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Cutting Legal Aid: Advice sources and outcomes in civil justice

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Contents

Executive Summary	Page 3
1. Introduction	Page 5
2. Research Design	Page 7
3. Results of the Analysis	Page 11
4. Conclusion: Key findings and implications for policymakers	Page 16

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Executive Summary

This research looked at how proposed changes to Legal Aid may affect the way in which people deal with their law-related problems, and on how their problems conclude. Data from the Civil and Social Justice Survey were analysed. The research found that if Legal Aid changes are implemented, we can expect: fewer social welfare legal issues, especially housing problems, to end in agreement; more people to give up trying to bring their divorce and relationship breakdown problems to a satisfactory conclusion; and an increase in the demand for tribunal hearings, for a variety of inter-related reasons. The risk that poorer people will have a reduced level of access to justice in relation to employment problems compared with the present will need very careful quantification and mitigation.

In January 2011 the Strategic Society Centre was commissioned by the General Council of the Bar (the Bar Council) to carry out research on the potential impact of wide-reaching changes to the scope of civil legal aid; in particular, on how the changes may affect the way in which people deal with their law-related problems, and on how their problems conclude.

The research comprised original secondary analysis of the most recent data from the Civil and Social Justice Survey (a household survey commissioned by the Legal Services Research Centre in London).

The research found that:

- ▶ More people decide that they are unable to pursue their objectives to a satisfactory conclusion when they use non-legal aid services, than when they do;
- ▶ The most significant health improvements that people ascribe to receiving information and advice for civil justice problems are associated with professional independent legal services, i.e. those currently eligible for a legal aid contract;

- ▶ Both the social welfare and divorce/relationship breakdown problems of poorer people in this sample reached agreement less frequently than those of their wealthier counterparts.

Findings from the research appear to suggest that if the removal of legal aid funding results in a reduction in the overall capacity of legal services for divorce and relationship breakdown problems, it will be poorer people who feel the affects of this disproportionately.

If the Ministry of Justice implements its proposals, and if consequently fewer people will be able to access professional independent legal services – either because they would no longer be eligible for legal aid, or because a service has closed as a result of lack of funding – we might expect:

- ▶ Fewer social welfare legal issues, (problems of 'everyday life'), and especially housing problems, to end in agreement between the parties. Policies that promote Alternative Dispute Resolution or ADR (as opposed to litigation) as a substitute for legally aided social welfare services need to take account the fact that the problems of poorer people are less likely than other

peoples' to reach agreement, regardless of where they seek assistance.

- ▶ More people to give up trying to bring their divorce and relationship breakdown problems to a satisfactory conclusion. Poorer people will be disproportionately affected, since they are more vulnerable than other people to giving up (and not necessarily because of the cost of taking action).
- ▶ Fewer people with housing problems experiencing an improvement in their health. This does not represent so much an 'opportunity cost' as an *actual future cost* to health services, and one which has not been acknowledged or quantified in the Ministry of Justice's impact analysis. Since improvements are currently reported most frequently among poorer people (who have been shown to generally be in poorer health than other people), they would be particularly affected. A failure to invest in independent professional legal services may have a cumulative effect on the health of people vulnerable to housing problems, and may, over time, result in cumulative healthcare costs.
- ▶ An increase in the demand for tribunal hearings, for a variety of inter-related reasons. The risk that poorer people will have a reduced level of access to justice in relation to employment problems compared with the present will need very careful quantification and mitigation. This will be particularly important if demand for

employment and employment appeal tribunals increases beyond a level that the system can cope with; since their problems are already more likely to reach tribunal than those of their wealthier counterparts, in such a scenario the impact of any backlog in hearings will affect poorer people more than others.

1. Introduction

This report presents the findings of research into the impact of proposed changes to Legal Aid, using data from the Civil and Social Justice Survey...

This paper presents the findings of research commissioned by the Bar Council in January 2011 during a Ministry of Justice consultation on reforms to the scope and funding of civil legal aid in England and Wales.¹

In England and Wales, civil legal aid is currently available for law-related problems in many areas of civil law relating to private individuals (rather than businesses), for those people that meet the relevant financial eligibility criteria (that is, who are relatively poor) and whose legal issues are deemed to justify such use of public funds. Civil legal aid, currently administered by the Legal Services Commission with Ministry of Justice budget, thus funds access to law-based means of resolving many problems of 'everyday life'.² This is generally in the form of advice from, and/or legal representation by, specialist contracted providers employing professional advisers (including solicitors and barristers). In other words, civil legal aid funds access to justice for people who can least afford to pay privately for legal services in matters that include employment, debt, housing, family law and benefits-related problems.

The research aimed to investigate potential impacts of key policy proposals that look to significantly reduce the scope of civil legal aid (proposals on which the Ministry of Justice consulted between November 2010 and February 2011). These would see the removal of funding for several wide-reaching areas of law, other than by (rare) exception. Most housing, employment, debt, welfare benefits and money-related problems would be 'out of scope'. Funding in most divorce and relationship breakdown problems would be limited to assistance via mediation processes.

Although the Ministry of Justice (MoJ) identifies other co-drivers for these reforms, the planned cuts appear to be primarily a function of cross-government policy to

reduce public spending, and would make a significant contribution to balancing MoJ's reduced budget.³

In identifying where it is envisaged that money can be saved from the civil legal aid budget, the Ministry of Justice has attempted to place problems on a 'spectrum of objective importance'. Loss of liberty, the risk of loss of life or physical harm, immediate risk of homelessness, and the desirability of enabling individuals to challenge the decisions of public bodies and the state via judicial review feature at its higher end. By contrast, it is envisaged that, in future, 'financial issues' such as 'debt matters where the client's home is not at immediate risk' (paragraph 4.177 of the proposals) will generally no longer be in scope. Similarly, 'proceedings where clients are primarily seeking monetary compensation will not generally be of sufficient importance to merit public funding' (paragraph 4.17). This latter characterisation is applied to employment problems (paragraph 4.189) where 'cases are generally concerned with monetary damages or earning potential'. In fact funding is currently available for a wide range of employment-related problems that include unfair and wrongful dismissal, data protection and employee confidentiality (paragraph 4.138).

