

# Understanding Advice Seeking Behaviour: Further Findings from the LSRC Survey of Justiciable Problems

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Legal Services Research Centre

2004

LSRC

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## ***Abstract***

This paper discusses empirical findings about public use of legal advice and information services to help in resolving civil disputes and problems for which legal remedies exist (“justiciable problems”). The discussion uses data from the Legal Services Research Centre (LSRC) Survey of Justiciable Problems, a large-scale social survey of 5,611 adults’ experience of and response to justiciable problems, conducted throughout England and Wales. We describe how the public approaches the resolution of such problems, whether and where they go for advice and what obstacles are perceived and experienced in trying to seek a satisfactory resolution of their disputes. The discussion is set in the context of access to justice debates and the role of legal and other services in empowering and assisting citizens to achieve just outcomes.

# **1. Introduction**

## **1. 1 The role of legal advice in achieving access to justice**

Access to justice concerns have changed and developed over time. The initial emphasis on providing the poor with access to lawyers through legal aid provision gradually widened to a concern about the exclusion of middle-income groups from effective access to courts, and on to more fundamental concerns about access to just *outcomes* and non court-based avenues of dispute resolution and redress. More recently access to justice debate has focused specifically on the role of legal services in helping to “lift” people out of social exclusion:

Legal advocacy and advice for the poor and excluded is an effective engine of social inclusion and fighting poverty through insuring and expanding rights to critical benefits and services, and giving a voice to grievances and empowering people and communities.<sup>1</sup>

The public’s need for advice and help, and their behaviour in seeking out that advice and help when faced with justiciable problems is central to these concerns. Where the ability to resolve disputes, to protect rights and enforce responsibilities, depends on the motivation and personal resources of individual members of the public, it is necessary to understand the complex interaction of factors that influences individual choices about whether and when to take action when faced with justiciable problems, and what action to take. Similarly, a focus on the proactive potential of legal services in problem avoidance or escalation leads inevitably to questions about public experiences of the availability and usefulness of advice and legal services.

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<sup>1</sup> Stein, J (2001) *The Future of Social Justice in Britain: A New Mission for the Community Legal*

In this context “legal” services are broadly interpreted to comprise information, advice or assistance involving knowledge of rights and obligations conferred by law, and of legal procedures whether provided by a lawyer or otherwise. They include action taken on behalf of a client, or facilities used by a client. Such services enable the citizen to enforce or defend rights and obligations through appropriate procedures, which may or may not involve formal legal proceedings in a court or tribunal or the use of Alternative Dispute Resolution processes. Defined in this way legal services can help citizens to understand how to organise their affairs in such a way as to avoid disputes or claims from arising. They can help the public to deal more effectively with disputes and difficulties in order to prevent them escalating into something more serious. Finally, legal services can assist the public to use the courts, tribunals or ADR processes to vindicate or defend a claim if other methods do not succeed. In the absence of legal expertise some people may wrongly diagnose their problem as “unsolvable” by misjudging the legal prospects and legal services available. Similarly, people may misjudge by thinking a legal solution exists when it does not.

Easily accessible sources of information and advice may prevent disputes and challenges from occurring. It may lead to early settlement of disputes *without* the involvement of legal proceedings. It may also be effective in diverting weak cases away from courts and tribunals, or strong cases towards effective non-court-based resolution processes. Accessible advice and information may also save social costs through the effective assertion or protection of legal rights. For example, protection of employment rights or adequate compensation may avoid dependence on benefits. Protection of occupation rights may avoid the loss of a home and need for rehousing at public expense. Protection of rights or amelioration of legal problems may avoid negative health impacts such as depression and stress-related illness, thus saving money for the National Health Service<sup>2</sup>. The value of legal services in these respects

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*Service*, Centre for Analysis of Social Exclusion, London School of Economics, Paper 48, p. iv.

<sup>2</sup> See Pleasence, P., Balmer, N.J., Buck, A., O’Grady, A., & Genn, H. Civil law problems and morbidity. *Journal of Epidemiology and Community Health*. 58(7), 552-557.

has been explicitly recognised in the establishment of the Community Legal Service in England and Wales as follows:

Education, timely information and advice can help individuals deal with problems and also reduce expensive claims on other public bodies. Helping people to resolve disputes involving debt, housing and domestic violence can reduce the social exclusion experienced by our most disadvantaged citizens<sup>3</sup>.

## **1.2 Research on the use of legal services**

An effective policy of enhancing access to justice through better provision of information, advice and assistance requires information about current use of available services – who goes to which providers and for what? However, mapping the use of legal services tells one little about the incidence of potential “legal problems” or about people who do not use legal services, for whatever reason. Thus an important challenge in understanding “advice-seeking behaviour” is the question of why people with problems which might potentially benefit from the provision of advice and legal services do not obtain advice or help. Is it a matter of choice or are there barriers preventing access, and if there are barriers, how can these barriers be removed?

The corpus of access to justice literature stretching back over the last thirty years identifies different broad categories of barriers to access. These are physical barriers, such as distance to sources of advice and opening hours; structural barriers such as the cost of legal and advice services; and finally personal or psychological barriers such as a sense of social powerlessness<sup>4</sup>. One of the most influential models of disputing behaviour<sup>5</sup> suggests that public responses to potentially injurious events

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<sup>3</sup> Legal Services Commission (2002) *Corporate Plan, 2002/03 – 2003/04*, p. 9.

<sup>4</sup> For an excellent review of these issues see Roderick A Macdonald, *Access to Justice in 2003*, Paper for Law Society of Upper Canada, Conference on Access to Justice.

<sup>5</sup> W. Felstiner et al (1981) “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...”, 15 *Law and Society Review* 631.

depends on attribution of blame to others, the consciousness of legal remedies, and the willingness to seek such a remedy rather than simply ignoring or putting up with the event or problem (lumping it) or attributing the problem to bad luck or an act of God. The model is a helpful starting point in identifying the psychological processes and structural barriers that affect choice, although it is more appropriate for justiciable problems involving damage than, say, entitlement.

In order to understand better the dynamics of access and lack of access to justice, considerable energy has been expended by socio-legal researchers in empirical explorations of public use of advice and legal services<sup>6</sup>. The main body of work was conducted in the late 1960s and early 1970s in the USA, England and Wales, Australia, Canada and the Netherlands.<sup>7</sup> These early studies surveyed members of the public, asking respondents about their experience of 'legal' problems and whether they had consulted a lawyer to try and deal with the problems. The surveys found many instances where problems had been encountered, but no lawyer consulted. The findings were subsequently used to highlight potential deficiencies in the legal aid system and barriers to access to the law. The weakness of these studies was that they tended to be limited to the traditional narrow range of problems typically taken to private practitioners and were underpinned by the assumption that recourse to lawyers was the best solution to the problems encountered by respondents<sup>8</sup>. The surveys were essentially studies of who used lawyers and why. They shed little light on the strategies adopted by members of the public who experienced problems in less "traditional" areas, nor what steps they took to resolve problems outside of the formal

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<sup>6</sup> A history of these is contained in Pleasence's *Local Legal Needs Project* based on work by Tamara Goriely. P. Pleasence et al., *Local Legal Need*, London, Legal Services Research Centre, 2001. See also H.Genn, *Paths to Justice*, Oxford, Hart Publishing, 1999, pp.5-9.

<sup>7</sup> E.g. B. Abel-Smith, M.Zander and R.Brooke, *Legal Problems and the Citizen*, London, Heinemann, 1973; M. Cass and R. Sackville, *Legal Needs for the Poor*, Canberra, Australian Government Publishing Service, 1975; C. Messier, *Les Mains de la Loi* (In the Hands of the Law), Montreal, Commission des Services Juridiques, 1975; K.Schuyt, K.Groenendijk and B. Sloot, *De Weg naar Het Recht* (The Road to Justice), Deventer, Kluwer, 1976.

