificant) such benefits were. Similarly, much thought could go into maximizing the impact of pro-bono advisers and rendering more general support to litigants in person.

The diversity in reactions of our family practitioners to the advice strategies employed by advisers is interesting. It suggests a lack of consensus about which strategies may work and also how unrepresented parties will respond to unbundling strategies. That this should be so is unsurprising. Practitioners have little basis for understanding how unbundling works: although market forces may be

changing this, they have rarely practiced it and they have little cause to, or basis for, evaluating what works in unbundling terms. Nor

Similarly, it is worth emphasising the difficulties faced when dealing with such clients. Advisers are attempting to encourage behavioural change on two dimensions. One set of behavioural change is to enable the litigant to bet engage with the legal process. The second is to better enable the client to adopt to, manage or mitigate their family problems in their practical and emotional dimensions.

If we briefly consider one model of behavioural change from Michie et al a sense of the complexity of the task faced during unbundled legal service can be gained.²⁰ The kinds of intervention that can be employed to encourage behavior change include:

- education (increase in knowledge or understanding)
- persuasion (using communication to induce positive or negative feelings or stimulate action)
- training (imparting skills)
- modelling (providing an example for people to aspire to or imitate); and,
- enablement (increasing means/reducing barriers to increase capability or opportunity)

We saw some elements of many of these intervention approaches but employed in an intuitive, and episodic way, constrained by resources and the limited nature of client appointments.

It should also be noted that whilst such services had the potential to reduce costs on courts, opponents and the clients themselves, they may also increase costs because unrepresented litigants cannot, or should not, always be diverted from courts. Sometimes they have to be helped in, rather than just helped out.

-end-

²⁰ Susan Michie, Maartje M. van Stralen, and Robert West, “The Behaviour Change Wheel: A New Method for Characterising and Designing Behaviour Change Interventions,” *Implementation Science* 6, no. 1 (April 23, 2011): 42, doi:10.1186/1748-5908-6-42.