As well as the immediately obvious impact on the types of problem for which poorer people will be able to ask for assistance via legal aid, the removal of legal aid funding is likely to have an impact on: *which* organisations have the capacity to support people in future; the numbers of people who they can help; and, thus on *where* people will be able to turn for help with their law-related problems.

The Bar Council and the Strategic Society Centre were therefore keen to investigate whether and how the outcomes of civil legal problems differ depending on the source(s) of help to which an individual turns for information or advice. Publicly available data from the most recent (final) wave of the Civil and Social Justice Survey were analysed to this end.

The Civil and Social Justice Survey was a household survey of civil legal problems commissioned by the Legal Services Research Centre...

The Civil and Social Justice Survey (CSJS) was a household survey of civil legal ('law-related' or 'justiciable') problems commissioned by the Legal Services Research Centre. Its data constitute a unique resource for researching the experience of such problems among the household population of England and Wales. Further details are given below.

A considerable amount of research on advice outcomes using CSJS data has already been published, both by its commissioning organisation and by academics. To date, however, none has specifically compared differences in outcomes between those problems for which respondents sought help from a service that may currently qualify for a contract to provide civil legal aid services, and problems for which people turned to other sources of help. It is this evidence gap that the Strategic Society Centre and the Bar Council sought to begin to address through the research outlined here.

Within this broad theme, and echoing several of the key priorities for potential savings identified in the MoJ consultation, the areas of law on which the research focuses are:

- ▶ Housing; employment; debt; welfare benefits; money advice ('social welfare' law);
- ▶ Private law family (specifically, relationship breakdown and divorce).

In Chapter two, the research design used for the analysis is described.

The third chapter presents the results of the analysis.

Chapter four draws out the key findings, and discusses the implications for policymakers.

Key points:

- ▶ The government has consulted on wide ranging reforms to legal aid that would remove funding for most social welfare law and private law family problems.
- ▶ The effects of the reforms are unlikely to be limited to those whose problems will no longer be within scope of civil legal aid; if professional legal services close, other clients will also be affected.
- ▶ This research looks at how outcomes for problems differ depending on where people seek help. It is particularly interested in describing the role of independent professional legal services.
- ▶ Data are from the Civil and Social Justice Survey, a unique household survey of law-related civil problems in England and Wales on which considerable civil legal aid policy development has drawn.

2. Research Design

The research looks at the relationship between source of assistance for civil legal problems, and the way problems concluded, as well wider reported effects on people's lives...

This chapter describes the design of the research undertaken.

It details the objectives of the research, the dataset used, key variables and the types of statistical test applied.

Research objectives

The research aims to identify relationships between the source of assistance to which people turn when faced with law-related problems and:

- ▶ The way in which their problems conclude; and
- ▶ Wider positive impacts on people's lives attributed to the advice they received.

Specifically, for each of three Groups of information/advice sources, the research considers:

- ▶ How often problems conclude with agreement being reached between the parties;
- ▶ How often people give up trying to bring their problems to a satisfactory conclusion;
- ▶ How often people report that the advice they received improved their health;
- ▶ How often problems reach court or tribunal.

Rather than being treated individually in the analysis, sources of advice/assistance have been grouped in this way, due to

- ▶ The number and variety of sources to which people turn for help; and
- ▶ The desirability of differentiating between three broad *types* of source of assistance, in terms of their capacity to provide independent, quality assured legal services.

This is explained in more detail below (see 'Sources of assistance').

The dataset

All analysis is based on the most recently available data from the Civil and Social Justice Survey (CSJS). The CSJS was a continuous household survey of civil legal problems commissioned by the Legal Services Research Centre in London.⁴ It concluded in January 2009, being then superseded by the Civil and Social Justice Panel Survey.

The dataset analysed for this research contains information on 6,115 separate law-related ('legal' or 'justiciable') problems across eighteen different areas of law, described by those reporting them as 'difficult to solve'. Analysis is limited to certain key legal areas (as noted above).

Excluding from the analysis those problems that could potentially still receive civil legal aid

Because, under the Ministry of Justice proposals, it is envisaged that certain types of problem *will remain* within the scope of civil legal aid as exceptions to more general exclusions, where it has been possible to attempt to identify such problems, these have been excluded from the analysis. Thus, when a problem was described by a respondent as relating to any of the following, it has not been included in any of the analyses:

- ▶ Repossession of the home, eviction or the threat of eviction;
- ▶ Homelessness;
- ▶ Living in unsafe conditions.

In this way, the potential impacts of the proposed reductions in scope identified below reflect, as far as possible, the intention to *retain* funding for certain types of case.

However, despite the intention to retain legal aid for private law services (as per the current scope) for

The research distinguishes three groups of sources of advice, with Group 3 comprising those organisations currently eligible to undertake civil Legal Aid work...

cases where domestic violence is an issue, problems that may relate to domestic violence *have* been included in the relevant analyses. This is because of the relatively small sample size; excluding such problems entirely would result in few statistical tests being valid. Instead, most analyses of divorce and relationship breakdown problems below *control for* the experience of domestic violence; in other words, any separate effect that the presence of domestic violence may have on the outcome being investigated is identified separately as part of the statistical test. In the same way, where both variables are included in the model, any identifiable effect that, for example, source of assistance has on outcomes will be shown separately from any effect of domestic violence.

Sources of assistance

Respondents to the Civil and Social Justice Survey cited a very wide range of individuals and organisations to whom they turned for information and/or advice in relation to their law-related problems. Individual respondents often sought the assistance of more than one person or organisation with respect to any particular problem. While some sources of assistance were named frequently by respondents, others were cited very rarely. Accordingly, in order that statistical analyses are meaningful and to facilitate comparison between different types of services, each source of assistance to which one or more respondents turned has been allocated to one of three Groups.