<sup>8</sup> See Lewis, and Griffiths. For a summary of the critiques see, J. Johnsen, "Legal Needs Studies in a Market Context" in F.Regan, A.Paterson, T.Goriely and D.Fleming (eds), *The Transformation of Legal Aid*, Oxford, Oxford University Press, 1999.

legal system. However, comparisons of public use of the Legal Aid Advice and Assistance scheme and research by Citizens Advice Bureaux in relation to social welfare law areas of housing, debt, employment and welfare benefit suggested that such problems were far more frequently brought to CABx than to lawyers.<sup>9</sup>

A major study by Curran in the United States in 1977<sup>10</sup> took a broader approach, focusing on the situations in which the public seeks advice or the help of lawyers and attempting to identify the factors which appeared to influence those decisions. Curran showed that the likelihood of using a lawyer was predominantly determined by the kind of problem confronted, so that, for example, poor or black respondents were far more likely to use a lawyer for certain kinds of problems than wealthier or white respondents. Curran also suggested that in making a choice about whether to use a lawyer people engaged in quite sophisticated and rational cost benefit analyses.

The Curran study was subsequently updated by the American Bar Association with focus on a greater range of problem types and on the experience of low and moderate income households.<sup>11</sup> The study found relatively little difference between the two sets of households in terms of the incidence of “needs” or in the resort to lawyers. Most of the problems reported did not find their way into the formal justice system, and the most common course of action in dealing with a “legal need” was to try to handle the situation on their own.

In the last decade there has been a resurgence of interest in legal needs studies around the world, largely in response to the rationing of publicly funded legal services and the emphasis on targeting resources to areas of greatest “need” or where the provision of services are predicted to have the most significant impact. In this context,

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<sup>9</sup> This is still the case – see T. Goriely with A. Paterson, *Access to Legal Services: A European Comparison*, The Law Society RRP and the Scottish Executive CRU, London, The Law Society, 2000 at p.46.

<sup>10</sup> B. Curran, *The Legal Needs of the Public*, American Bar Foundation, Chicago, 1977. Curran’s interviewees were instructed not to mention that the research was about legal problems or lawyers but rather that it was about “general problem solving”. However her list of fact situations was chosen because they implied legal need in that it would have been a reasonable and appropriate course of action to have consulted a lawyer in connection with the problem.

<sup>11</sup> ABA, *Report of the Legal Needs of the Low-and Moderate-Income Public*, Chicago, 1994.

legal needs studies offer the possibility of being able to assist in the prioritisation of areas for expenditure and suggest ways in which existing services can be better organised to reach more effectively “hard to help” groups.

### **1.3 The LSRC Periodic Survey of Justiciable Problems**

The Legal Services Research Centre (LSRC), the Legal Services Commission’s research division, has established a programme of national periodic surveys of legal need. The objective is to develop a detailed understanding of people’s experience of problems and their advice-seeking behaviour in order to provide a knowledge-base for the development of civil justice policy.

The first LSRC survey was conducted in summer 2001 (reporting on the first follow-up survey will begin in 2005), using methodology developed from that of the *Paths to Justice* study (Genn, 1999). The LSRC surveys include more comprehensive social and demographic information than available in *Paths to Justice*, and focus in greater detail on the crucial early stages when respondents make decisions about how to deal with their justiciable problems.

The LSRC surveys adopt Genn’s approach in mapping 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 surveys are not asked about ‘legal’ problems they might have experienced, but rather whether they had experienced ‘any problems that were difficult to solve’ in different categories, such as housing, family or debt. The categories have been carefully defined to reflect problems that have potential legal solutions.

The first LSRC periodic survey was divided into two parts: a ‘main’ standard national random household survey, and an additional survey of people living in temporary accommodation. Although those living in temporary accommodation are

typically excluded from large-scale surveys, they are often among the most vulnerable and socially excluded groups within the population.

The LSRC main 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 problem. Eighteen problem categories were used: consumer, neighbours, money/debt, employment, personal injury, housing (rent), housing (own), post-relationship, welfare benefits, divorce, children, domestic violence, homelessness, immigration, unfair treatment by the police, discrimination, mental health, and clinical negligence.

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. The survey covered all problems people had experienced between January 1998 and summer 2001. Comprehensive details of the survey can be found in 'Causes of Action: Civil Law and Social Justice'<sup>12</sup>.

## ***2. Findings***

### **2.1 The landscape of justiciable problems**

Around thirty-seven percent of the general population had experienced one or more justiciable problems in the preceding three-and-a-half years. However, the figures were significantly different for the sample of respondents in temporary

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<sup>12</sup> Pleasence, P., Buck, A., Balmer, N., O'Grady, A., Genn, H., & Smith, M. (2004). Causes of Action:

accommodation with about 84% reporting having experienced one or more problems, which is around two and a half times the rate reported for the general population. These socially excluded respondents also reported on average having experienced more problems each during the period.

Among the general population the most common problems experienced were consumer problems, problems with neighbours, money/debt problems, employment problems, personal injury, and problems concerning rented accommodation. Among those living in temporary accommodation the picture was rather different. Here the most common problems reported concerned rented accommodation, money/debt, employment, domestic violence and discrimination. The survey also reveals that experiencing one justiciable problem greatly increases the likelihood of experiencing further problems and that socially excluded groups were the most likely in the survey to report having experienced multiple problems<sup>13</sup>.

The results of the survey also confirm important features identified in the *Paths to Justice* study: That involvement in legal proceedings to resolve justiciable problems is the exception rather than the rule for most types of problems; that the use of alternative dispute resolution procedures such as mediation is a rarity; that many justiciable problems experienced by the public simply remain unresolved; and that the health, social and economic consequences of justiciable problems can be severe.

## **2.2 Approach to problem handling**

In an attempt to build on information gained from *Paths to Justice* about advice-seeking strategy, the LSRC survey focused more closely on the detail of strategies adopted by respondents to deal with their problems, and the role, if any, played by different kinds of advisers in the early stages of dealing with problems. Thus

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Civil Law and Social Justice. London: Stationary Office.

<sup>13</sup> Pleasence, P. et al. Multiple justiciable problems: common clusters and their social and demographic indicators. *Journal of Empirical Legal Studies*, 1(2), 301-329.

respondents were asked whether they had taken any action at all to resolve their problems, whether they had sought and obtained advice at any stage, where that advice had been from, and their experiences of the usefulness of the advice or help that they had received. At each stage an attempt was made to encourage respondents to articulate their reasons for actions taken or not taken.

Although the information provided by respondents is useful in elaborating our understanding of strategies adopted, there are some weaknesses in using the responses to structured questionnaires for understanding decision-making processes particularly when what limits the range of responses to problems may be a general sense of powerlessness, a lack of knowledge about available avenues of redress, or basic understanding of options. In order to reach the stage of seeking advice about a problem, an individual must have an awareness of a question to ask, or intuit that the course of events *could* be influenced or changed. For certain groups ameliorating this general sense of powerlessness and fatalism is a serious challenge.

Overall about one in five respondents did nothing to attempt to resolve their problem, about three in ten handled their problem alone without any help, about one in thirteen tried to get advice but failed (the majority of these going on to handle alone), and just over two in ten 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. Broad strategy varied greatly by problem type, as can be seen in Figure 1.

