

Summary of
*‘Causes of Action:
Civil Law and Social Justice’*

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The opening chapter maintains that the problems to which the principles of civil law apply are not abstract legal problems, but for the most part problems of everyday life. It observes that legal process does not always provide the best means, or even a sensible means, through which to resolve such problems, as many alternative means of resolution exist. However, it asserts that the existence of a defining framework of civil law applicable to many problems of everyday social life and social well-being, and the possibilities for utilising legal services and process to reach solutions to such ‘justiciable’ problems when necessary, mean that the infrastructure of civil justice today plays an important role in realising social justice. It also plays an important role in tackling social exclusion. The chapter then introduces the English and Welsh Civil and Social Justice Survey, along with a survey of people living in temporary accommodation conducted in parallel with the 2001 survey. These surveys have allowed a comprehensive and unique analysis to be undertaken of the experience and impact of 18 categories of ‘justiciable’ problem (discrimination, consumer, employment, neighbours, owned housing, rented housing, homelessness, money/debt, welfare benefits, divorce, relationship breakdown, domestic violence, children, personal injury, clinical negligence, mental health, immigration and unfair police treatment), the difficulties people face in resolving them, and the degree to which advice, legal services and formal processes facilitate problem resolution.

The second chapter sets out the pattern of experience of justiciable problems across England and Wales, by describing the 36 per cent of 2001 survey, 33 per cent of 2004 survey and 84 per cent of temporary accommodation survey respondents who reported having experienced one or more problems in the three-and-a-half year survey reference periods. It provides a detailed analysis of how differences in life

circumstances entail differences in vulnerability to problems, and why different rates of problem incidence are therefore associated with differently constituted population groups, both in general terms and within individual problem categories. As part of this, it describes the vulnerability of certain population groups to problems that can be constituent elements of social exclusion, and the particular vulnerability of socially excluded groups to the experience of justiciable problems. It also illustrates how vulnerability to justiciable problems is linked to geography and crime. The chapter then describes the distribution of problems among those respondents who reported having experienced one or more of them. It shows how the experience of problems has an additive effect; meaning that each time a person experiences one problem, they become increasingly likely to experience another. It illustrates how this additive effect can act to reinforce social exclusion. It also explains how certain justiciable problems are more likely to lead to others, and then demonstrates the extent to which justiciable problems also lead to broader social, economic and health problems. These broader problems are extensive and entail substantial public expenditure. Lastly, the chapter details how some problems tend to occur together or in sequence in problem clusters. Three distinct clusters are identified. These are characterised as family, homelessness and economic clusters.

The third chapter sets out the ways in which people deal with justiciable problems. It highlights the sense of powerlessness and helplessness often experienced by those who face them, and confirms there is a general lack of knowledge about obligations, rights and procedures on the part of the general public. It reports that no action was taken to resolve 19 per cent of problems reported through the 2001 survey, 10 per cent of problems reported through the 2004 survey and 28 per cent of problems reported through the temporary accommodation survey. It explains that inaction is particularly common in relation to some serious problem types (such as mental health and domestic violence), and also, apparently, more likely among some disadvantaged population groups (such as minority ethnic groups). It also reports that inaction owing to fear is common in relation to some problem types (such as neighbours and domestic violence). When action is taken to resolve problems, formal advice is sought on just under two-thirds of occasions, although it is actually obtained on fewer occasions. In describing the problems in relation to which people most often seek advice, the chapter demonstrates that advice is more likely to be sought in relation to more serious problems. It also explains, though, that awareness of advice services and