Group 1 sources are those people or organisations that could *not* routinely be expected to be able to provide independent, accurate and high quality legal advice or assistance.

This group includes:

General Enquiries at council, council department excluding advice services, doctor or other health

worker; social worker; MP or local councillor; landlord; church; school; government department; commercial non-legal advice; accountant; consumer non-legal advice; financial institution; media.

It also includes any type of person or organisations cited by at least one respondent not listed in Group 2 or 3 below.

Group 2 sources are organisations that may or will be expected to have at least some legal knowledge, and may also have a formal advisory capacity. However, they may not be independent of the problem being experienced, and in any event, would not currently qualify for a contract for civil legal aid work from the Legal Services Commission.

This group comprises:

Council advice services; Trading Standards; trade union/professional body; police; employer; insurance company; Jobcentre; ombudsman; regulatory body; Victim Support; Child Support Agency; court; mediation/conciliation service; education body (excluding schools and Local Education Authorities).

Group 3 sources are those people or organisations that may currently be eligible to undertake civil legal aid work (that is, to hold a Legal Services Commission civil contract).

This group comprises: *barrister; solicitor; other lawyers; Citizens Advice Bureau; Law Centre; other advice agency.*

Where help for a problem was sought from sources across more than one group, the problem has been assigned to the group with the highest number. Hence:

- ▶ Problems for which help was sought from both Group 2 and Group 3 are in Group 3;

All analyses are limited at least to problems for which the respondent sought advice...

- ▶ Problems for which help was sought from both Group 1 and Group 3 are in Group 3;
- ▶ Problems for which help was sought from both Group 1 and Group 2 are in Group 2;
- ▶ Problems for which help was sought from all three Groups are in Group 3.

Those in Group 1 are referred to as 'Group 1 problems'; in Group 2 as 'Group 2 problems', etc. The variable by which Groups are referred to collectively is 'Group advice source'.

Key outcomes

For any problem that the respondent considered to have ended at the time of their interview (or for which they felt otherwise able to judge), they reported it ending in one of twelve (plus two) ways.

- ▶ Through a court or tribunal
- ▶ Through mediation
- ▶ Through an ombudsman
- ▶ Agreement reached between you & other side
- ▶ The problem/dispute sorted itself out
- ▶ Gave up trying to resolve the problem
- ▶ Did nothing to resolve the problem
- ▶ Police / third party intervention
- ▶ Gave up / did nothing / agreed
- ▶ Left problem behind
- ▶ Sorted it out on own
- ▶ Other (specify)
- ▶ Don't know
- ▶ [Refused]

These are mutually exclusive; only one ending type may be selected. For example, problems *cannot* be reported as both 'ending in agreement' *and* 'problem/dispute sorted itself out'.

Types of test

Two types of statistical test have been used to investigate relationships between Group advice source and outcomes. Chi-square tests look for the presence or absence of an association between two variables; in this case, between Group advice source and the outcome of interest (for example, whether a problem involved going to court or tribunal). In other words, changes in one variable occur systematically with changes in the other. Where results of a Chi-square test suggest that there *is* such as association, that is, that changes co-occur, binary logistic regression is then used to investigate the effect of one or more variables on the probability of the outcome occurring while controlling for any other factors of interest. If the test statistics indicate that the model developed improves our ability to predict the likelihood of the outcome occurring (e.g. that a problem reaches court or tribunal), statistically significant results from the regression enable us to compare (for example) the likelihood of a Group 1 problem reaching court or tribunal with the likelihood of a problem a Group 3 problem reaching court or tribunal.

Seeking, or seeking and obtaining, advice

All analyses below are limited at least to problems for which the respondent sought advice; problems for which the respondent at no stage sought help from another party, or took no action themselves at all, have been excluded. In some analyses, where possible and where it is particularly desirable to do so, the sample is restricted further to only those problems for which respondents report having *obtained* 'some' or 'all' of the assistance they were seeking. This approach has the effect of reducing the sample size slightly, so has not been possible where the effective sample size would then be too small to analyse meaningfully. However, where a positive outcome is being investigated (for example, improvements in health attributed directly to advice) it is clearly important that,

Some analyses compare the experiences of 'eligible' and 'ineligible' respondents...

wherever possible, only problems for which advice was actually obtained are included.⁵

Eligibility for civil legal aid

Some analyses compare the experiences of 'eligible' and 'ineligible' respondents. 'Eligible' here means that the respondent was identified by commissioners of the research using survey data relating to income and assets applying the contemporary eligibility rules as *highly likely to qualify for civil legal aid on the basis of their financial resources*. It **does not** mean that:

- ▶ Any/all of their *problem(s)* necessarily met the requirements for receipt of civil legal aid;
- ▶ They necessarily received civil legal aid;
- ▶ They necessarily sought advice from an organisation with a civil legal aid contract;
- ▶ They would necessarily be 'eligible' (qualify financially) under the proposed new rules regarding income and assets, for which changes are also envisaged.⁶

Rather, it gives a very strong indication that such a person would have been financially eligible for legal aid for most civil problems meeting the relevant scope and merits criteria.

Key points:

- ▶ Sources of help have been assigned to one of three groups to ensure that statistical tests are meaningful.
- ▶ Where possible, problems that will continue to be within the scope of civil legal aid have been excluded from analyses, so that conclusions may better reflect the potential impacts of reform.
- ▶ It should be noted that respondents flagged in the dataset as 'financially eligible' will not necessarily have received legal aid funding or have accessed services with a civil legal aid contract.

3. Results of the Analysis

Some analyses compare the experiences of 'eligible' and 'ineligible' respondents...

This chapter describes the key results found in the analysis.

Detailed outputs for all tests are given in Appendix A.

Many of the results reported in this chapter are statistically significant; in other words, there is a very high probability (of at least ninety percent) that a result reflects not only the experience of respondents in the sample but is also representative of the sampled population. Thus we can confidently assume such findings represent the collective experience of the wider household population of England and Wales.