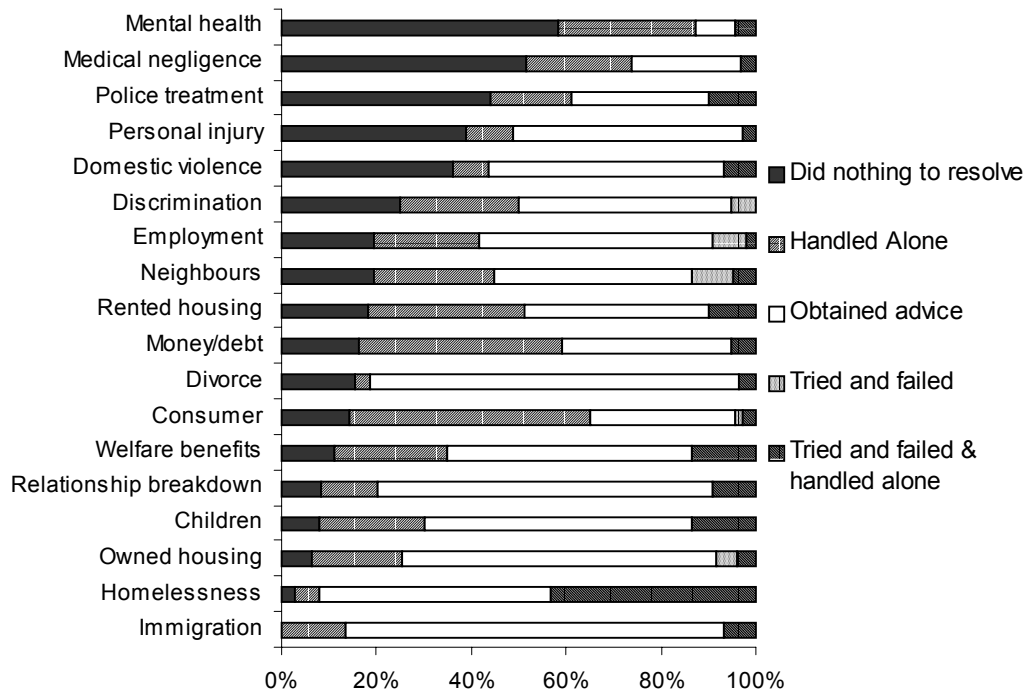


Figure 1. Broad strategy for each of eighteen discrete problem types

Respondents progressing to a main interview were asked whether there was anything about the way in which they had handled their problem that they wish they had done differently. Around a third of the respondents suggested that they regretted the way in which their problem was handled, though both rates of and reasons for regret were related to the broad problem solving strategy adopted. Those respondents who handled their problems alone were least likely to express regret, doing so for about twenty-six percent of problems. In contrast, both those doing nothing and those who obtained advice were more likely to express regret (34% and 36% respectively) though the highest percentage was amongst those who tried but failed to obtain advice (40%). The single most common reason for regret was that respondents felt that they should have taken some or more action, without specifying exactly what. This was a particularly common reason amongst those doing nothing, where it accounted for around thirty-five percent of responses. Further common reasons were regrets over lack of persistence, which was particularly common amongst those who

handled their problems alone (17%) or tried and failed to obtain advice (21%) and regrets over not trying to obtain more advice. Failure to act sooner was also a fairly common regret, particularly for those who obtained advice (17%).

### **2.2.1. No action taken**

A significant and important minority of respondents (around 19%) said that they had done nothing at all to resolve their problem. 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. Rates of inaction for each of the eighteen problem types can also be seen in Figure 1.

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% of those in temporary accommodation compared with 19% of main survey respondents).

Further analysis of problem-solving strategies in relation to demographic factors suggests that men were somewhat more likely to do nothing about their justiciable problem than women (twenty-one per cent compared to seventeen per cent) and black and minority ethnic respondents were more likely to do nothing to resolve their justiciable problem than white respondents (twenty-three per cent and

nineteen per cent respectively). Of family types, single respondents without children had the highest rates of inaction (almost twenty-four per cent doing nothing), while lone parents were characterised by particularly high rates of obtaining advice (fifty-three per cent) and low rates of handling problems alone (twenty per cent). Strategy was also related to academic qualifications, with rates of handling alone increasing and inaction decreasing as highest academic qualification increased.

There was also some evidence of both individual respondents and their household members persisting with particular strategies for different problems. So those who handled a problem alone often did so again for further problems, those obtaining advice typically returned to advisers and similarly those doing nothing remained inactive across problems.

### ***2.2.2 Reasons for inaction***

In order to gain some understanding of the reasons underlying a failure to take action respondents were asked why they had taken no action to try and resolve their justiciable problem. The single most common reason for inaction was the feeling that nothing could be done, given by around thirty per cent of respondents. Feeling that nothing could be done was a common reason across nearly all problem types, reflecting both lack of information and knowledge about potential avenues for redress or resolution, and also a sense of powerlessness. A further six per cent gave as their reason that they were “too scared” to do anything. This reason was particularly common among domestic violence cases where about one-quarter of respondents said that they had been too scared to take any action. Among problems to do with neighbours around fourteen per cent suggested that they were too scared to act, with eighteen per cent suggesting that taking action would damage the relationship further. 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<sup>14</sup> (around 40%). This is likely to be a highly unreliable judgement since the assessment has been made without the benefit of advice.

## **2.3 Obstacles to obtaining advice**

Among those people who sought advice to try and resolve their problem, about fifteen percent were not successful. About one quarter of respondents said that there *were* advisers that they had considered contacting, but in the end did not do so. Those who tried to get advice but failed and those who considered getting advice but in the end decided against it or simply failed to act on the thought were asked for their reasons and this information is described below.

### ***2.3.1 Failed attempts to obtain advice***

Unsuccessful attempts to obtain advice occurred most commonly in relation to homelessness, benefits, renting, employment, consumer problems, children and neighbour problems. Respondents with benefit problems had most often unsuccessfully attempted to contact the local council (38%) or MP (19%) to get advice about their problem. Respondents with problems about renting had also most frequently unsuccessfully attempted to contact their local council (69%). Those with employment problems had most often made unsuccessful attempts to contact their employer (61%) and respondents with consumer problems had commonly made unsuccessful attempts to get advice from a CAB (28%), a consumer advice agency (18%), and the local council (13%).

These instances of unsuccessful attempts to obtain advice were then divided between those who continued to try to resolve the problem on their own and those

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<sup>14</sup> These findings consistent both with *Paths to Justice*, Genn (1999), and earlier work of Harris et al.,

who simply gave up. Giving up after an unsuccessful attempt to obtain advice tended to occur when respondents were dealing with problems over owned property, employment, neighbours, discrimination and consumer problems (see Figure 1). On the other hand when people were dealing with homelessness, benefits, children, or problems over rented accommodation they were more likely to continue to try and resolve the problem on their own, rather than simply giving up.

Respondents revealed that they adopted different approaches to obtaining advice depending on the potential advice source. When respondents had been trying to obtain advice from the local authority they most frequently did so by telephone or in person and much less often in writing. Unsuccessful attempts to contact the CAB were most often made by telephone or in person, but never in writing. Respondents in general were most likely to try the telephone in order to make contact with almost all potential advice sources, highlighting the potential significance of the telephone in the provision of advice and assistance.

When asked why they were unable to obtain help from the desired source respondents' answers show that the most common reasons were an inability to get through on the telephone or that the adviser was "no help", accounting for around two-thirds of responses. Rarely did respondents complain that the adviser had been too far away. The second most common reason was failure to get through on the phone, which was particularly common for CABx and to a lesser extent local councils. In both these cases "no help" also remained a common reason, as it was for solicitors where interestingly, "too expensive" was only rarely cited. The small number of instances when solicitors were judged to be too expensive reflects the fact that most people rule out solicitors immediately on the ground that they cannot afford to seek legal advice (see below). MPs and local councillors were most often no help or not available and the police were most often "no help"

## **2.4 Use of advisers**

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 (55%) succeeded on making contact with at least one adviser in order to obtain information or help with resolving their problem. In common with the findings of *Paths to Justice*, 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. Rates of advice seeking for each problem type as compared to other broad strategies can be seen in Figure 1.

### **2.4.1 How quickly was advice sought?**

About half of those who contacted an adviser to help with their problem did so as soon as the problem started and about another fifth obtained advice within a month of the beginning of the problem. However, a sizeable minority (17%) took more than three months to obtain advice.