previous strategies employed to resolve problems, including those of other household members, influence the manner in which problems are resolved. The chapter then details the many sources from which people attempt to obtain formal ‘rights-based’ and ‘personal’ advice (from solicitors to social workers, trade unions to politicians, and the police to the media), the difficulties they experience in doing so, and the nature of the advice and additional help received by those who are successful in doing so. Through this, it illustrates how people’s choices of advisers, although often logical and apposite, can be uncertain and unpromising and, also, how people’s choices can be undermined by the provision of services in manners that do not fit with their lives. In doing this, it reveals the extent to which the telephone is now used as a means to obtain advice. In addition, it exposes the phenomenon of referral fatigue, whereby the more times people are referred on to another advice service by an adviser, the less likely they become to act on a referral. The chapter also demonstrates the relative infrequency of court, tribunal and alternative dispute resolution processes being used as part of problem resolution process. Lastly, it details the people and organisations that pay for advice. It confirms that most advice is provided free at the point of delivery and, where advice is paid for, it is commonly paid for by legal aid, trade unions, legal expenses insurance and private individuals. It also observes that legal aid appears to be targeted towards more serious problems, in large part because it is focused on a relatively narrow range of problems and advice services.

The fourth chapter sets out the range of objectives that motivate people to act to resolve justiciable problems (such as obtaining an apology for a wrongdoing, obtaining or retaining money or property, obtaining or retaining a job, improving working conditions or securing access to children). It illustrates the different objectives associated with different problem types, problem resolution strategies, advisers and population groups. As part of this, it describes how objectives vary along with the consequences of problems, and confirms that certain problems are more likely to lead to others. It then details the ways in which problems conclude, and the extent to which people obtain their objectives. It points to evidence that resolutions are more favourable for those who obtain advice. It also suggests that those who are represented before courts and tribunals fare better than those who are not, and also that objectives are more often met in relation to more important problems. It also observes that those who obtain advice that is funded by legal aid appear to fare better than others who obtain advice. The chapter then explains how the duration of

problems varies by problem and adviser type, and also, seemingly, by seriousness. Lastly, it shows that although people can benefit greatly from taking action to resolve justiciable problems, the resolution process can be stressful and even bring about ill-health.

The final chapter draws together the findings detailed in earlier chapters and sets out their implications. It suggests that the nature of justiciable problems requires that they should be of general concern, and that their prevention and resolution should be seen as a central part of efforts to tackle social exclusion. It also argues, though, that policies concerning access to justice need to be set out in a broader context than just that of social exclusion. Justiciable problems are frequently encountered by people from all walks of life and can have great impact on their lives. Access to justice policy must therefore be broadly directed towards enabling all citizens to make effective use of the law and dispute resolution processes, so as to ensure that the framework of civil justice instituted in their name has legitimacy and meaning. The chapter then highlights the role of education and information in raising awareness of the civic context of justiciable problems and the methods that can be used to resolve them, and stresses the importance of framing laws and legal instruments in the clearest language possible. While recognising the great difficulties involved, it underlines the importance of development and co-ordination of advice and other services so that people are able to obtain the help they need to resolve problems and to ensure that problems are not just dealt with in isolation once they have arisen, but also that their likelihood of occurring or leading to further problems is lessened through holistic and preventative action. It notes that the findings set out in this book indicate usefully how resources might be targeted towards problem prevention. The chapter then suggests that dedicated advice services should mirror the needs and behaviour of those who wish to use them. Noting the phenomenon of referral fatigue, the chapter highlights the importance of equipping those from whom people initially seek advice with the means to quickly and effectively refer them on to the most appropriate adviser, and the importance of accessible and good quality general advice services that act as formal gateways to the great array of advice and legal services. It suggests general access numbers, along the lines of the 2-1-1 and 3-1-1 information and referral numbers being developed in North America, would be a great help in this regard. More broadly, the chapter recognises the important role to be played by those

who have routine professional contact with individuals vulnerable to justiciable problems in ‘problem noticing’ and signposting people to such gateways.

Finally, there is a discussion of where investment should come from to develop the methods and services that will enable more people to benefit from early and effective advice. Given that advice on the resolution of justiciable problems is already provided under the remit of a range of government departments and local authorities, and that a range of government departments and local authorities can benefit greatly from the timely resolution of justiciable problems, it suggests that public investment should come from across government. It also suggests that public sector investment could be complemented by private sector investment. The development of initial advice and referral services will, for example, inevitably generate demand for commercial advice services. The chapter warns, though, that investment, as well as the development of the broad infrastructure of civil justice, must be properly co-ordinated and targeted to maximise the public benefit they deliver, and suggests that this is a key challenge for government.