Some results fall short of being conventionally statistically significant; that is, there is a greater than ten percent probability that a relationship suggested by the result for our sample is actually the product of factors other than the specific ones we have investigated or accounted for in the relevant analysis, or of random processes (chance). This means that there is at least a ten percent chance that we would **not** find the result replicated across the wider population. Often, however, an interesting and potentially enlightening result is only slightly short of being statistically significant at this ninety percent confidence interval, or is still much more likely to point to a real pattern in the population than not. Here, where a result cannot with 'ninety percent confidence' be generalised to the wider household population, it has nevertheless been identified below, and its relevance and any potential implications discussed.

Problems where agreement is reached

Considering collectively those **housing, employment, money, debt and welfare benefits problems** for which respondents sought information and/or advice, problems where the highest numbered contacted source of help was a Group 2 source report their problems reaching agreement (including via mediation) only two-thirds as frequently as respondents who

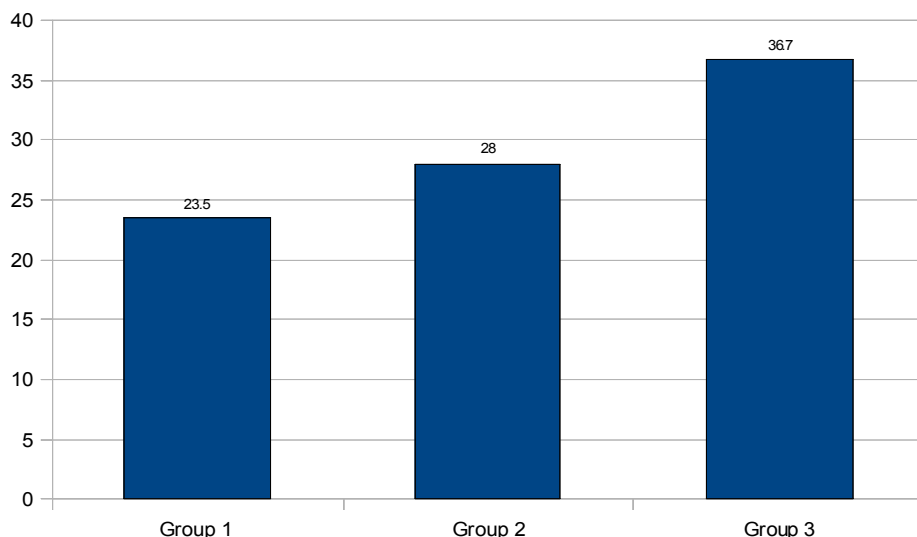
sought help from a Group 3 source. Group 1 problems were reported as reaching agreement (including via mediation) *less than* two-thirds as frequently as problems for which a Group 3 source was consulted. This finding is statistically significant (Test 1 in Appendix A below).

When financial eligibility is included in the model, the result for eligible respondents reaching agreement falls slightly short of being statistically significant (Test 2). However, in this sample, eligible respondents reach agreement only *three-quarters as often* as ineligible respondents. While further research would be needed to confirm and investigate this finding more fully, given that Group advice source has been controlled for, this result should perhaps be borne in mind when formulating expectations about the extent to which the social welfare legal problems of people who would currently be financially eligible for legal aid *may* end in agreement, *regardless* of who helps them (and thus whether or not a formal mediation process is involved).

For **housing problems** where respondents *sought* (and, in most cases, obtained) assistance, a binary logistic regression shows that when a Group 3 source is contacted, agreement is reached approximately *twice as often* as when a Group 1 source is contacted, and *more than twice as often* as when a Group 2 source is the most sophisticated. These findings (Test 3) are statistically significant.

For those housing problems for which people actually *obtained* advice, the proportion of problems reported as ending in agreement (via mediation or otherwise) increased as the Group number increases, as shown in Figure 1 below. Where a Group 1 source is consulted, agreement was reached in 23.5% of problems. For Group 2, the proportion is 28%. For Group 3, it is 36.7%. These statistically significant results (Test 4) confirm that there is a relationship between which Group consulted and whether agreement is reached.

Figure 1: Proportion of housing problems for which assistance is sought that reach agreement



The starker differences between the Groups in whether agreement is reached suggested by Test 3 results compared with those from Test 4 will reflect the varying levels of success respondents experienced in actually obtaining advice from different types of source.

For divorce and relationship breakdown problems where advice was obtained, in this sample, problems for which a Group 3 source was consulted reached agreement (including via mediation) over a third of the time (37.3%). By contrast, only 22.2% of problems where a Group 2 source was consulted reached agreement. These results (Test 5) fell short of being statistically significant; a larger sample may confirm whether this finding is very likely to be true of the wider population.

When a regression model controlling for Group advice source was fitted to the data, in this sample, problems experienced by financially eligible respondents reached agreement only 85% as frequently as those of other respondents (Test 6). Again, a larger sample and further research would be needed to confirm this pattern and identify other influences. Nevertheless, this result suggests that, regardless of the type of adviser consulted, the *types of problems* faced by poorer people may in themselves be such that they are less likely to end in agreement than those experienced by the better off. This has implications for legal aid policy development regarding any extended role and/or targets for alternative dispute resolution (ADR) providers and processes.

Problems where people give up trying to reach a satisfactory conclusion

Among divorce and relationship breakdown problems for which people obtained advice, where a Group 2 source was consulted, respondents reported 'giving up' trying to solve their problems *over eight times more often* than those consulting a Group 3 source (Test 7).

When experience of domestic violence, eligibility for legal aid and problem type ('relationship breakdown' or 'divorce') are controlled for in the model, respondents consulting a Group 2 source still gave up trying to resolve their problem *five and a half times more often* than those consulting a Group 3 source (Test 8). Findings from both these tests are statistically significant.