Despite the fact that the majority of respondents who sought advice did so relatively soon after the problem started, there were again significant differences between problem types in the speed with which respondents attempted to seek advice. When people had been made homeless they overwhelmingly sought advice as soon as the problem occurred. The longest delays occurred in mental health cases, medical negligence and divorce where delays of six months or more were not uncommon. Time to first adviser contact for each problem type is shown in Figure 2.

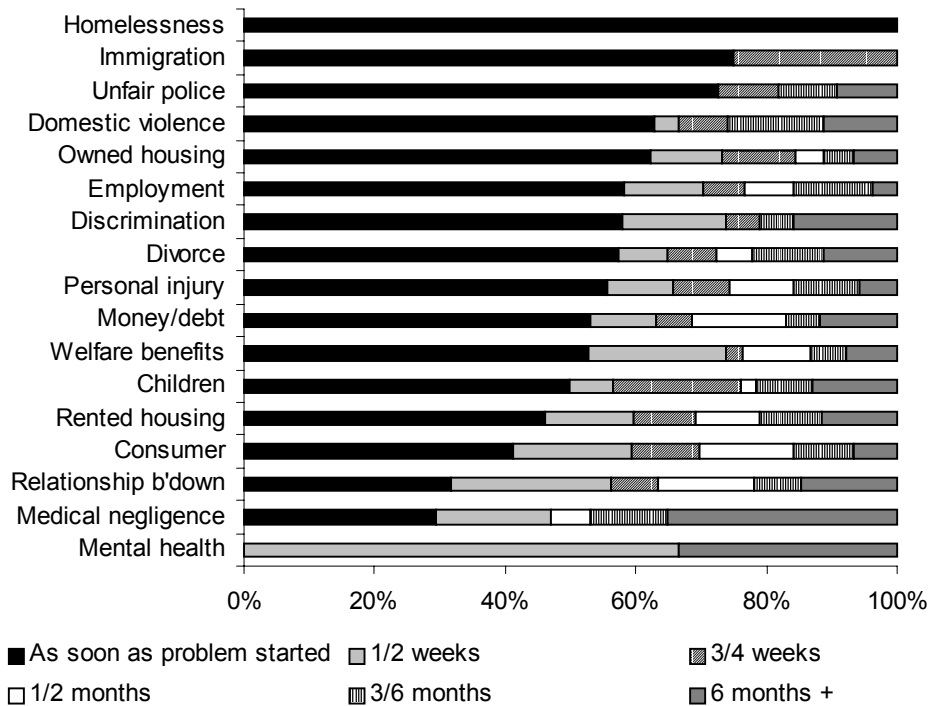


Figure 2. Time taken to contact first adviser by problem type

Although we do not have specific information on the causes of delay - whether people waited to see whether they could achieve a resolution themselves or whether there was delay while they tried to make contact with an adviser - it is likely that a long delay in obtaining advice may make it more difficult to achieve a satisfactory resolution of the problem and, as mentioned earlier, there is the potential for problems to become compounded in the absence of assistance with problem resolution<sup>15</sup>.

#### 2.4.2. How far did respondents travel for advice?

Although most respondents reported that they had met their advisers face-to-face, this was least likely to be the case when the adviser was an insurance company or advice agency other than a CAB. On the whole distances travelled to meet with advisers

<sup>15</sup> Pleasence, et al. (2004). Multiple justiciable problems: common clusters and their social and demographic indicators. *Journal of Empirical Legal Studies*, 1(2), 301-329.

were relatively small. For first advisers around thirty percent did not travel at all, twelve percent travelled less than half a mile and twenty-nine percent travelled between half a mile and two miles. Of the longer distances, around fifteen percent travelled between two and five miles and fourteen percent over five miles. However, of journeys in excess of five miles, over half were to solicitors, where the 'over five miles' group accounted for twenty-six percent overall.

### **2.4.3. Signposting**

All respondents who made contact with an adviser were asked whether or not that adviser had been a friend or relative. The results show that overall about eight percent of first advisers, nine percent of second advisers 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.

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. In about 15% of cases the first adviser had been suggested by a friend or relative (see Figure 3) showing the importance of informal networks in directing members of the public to appropriate sources of information and advice for the types of problems they are experiencing. A large proportion, however, said that their choice of first adviser was "obvious". Given the lack of fit between some of the choices of first adviser with the type of problem being experienced, this finding suggests that there is considerable scope for improving public consciousness about appropriate sources of advice for particular types of problems.

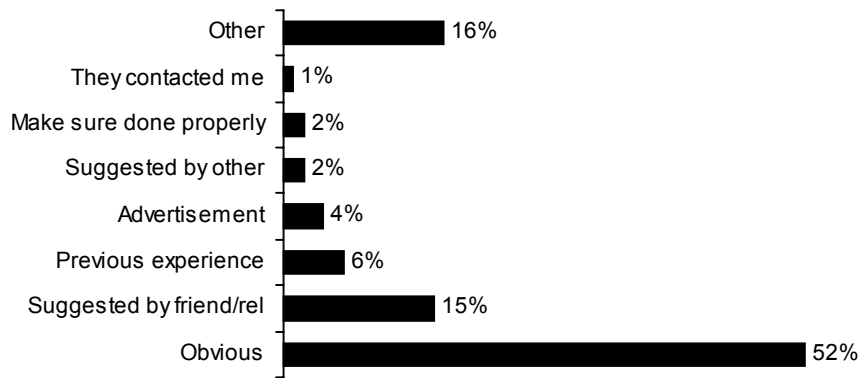


Figure 3. Reasons given by respondents for contacting advisers

## 2.5 Sources of advice

In order to understand how the public attempts to mobilise assistance in seeking a resolution of their problems, questions were asked about first and subsequent advisers contacted. Overall, a little over half of those who obtained advice went to only one adviser (54%) and another third of respondents (32%) went to two advisers. Around eleven percent went to three advisers and the remaining minority went to four or more advisers.

### 2.5.1 First advisers

Of all main survey respondents, about one in four of those who obtained advice went directly to a solicitor for advice and just under one-fifth went directly to a CAB. Other common first points of contact for respondents trying to obtain help with their problem were local authorities, advice agencies *other* than CABx, trades unions or professional associations, employers, the police, and insurance companies. Almost one in five respondents, however, went to some “other” source of advice and these covered sources such as claims agencies, social workers, ombudsmen, housing association,

health professionals, court staff, barristers, MPs, religious organisations, the media, social security offices, and consultants of various sorts.

The choice of first adviser appeared to vary substantially between different problem types, as can be seen in Figure 4. So, for example, among those experiencing divorce, post-relationship problems, problems with owned property, and personal injury the single most common first adviser was a solicitor. CABx on the other hand were the most common first choice of adviser for consumer problems, problems with rented accommodation, employment, money and debt problems. The police were the most common first point of contact for those suffering domestic violence.