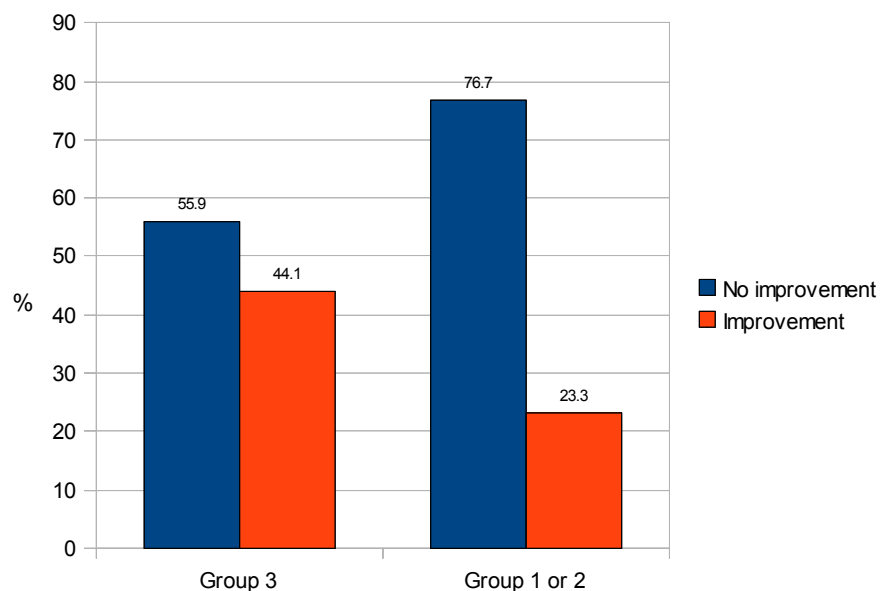
When Group advice source, legal aid eligibility and experience of domestic violence are controlled for, respondents with relationship breakdown problems are, perhaps unsurprisingly, *over seven times more likely* to give up addressing their problems than those involved in divorce proceedings. This result (Test 8) is also statistically significant.

In this sample, when Group advice source, problem type and experience of domestic violence were controlled for, respondents who were financially eligible for legal aid were almost *three times more likely* to give up pursuing their divorce or relationship breakdown problems to a satisfactory conclusion compared with ineligible respondents. This does not mean that eligible people who consulted a Group 3 source received legal aid services for such problems. Rather, it suggests that poorer people are more vulnerable to feeling unable to pursue their justice objectives compared with those who are better off. This finding falls slightly short of being statistically significant (Test 8), but the odds that the result does not reflect a real relationship in the wider population are only one in five. Therefore further research in this area is strongly recommended.⁷

Improvements in physical health and/or levels of stress attributed to advice received

Among **housing** cases where advice was obtained, respondents who consulted a Group 3 source reported an improvement in physical health and/or in levels of stress as a result of the advice they received 44.1% of

Figure 2: Proportion of housing problems for which advice reportedly led to health improvements



the time. This fell to 23.3% for other groups (Figure 2). A standard chi-square test suggests this finding is statistically significant, while a common 'corrective' test suggests it is not (Test 9; Table 9.2); nevertheless, the latter points to a greater than eighty-five percent chance that the result would also be true of the wider population. This finding is likely to reflect the degree of worry that respondents experienced as a result of their problems, which, in turn, will be related to the nature of the problem (and thus the source of help consulted). It may also reflect housing conditions; while problems that relate to unsafe living conditions have deliberately been excluded from the analysis, those that relate to 'unsuitable conditions' or 'communal repairs or maintenance' have been included.

Among housing problems for which respondents sought advice, and fitting a regression model that controls for legal aid eligibility, those who sought the assistance of a Group 1 source report health improvements approximately a third as often as people who sought assistance from Group 3 (Test 10). This finding is statistically significant.⁸

In this sample, respondents seeking the help of a Group 2 source reported an improvement less than half as often as people seeking assistance from Group 1, and less than five times as often as those contacting a Group 3 source. The Group 2 result falls just short of being significant; nevertheless, the significance test suggests that there is less than a fifteen percent risk that this result has occurred by chance, so it is still much more likely than not to reflect a genuine pattern in the household population.

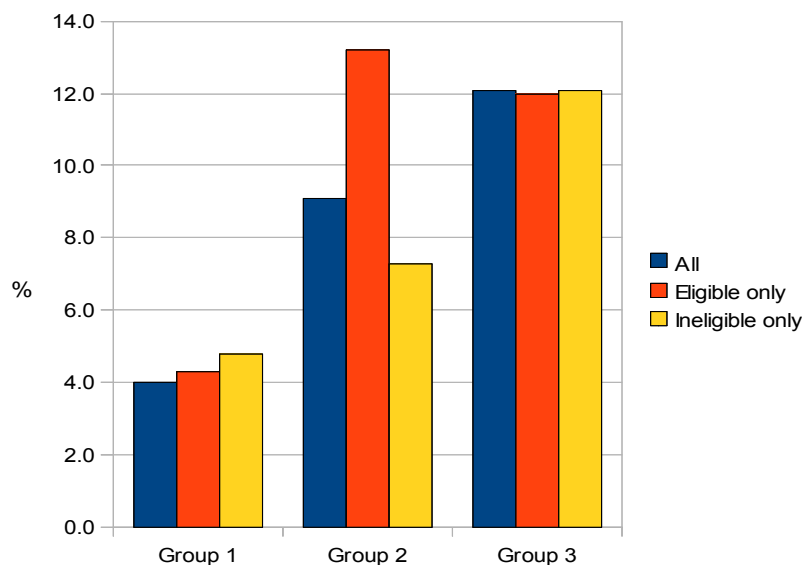
When Group advice source is controlled for (that is, regardless of where people sought help), eligible respondents in this sample were *over twice as likely* to report an improvement in their health compared to other people. The result fell short of being statistically significant, but again the test suggests that the risk of it being due to other factors is less than fifteen percent

(Test 10). Therefore, as above, the odds that it reflects the actual experience of the wider household population are greater than eighty-five percent. The result is likely to be related to the (well-documented) relationship between being poor and being more likely to be in poorer health (discussed in recent literature in terms of 'health inequalities'). But it also highlights the positive impact that receiving appropriate housing advice can have on the health of the poorest (and, often, the most ill) people in society, even where the issue at stake does not relate to eviction, repossession, homelessness or the most obviously or urgently unsafe living conditions.