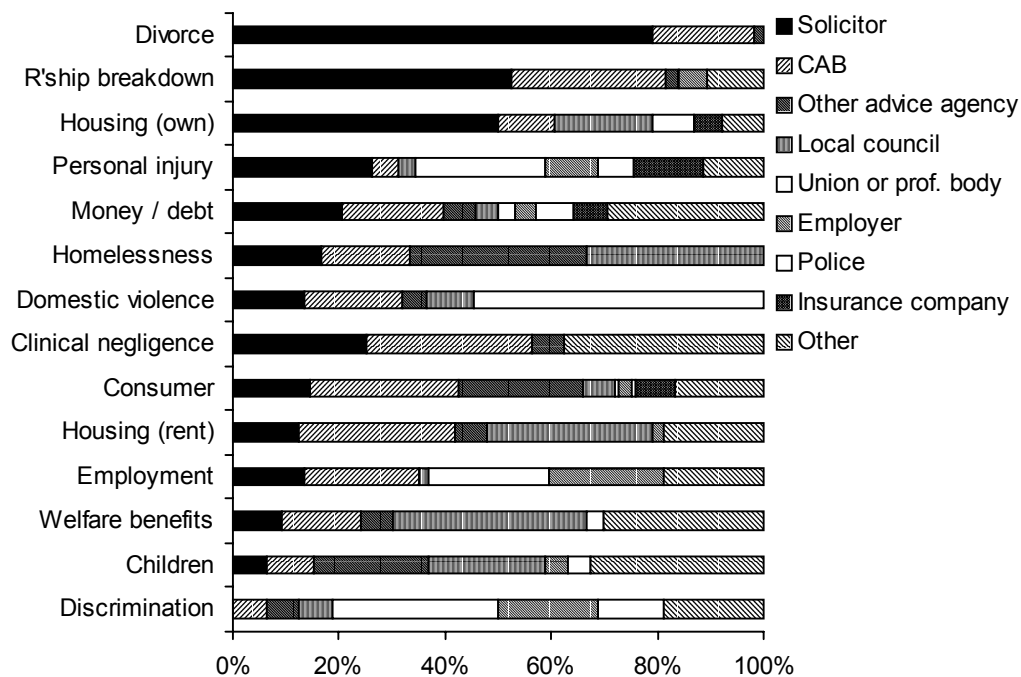


Figure 4. First adviser by problem type

The range of first advisers used and the 'fit' of the adviser with the type of problem experienced could suggest either a degree of creativity in choices or, on the other hand, actions of desperation among members of the public who are unsure about where to go for appropriate and effective help. Where people go first and what advice

they receive may be crucial in achieving a satisfactory resolution of problems, since a high proportion of respondents go to one adviser only and many do not follow up on referrals from first advisers.

Although the first source of advice often seemed appropriate for the type of problem being experienced, in some cases the source chosen seems rather unsuitable. For example, among those respondents experiencing a consumer problem the most common first source of advice was a CAB. However, among those experiencing problems with renting and benefits, the most common source of advice was the local council - probably the body with whom the respondent was in dispute. Similarly for those experiencing employment problems the employer was also often used as a first source of advice. It seems unlikely that the kind of advice to be gained from the body or individual with whom a person is in dispute will be as dispassionate and valuable as that potentially available from an independent adviser.

### **2.5.2 *Second advisers***

Where respondents went on to contact a second adviser, a similarly wide range of advice sources was used (see Figure 5). The most common second advisers by far were solicitors. Otherwise respondents went in roughly similar proportions to CABs, 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. For example, respondents experiencing discrimination problems rarely went to a solicitor as a first source of advice, but among those respondents dealing with discrimination problems who went on to see a second adviser, around one-quarter went to a solicitor.

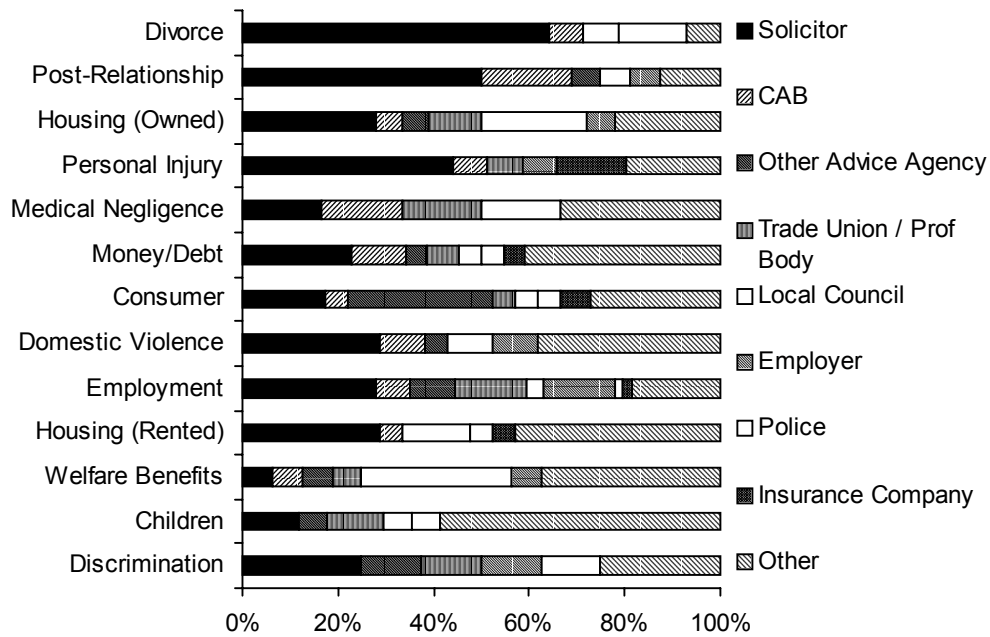


Figure 5. Second adviser by problem type

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.

Although only a minority of respondents went to three or more advisers, there continued to be a relatively wide range of advisers used and considerable variation depending on the type of problem being dealt with. Solicitors were the most common third advisers for those dealing with personal injury, owned property, and employment, although for all problem types a relatively wide range of advisers was used. Domestic violence, consumer and money problems all involved the use of a relatively wide range of third and fourth advisers.

### 2.5.3. Number of advisers used

Just as the type of problem experienced was associated with the type of first adviser contacted, the type of problem being experienced was also associated with the number of advisers contacted as shown in Figure 6. Those most likely to go to more than one adviser were respondents dealing with problems to do with domestic violence, homelessness, immigration, personal injury, and mental health. The problem types for which respondents were most likely to go to as many as three or more advisers were domestic violence, homelessness, immigration, and unfair treatment by the police.

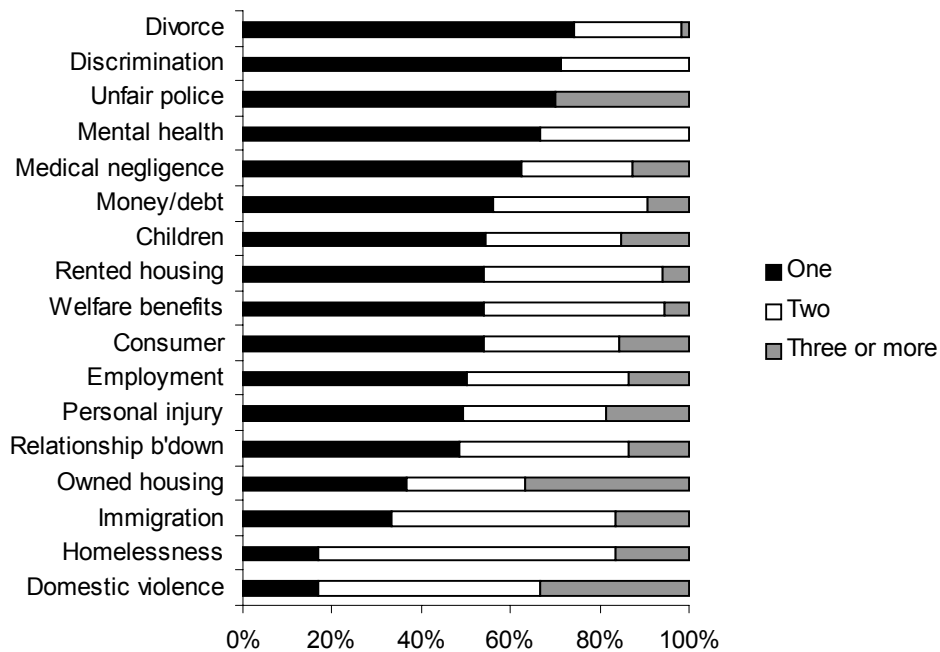


Figure 6. Number of advisers used by problem type

This tendency is itself related to the type of first adviser contacted. Respondents going first to solicitors were very likely not to go on to a subsequent adviser, whereas those respondents who went first to a CAB or the police were more likely to go on to use other sources of advice.