The model used in this test (Test 10), which controls only for eligibility and Group advice source, explains almost twelve percent of the variation in whether or not a health improvement is reported. This modest figure is nonetheless considerable, given the likely range of other factors at work here.

Respondents with **divorce or relationship breakdown problems** in this sample reported an improvement in their health as a result of the advice obtained 25% of the time where a Group 2 source was consulted. This proportion rose to 39.1% among respondents consulting a Group 3 source (Test 11), but a chi-square test for a real association between health improvements and Group advice source was not statistically significant (which is at least partly due to the small sample size, n=79). When eligibility for legal aid, experience of domestic violence and problem type (divorce or relationship breakdown) was controlled for, in this sample respondents consulting a Group 3 source reported an improvement in their health as a result of obtaining advice *twice as often* as those for whom a Group 2 source was consulted (Test 12). Again, however, a test of the model power suggests it does not significantly improve the ability to predict whether a health improvement is reported.

Figure 3: Proportion of housing, employment, money, debt and welfare benefits problems for which advice was sought that reached court or tribunal



In this sample, when source of advice, experience of domestic violence and problem type (divorce or relationship breakdown) were controlled for, respondents who were eligible for legal aid reported an improvement in their health only half as often as others did. However, this may reflect characteristics of their problems, their vulnerability to poorer health in general, or some other factor not controlled for here. The result was not statistically significant, however, the odds of it reflecting a real pattern in the wider population being less than two in three.

Problems reaching court or tribunal

For **housing, employment, money, debt and welfare benefits problems** for which advice was sought, the higher the Group number, the higher the proportion of problems that reached court or tribunal - 4% for Group 1 problems, 9.1% for Group 2, and 12.1% for Group 3. These results (Test 13) are statistically significant, and are as would be expected, reflecting the complexities of the issues and the varying capacity of the different sources of advice to assist with preparation for a hearing and/or to represent respondents. The test suggests that Group advice source accounts for a considerable eleven percent of the variation in whether problems reach court or tribunal or not.

Where a Group 3 source was contacted, almost identical proportions of problems of eligible respondents reached court or tribunal compared with those of ineligible respondents (12% and 12.1% respectively; Tests 14 and 15). Proportions were also similar for Group 1. By contrast, a smaller proportion of the problems of ineligible respondents for which a Group 2 source was contacted reached court/tribunal compared to the problems of eligible respondents; 7.3% compared to 13.2% (see Figure 3 above). A chi-square test suggests that the apparent differences in the proportion of problems of ineligible respondents reaching court or tribunal are not statistically

significant. However, the test value nevertheless suggests that, for the problems of eligible respondents, there is a greater than two-thirds likelihood of a real association between Group advice source and whether a court or tribunal is involved. Moreover, the tests for the whole sample and for the problems of ineligible respondents were both statistically significant, indicating a generally very clear relationship between Group advice source and reaching court or tribunal.

Taken together, these results may provide some reassurance that cases for eligible respondents are justified in reaching court/tribunal, and that eligible respondents currently have equal access to the courts. They also suggest that problems of eligible respondents accessing a Group 2 source are more likely to reach court or tribunal compared both with those of ineligible respondents seeking help from Group 2 and with those of eligible people contacting Group 3 sources. It must be stressed that no other factors (such as the precise nature of people's problems) have been taken into account, and that results for eligible respondents were not statistically significant. Yet the relatively high rate of court/tribunal usage for poorer people contacting a Group 2 source merits attention from civil justice policy-makers. Further research is also recommended into the relationship between advice source and court and tribunal usage, including whether there is significant variation in the *type of decisions* reached at court while controlling for different kinds of problems.

A regression model for problems where advice was obtained that controls for legal aid eligibility confirms that problems where a Group 2 source is consulted reach court or tribunal just over half as often as those for which a Group 3 source is consulted. When a Group 1 source is consulted, the proportion of problems reaching court or tribunal is approximately a quarter of that for Group 3. Results comparing Group advice source (Test 16) are statistically significant. As above, the analysis confirms that in this sample, and

separate from any effect that Group advice source has on court usage, the problems of eligible respondents reached court or tribunal one and a quarter times more often than those of ineligible respondents. This result comparing eligible and ineligible respondents (Test 16) fell short of being statistically significant. However, the test suggests that the odds of this pattern being true of the wider population are still greater than sixty-six percent.

Among **employment** problems for which advice was obtained, when source of advice is controlled for, the problems of those respondents who are financially eligible are *over twice as likely* to reach court or (as is more likely for this type of problem) tribunal. This does **not** mean that respondents *were* legally aided. Rather, it means that people who are not financially eligible (and thus poorer) are over twice as likely to have the kinds of problems that result in a hearing, regardless of any separate effect that Group advice source has on rate of tribunal usage. This may be due to differences in the specific nature of their employment problems compared to those of ineligible respondents, and/or to other factors not investigated here. Because this finding (Test 17) is statistically significant and can be generalised to the household population, it should be borne in mind when formulating assumptions about changes in the rate of court/tribunal usage, and particularly if attempting to quantify any specific effect that removing legal aid funding may have on usage rates.

When controlling for financial eligibility for legal aid, problem type, and whether the respondent reported experiencing domestic violence, **divorce and relationship breakdown problems** for which respondents obtained advice and where a Group 2 source was consulted reached court approximately a fifth as often as problems where a Group 3 source was consulted. This result (Test 18) was statistically significant, and is as would be expected. In this sample, it was also found that:

- ▶ Problems for which a Group 1 source was consulted reached court *as often* as those for which a Group 3 source was consulted;
- ▶ Relationship breakdown problems reached court slightly more often than divorce cases;
- ▶ Problems of respondents who had also reported domestic violence reached court only very slightly less often than those of people who did not report domestic violence;
- ▶ The problems of ineligible respondents reached court 1.3 times more often than those of financially eligible poorer respondents (remembering that the effect of advice source on this rate has been accounted for separately).