These findings, however, require considerable interpretation. So, for example, among those involved in divorce proceedings, about three-quarters of those who obtained advice went only to one adviser, and that adviser was most likely to be a solicitor. Among those involved with a discrimination issue a similarly high proportion went to only one adviser, but that first adviser was very *unlikely* to be a solicitor and equally likely to have been the police, a CAB, some other advice agency, a trade union, a local authority, an employer, or some “other” adviser. Going to only one adviser may mean that the first stop is successful and that there is no need to look further for help. This may be true for those going to solicitors for divorce or a CAB for a consumer problem. It may also mean that the first adviser has given accurate advice that there is no point in taking any further action. On the other hand going to one adviser only can be interpreted as a failure if the first source of advice is inappropriate, if the adviser is unable to offer the kind of help needed and if the respondent then simply gives up, convinced that either nothing can be done or that the help needed to deal with the problem is not easily available or not available at all. This interpretation is reinforced by the analysis of referrals below, which highlights the problem of “referral fatigue” (see section on referrals and figure 11).

## **2.6 Nature of advice given**

In order to explore in greater depth the type of help being offered by different advisers respondents were asked about the type of advice given to them by the adviser that they contacted initially. Respondents reported that they were most often advised about how to deal with their problem, what their legal position was, and their financial position. It is interesting that although solicitors were the most likely to be advising on the respondent’s legal position, CABx were also apparently advising very frequently on the respondent’s legal position as were a substantial minority of ‘other’ types of adviser. Thus advice about an individual’s legal position in relation to their problem is

being offered by a relatively wide range of initial sources and not simply by legal professionals. All three main categories of adviser gave advice on the respondent's financial position and advisers other than CABx or solicitors were the most likely to offer some other kind of advice. Type advice given by each advice provider is shown in Figure 7.

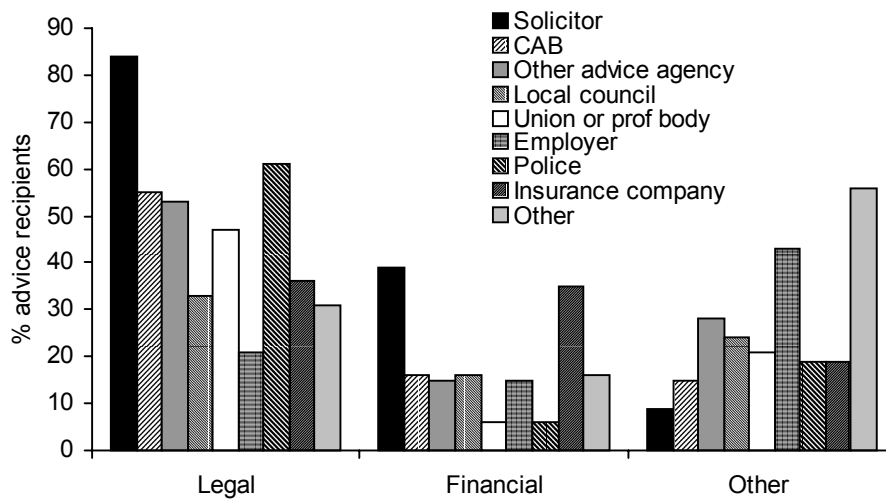


Figure 7. Subject matter of advice given by adviser type

There were also substantial differences in what initial advisers suggested that respondents might do in order to achieve a resolution of their problem. Solicitors were the most likely to suggest threatening legal action or starting legal proceedings. CABx and other advisers were most likely to suggest self-help by advising respondents to talk directly to the other party involved in the problem. CABx were also highly likely to suggest that respondents seek advice from elsewhere (Figure 8). Only rarely was advice given to try mediation or go to an ombudsman and interestingly Figure 8 suggests that solicitors were the most likely of the three categories of advisers to suggest mediation. This is consistent with the findings of *Paths to Justice* which concluded that “the very low rate at which either CABx or solicitors advised clients to consider mediation or other alternatives to traditional methods of dispute resolution

demonstrates the very slight impact that these processes have had on the thinking of advisers and, therefore, on the strategies adopted by the public for dealing with disputes”.<sup>16</sup>

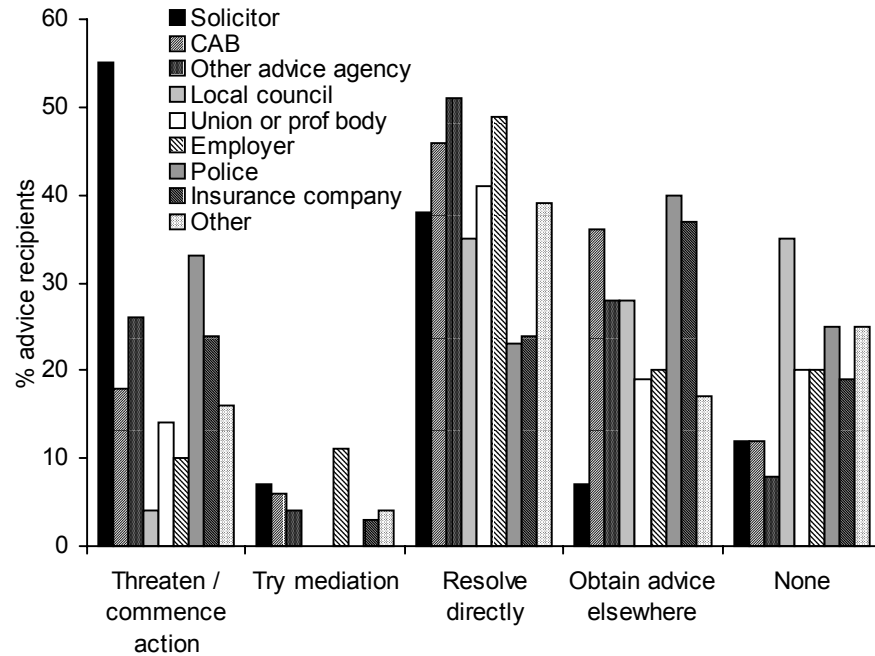


Figure 8. Content of advice given by adviser type

The figures are also consistent with the findings in *Paths to Justice* which indicate that those who went directly to CABx and other types of non-legal advisers were frequently referred on elsewhere or advised to try what in most cases had already been attempted – that is to seek to resolve the problem by a direct approach to the other side in the dispute or problem.

## 2.7 Referrals

There were substantial differences between advisers in the tendency to refer people on and in the sources of advice to which they refer their clients. So, for example, the

<sup>16</sup> See H. Genn (1999) op cit, p 96.

advisers most likely to refer people on are the police, CABx, insurance companies, other advice agencies and “other” advisers.

Figure 9 shows that 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. When the local council is the first adviser contacted they are most likely to refer people on to a relatively wide range of advisers and rather less often to a solicitor. Employers also, when used as a first adviser, rarely refer employees on to a solicitor, but more often to trades unions or professional bodies, advice agencies and other advisers.

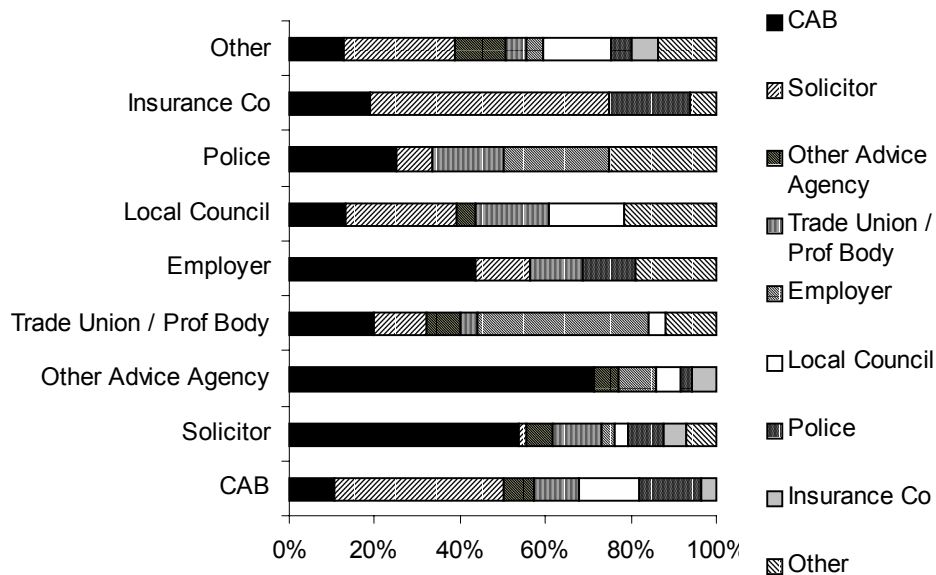


Figure 9. First adviser by second adviser type

Overall, when CABx referred clients on to another adviser the most common referrals made were to solicitors, consumer advice agencies, the Local Council, or some other advice agency. Although the most common referral was to solicitors, ‘other’ initial advisers tended to refer respondents on to a wider range of advice sources.

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, those referred by “other” advisers, solicitors, employers and other advice agencies were apparently less likely to make contact with the adviser to whom they had been referred. Figure 10 shows rates of both successful and unsuccessful referrals for each adviser type.

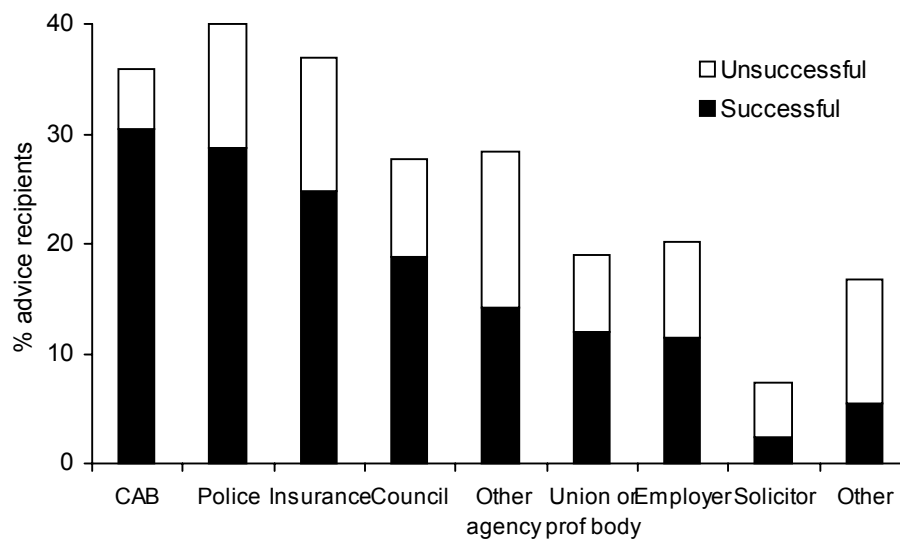


Figure 10. Success and volume of referrals by adviser type

This may reflect respondent 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.

The problem of how to develop appropriate and effective referral strategies between different suppliers of legal information and advice is not new<sup>17</sup> and was one of the central concerns in the development of the Community Legal Service and is clearly an area that would benefit from closer analysis. The study also reveals the phenomenon of “referral fatigue” in which the likelihood of people actually obtaining advice after having been referred on by an adviser declines with each adviser who makes a referral. Figure 11 that people are less likely to follow up a referral as the number of an adviser in the sequence increases. However, first, second and third advisers all appear to refer cases on at roughly the same rates.

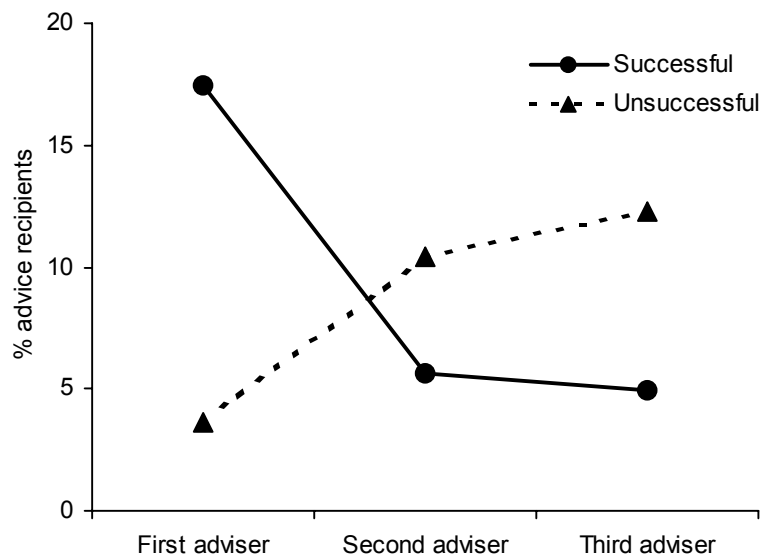


Figure 11. Percentages of successful and unsuccessful referrals as respondents progress through sequences of advisers

The Figure suggests a degree of exhaustion among members of the public as a result of being pushed from adviser to adviser. Qualitative evidence in *Paths to Justice* provided vivid descriptions of respondents having sometimes to make Herculean efforts to be seen by an adviser. It is therefore unsurprising that some will

<sup>17</sup> See discussion in H. Genn and A Paterson *Paths to Justice Scotland* (Hart, 2001) p 17, and especially C. Miller Research, *Referrals between Advice Agencies and Solicitors*, Edinburgh, CRU, 1999.

feel unable to maintain the necessary level of persistence and to invest the necessary amount of time to follow up repeated referrals on in order to obtain help with their problems.

## **2.8 Nature of help given by advisers**

An analysis of the nature of the help given by different advisers shows that CABx were less likely than other advisers to provide active assistance to respondents, which fits in with the CAB concept of “empowerment”, but may not always be what clients would most like to have in situations when they feel distressed or even paralysed by an ongoing problem. Respondents reported that CABx were the most likely of the three broad categories of advisers to do “nothing” and the most likely of the three groups of advisers to tell respondent to write a letter. CABx were also the least likely of all three categories of adviser to negotiate with the other side or prepare paperwork or contact the other side in the dispute on the client’s behalf, although they were the most likely to help the client to contact the other side involved in the problem or dispute. These findings are consistent with *Paths to Justice* which found that the most common advice given by CABx was to contact the other side involved in the problem, or to obtain help from another organisation. In *Paths to Justice* it was also found that “only in a minority of cases did the CAB suggest threatening the other side with legal action or taking legal proceedings”.<sup>18</sup>

Solicitors on the other hand were the most likely to do something active for the respondent. They were the most likely to prepare paperwork, negotiate with the other side and contact the other side on the client’s behalf. Solicitors were also the most likely to represent the respondent at court or to accompany the respondent to a court or tribunal.

## 2.9 Satisfaction with advisers

Respondents judged solicitors, CABx and other advice agencies most often to have been very or fairly helpful. Both solicitors and CAB were most often regarded as being either very helpful or fairly helpful with only a small minority in both cases being judged to be not very or not at all helpful. There was, however, a greater degree of dissatisfaction with employers, local councils, insurance companies, trades unions, and the police with around 20% to 30% of respondents judging their advice to have been not very or not at all helpful, underlining the problem of respondents going to an inappropriate first source of advice.

The assessments of the helpfulness of different sources of advice were carried over to views about whether respondents would recommend advisers to others. While CABx, solicitors, the police and other advice agencies fared best, there was much less certainty about other advisers. A substantial proportion of those who had obtained advice from employers, local councils and insurance companies felt that they would definitely *not* recommend that adviser to others. Figure 12 shows respondent recommendations of each adviser type.