As well as being likely to reflect the lower level of assets that eligible respondents will, by definition, have, this last result (Test 18) also suggests that eligible (poorer) people are **not** 'over-accessing' the family and divorce courts, compared with their wealthier counterparts. While a larger sample and further research is needed to explore this picture more fully, this result sounds a note of caution; care must be taken to ensure that, for those problems where going to court represents the most cost-effective method of resolution, poorer people have equal access to justice via a court hearing.

4. Conclusion: Key findings and implications for policymakers

Individuals who seek advice from Legal Aid eligible sources reach agreement at least two-thirds more often than those for other sources...

What is likely to be the effect of proposed changes to legal aid on outcomes in civil justice?

This chapter highlights key findings from the research, and key implications for policymakers.

Key findings and general policy implications

Reaching agreement

Reaching agreement is, arguably, one of the best possible outcomes for someone experiencing a civil legal problem. To the extent that this is true, it is also true for the 'other side', be that another individual (legally aided or otherwise), an employer, a public or private landlord or an agency of government. What then will be the likely effect of proposed changes to legal aid?

Looking collectively at social welfare problems for which people seek advice, Group 3 problems reach agreement at least two-thirds more often than those in other Groups.

For housing problems, this rises to at least twice as often. Where advice is obtained, people reach agreement when using a Group 3 source over a third of the time (36.7%). The next best is Group 2, at 28% of the time.

It may be a similar story for divorce and relationship breakdown problems. While not statistically significant (unlike the social welfare and housing results), agreement is reached when consulting a Group 3 source over a third of the time (37.3%); when consulting a Group 2 source, this falls to approximately one fifth of the time (22.2 %). Thus in general for the areas of law considered, Group 3 performs the best in terms of people reaching agreement with the other side. However, this does not control for various factors (including specific problem type within the two broad

groupings). More research controlling for a wider range of factors could shed more light in this area.

Nevertheless it appears that information and advice sources that may currently be eligible to provide civil legal aid services are more effective than other potential sources of assistance in terms of individuals reaching agreement in their social welfare, housing and divorce and relationship breakdown legal problems.

Giving up

Individuals may 'give up' addressing a civil legal problem because of the time and effort involved, or because of the stress, cost, or other negative effects of pursuing justice. In an ideal system, the availability of resources and support would minimise the incidence of individuals simply giving up in their attempts to obtain justice. But in the context of a difficult fiscal climate, the need to be strategic, in terms of targeting overall resources is arguably even more critical.

For divorce and relationship problems where advice is obtained, people consulting a Group 2 source give up trying to bring their problems to a satisfactory conclusion at least five and a half times more often than those consulting a Group 3 source (depending on other factors controlled for). It is important to note that this does not include problems where people 'left the problem behind' or 'gave up and did nothing or agreed', but instead reflects a more definite decision not to continue to pursue their justiciable aims.

Since we can be confident that this finding is true of the wider household population of England and Wales, and since a proportion of (particularly poorer members of) society is likely to find it much harder to access a Group 3 advice source following legal aid reform, the implication is that more people will decide that they are unable to pursue their objectives to a satisfactory conclusion.

Respondents reported an improvement in their health as a result of advice obtained from Group 3 sources for housing problems almost twice as often as for other sources of advice...

This finding is very important. If fewer people can access professional, independent legal services, and if truly accessing justice means seeing it through to a conclusion, then fewer people will be doing so compared with the present. Below, we discuss further the particular implications for poorer people.

Health improvements reported as direct consequence of advice received

The experience of civil justice problems can have a clear negative effect on a person's physical and mental health. Where medical treatment is required and provided as a result, this perhaps represents the most costly 'externality' in relation to civil justice problems. A useful way to measure and evaluate the effectiveness of different sources of advice and representation is the extent to which they result in health improvements.

Respondents reported an improvement in their health (physical and/or levels of stress) 44.1% of the time as a result of advice obtained from Group 3 sources for housing problems; almost double the rate for Group 2. Tests for significance (and thus generalisability) did not concur, but nevertheless suggest that this finding is more likely than not to reflect the experience of the household population of England and Wales. Among problems for which advice was sought, Group 1 problems resulted in a reported health improvement only a third as often as Group 3; Group 2 requires confirmation through a larger sample, but based on these data, it appears that a health improvement occurs less than a fifth as often as it does for Group 3.

The analysis controlled only for advice source and financial eligibility for legal aid, yet it explains approximately twelve percent of the variation in outcomes. This is a high proportion for only two variables, given the range of factors that can influence health. People are very clear that the right advice can improve their health, even in relation to housing problems other than those (such as 'unsafe living

conditions") for which a link to health and wellbeing is obvious. Similarly, while the equivalent results for divorce and relationship breakdown were not significant, in this sample people who consulted a Group 3 source were almost twice as likely to report a health improvement than people consulting Group 2.

Thus it appears the most significant health improvements linked to the receipt of information and advice for civil justice problems are associated with professional independent legal services, i.e. those currently eligible for a legal aid contract. These findings merit attention from both health and justice policy-makers.

Problems that reach court or tribunal

Looking collectively at social welfare problems, those for which advice is sought from a Group 3 source are the most likely to reach court or tribunals, followed by those for which Group 2 is consulted, then Group 1. This is as would be expected. However, results from the sample analysed here suggest the possibility that the problems of financially eligible (poorer) people where a Group 2 source is contacted are more likely to reach court or tribunal than either those of better off people contacting a Group 2 source, or of eligible (poorer) people accessing a Group 3 source. This finding merits more research using a larger dataset.