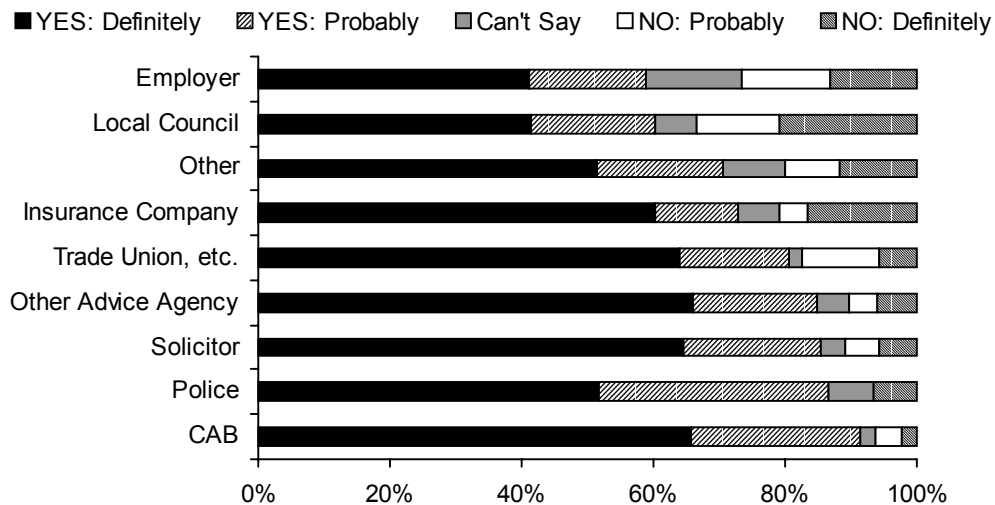


Figure 12. Whether respondents would recommend their adviser by adviser type

<sup>18</sup> H. Genn (1999) op cit, p.95.

Sources of dissatisfaction with advisers varied somewhat depending on the type of advisers. So, for example, complaints about the service offered by CABx tended to focus on the fact that the CAB had not been able to provide the help needed (50%), had given poor quality advice (33%), or had just “sent the respondent off” somewhere (17%). “Other” advisers were also criticised for simply sending off the respondent or for not giving the help needed and, also, for the quality of advice offered. Solicitors were most often criticised for not giving the kind of help needed (45%), for the quality of advice offered (49%) or for being too expensive (29%).

### **3. Conclusions**

The LSRC survey builds on the *Paths to Justice* study in a number of important respects. It advances our knowledge of the approach to advice seeking by expanding the number of problem areas analysed, particularly in areas of social welfare. The study provides previously unavailable information about approaches to problem resolution among temporary accommodation residents. It offers greater detail on unsuccessful attempts to obtain advice, and by what means members of the public attempt to make contact with advisers. It provides detailed information about the kinds of advisers members of the public approach, in which order and for what types of problems, and then provides a rich source of information about the referral strategies of different advisers and the success of those referrals.

Consistent with *Paths to Justice* the LSRC study found that most people faced with the task of sorting out a justiciable problem or dispute did try to get advice, even if they did not always succeed. In the majority of cases, and for most types of problems there is a need for information and help. However, we have seen that in trying to obtain help with their problems, members of the public go to an extensive range of

more or less appropriate potential 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.

Providing the right sort of information and help at the earliest possible stage must be a central objective in developing an effective policy for the provision of information, advice and assistance to members of the public involved in justiciable problems. The evidence discussed here shows how varied are the initial advice sources approached and highlights the need to pull into the ambit of the Community Legal Service a wider range of advice sources. General Practitioners, religious organisations, social workers or local authority information desks may not be viewed as traditional purveyors of legal services, but their potential role in directing the public to fruitful avenues for problem resolution must be recognised. Currently, Community Legal Service funding is distributed among a relatively narrow range of advisers, and it maps rather poorly onto the distribution of advisers actually consulted by the public as revealed in the LSRC study (Figure 13).

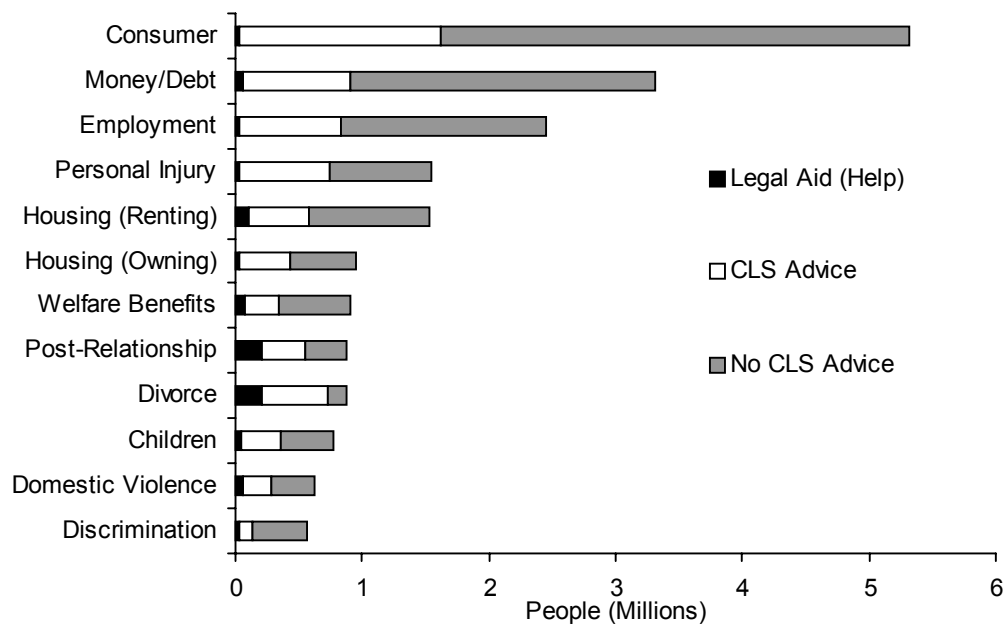


Figure 13. Reach of Legal Aid and the Community Legal Service

### **3.1. Obstacles to access**

The evidence gathered from the survey has also underlined the range of personal and structural obstacles operating to inhibit access to advice. The structural barriers experienced are principally lack of availability of free sources of advice such as CABx because of limited opening hours, and unanswered telephones; unacceptable cost as far as solicitors are concerned; and an inability to offer the kind of help needed among the wide range of “other” advice sources approached. Geographical location does not emerge as a significant obstacle to access. Equally important, but in many respects more difficult to manage in the context of access to justice policy, are the psychological or personal barriers expressed by respondents that lead to inaction because of fear of making a bad situation worse or a fatalistic sense that there is little to be done about problems and they must simply be endured. This is especially problematic when, as the study has shown, certain disputes and difficulties may inexorably lead to a cascade of others.

### **3.2 One size will not fit all**

The analysis of advice-seeking behaviour has reinforced the necessity of unpacking the concepts of “civil disputes”, “civil justice”, and “claimants” or “defendants” in the quest to develop effective strategies for assisting the public in resolving their everyday problems and disputes. A legal services strategy that aims to provide access to justice, with or without the need for legal proceedings, must recognise the variety of circumstances, people and remedies involved within the world of civil justiciable problems as revealed by recent surveys. There is a huge diversity of civil problems and disputes requiring different types of remedies. There is an enormously diverse population of potential claimants with different needs and capabilities. There is also diversity among potential defendants, ranging from the indigent individual defendant to

insurance companies, social landlords and agencies of central government departments.

Thus when we talk of improving access to justice whom do we have in mind? The social tenant disputing his threatened eviction for non-payment of rent? The benefit recipient disputing withdrawal or level of benefit? The homeless person claiming wrongful arrest and mistreatment by the police? The property owner driven mad by noisy neighbours? The pedestrian paralysed by a careless driver? The ex-partner seeking contact with children? The answer is, of course, that we have all of these situations in mind, but their 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, public education, and a range of options for dispute resolution.