Confirmation of this result would pose the question: why? More sophisticated analysis would then be needed to identify and investigate other associations, such as whether the type and frequency of different outcomes at court vary with Group advice source. It would also suggest that the number of problems reaching court or tribunal may actually *increase* as the possibility of assistance from a Group 3 source for poorer people decreases (due to the removal of legal aid). In terms of access to justice, such a trend may or may not be deemed desirable by policymakers, which might depend in part on what the results of any more

Both the social welfare and divorce/relationship breakdown problems of poorer people in this sample reached agreement less frequently than those of their wealthier counterparts...

sophisticated analysis showed. Desirable or otherwise at a global level, further research could also inform policies to ensure that poorer people's problems reach court or tribunal at *appropriate* rates compared with other members of society, taking into account any other factors (such as the precise nature of those problems) that are likely to have their own specific effect on the rate of usage. Commissioning further research would therefore be an obvious step to help understand and mitigate against the risks that removing legal aid will 1) increase tribunal and court usage across the population and/or 2) unfairly impact the ability of poorer people to access the courts.

Findings relating to poorer people, and the implications for justice policymakers

Focusing on poorer people in particular, that is, those that would be likely to be eligible for legal aid, we note the following findings.

Both the social welfare and divorce/relationship breakdown problems of poorer people in this sample reached agreement less frequently than those of their wealthier counterparts.

Not all possible factors have been controlled for, but source of advice *has* been. While a larger sample is required to confirm this finding, it raises the question: to what extent can we expect the legal problems of poorer people to end in agreement? Is it realistic to expect their problems to end in agreement at the same rate as those of other people? If it is not, is it realistic (or even just) to aim for parity with wealthier people in terms of the frequency with which other means of resolution (such as through courts and tribunals) are adopted? And would it thus be just to expect the problems of poorer people to cost the same (or less) to resolve, compared with those of other people, whoever is footing the bill?

Clearly such questions require consideration at the same time (within the same policy development cycles and structures) as those posed above regarding rates of court and tribunal usage. Meanwhile, in relation to immediate policy priorities, this result suggests that considerable care must be taken when assessing the scope for greater use of alternative dispute resolution (ADR) processes for the problems of people for whom civil legal aid would no longer be available. This will be particularly important if targets are to be set for the proportion of cases expected to end in agreement through ADR.

Eligible respondents in this sample were almost three times more likely to give up addressing their divorce/relationship problems than other people regardless of which Group advice source was consulted, and a larger dataset is needed to establish whether this is true of the wider population. Poorer people may be more vulnerable to feeling unable to pursue these types of justice objectives, for whatever reason. Existing research (quoted and discussed in the analysis above) suggests that the crucial factor need not be a financial one.

When considered alongside the general findings relating to giving up (discussed above), this result makes it even more plausible that if the removal of legal aid funding results in a reduction in the overall capacity of legal services for divorce and relationship breakdown problems (due to the impact on Group 3 sources), it will be poorer people who feel the affects of this disproportionately: their apparent greater vulnerability to giving up will combine with the fact that services currently eligible for legal aid contracts do best for (all) clients in this regard; poorer people would therefore be at even greater risk than currently of failing to pursue their justice objectives to a conclusion – and this before the direct impact of removing a funding stream available solely for poorer people is taken into account.

Our findings highlight the need for employment tribunals and appeals to be particularly accessible to poorer people, who are more likely to be ill and less likely to have academic qualifications...

In our sample, eligible people are over twice as likely to report a health improvement as a result of seeking advice for housing problems than for wealthier people. The odds that this reflects the experience of the wider population are greater than 85%, which suggests that the health of poorer people (who tend to have relatively poor health) appears to improve more often as a result of such advice. If true, this is evidence that the provision of professional housing legal services represents a particularly astute investment in public health, including mental health. While such investment potentially benefits everyone's health (as identified earlier), it is also an efficiently 'self-targeting' approach, in that it is those who are likely to be in relatively poor health (poorer people), who benefit the most.⁹

However, our results suggest that the opposite is true in relation to advice obtained for divorce and relationship breakdown problems. While not statistically significant, in our sample, eligible respondents reported a health improvement only half as often as other people. The model also controlled for Group advice source, presence of domestic violence, and broad problem type (that is, whether it related to divorce proceedings or relationship breakdown), but was not particularly powerful. Research into other potential factors is needed to establish whether this can be attributed to the nature of poorer peoples' problems, their general health before advice is sought, the nature of any health complaints, the stress experienced as part of addressing the problem in this way, and/or other factors.

The employment problems of eligible people who obtain advice are over twice as likely to reach court/tribunal compared to those of other people. While we did not control for the precise nature of the employment issue, Group source of advice was controlled for. Thus, regardless of any separate effect of Group advice source on whether a problem reaches court/tribunal, the problems of poorer people tend to

end up in court more often. This finding (which we can confidently assume reflects the experience of the wider household population) must be kept in mind when considering the future of Employment Tribunals and Employment Appeals Tribunals, and when developing policies to fill the gap that will be left by removing help with case preparation (for both types of hearing) and representation (at appeal) from the scope of legal aid.

Similarly, caution will be needed when formulating any assumptions about changes in the rate of tribunal usage once legal aid for employment problems is removed. Tribunal usage will not necessarily decrease automatically, and may even increase, given that in our sample the social welfare problems of ineligible respondents consulting Group 2 sources reached tribunal more than ineligible clients, and more than eligible clients consulting Group 3 sources. Of course, if legal aid for early advice on employment problems is currently successfully and appropriately preventing the need to go to court/tribunal, an increase is even more plausible.

Regardless of the overall rate of usage, our findings highlight the need for employment tribunals and appeals to be particularly accessible to poorer people, who are more likely to be ill and less likely to have academic qualifications, and who may therefore find preparing their case and representing themselves at tribunal particularly challenging.

By contrast however (though while not generalisable to the household population without a larger dataset), the divorce and relationship breakdown problems of *ineligible* respondents in this sample reached court one and a third times as often as those of eligible respondents, even after controlling for Group advice source. This suggests that poorer people are not 'over-accessing' the family courts; it even raises the question, do they have fair access (taking into account the nature of the issues)? More detailed investigation into the types of problems that both eligible and

Poorer people report a health improvement as a result of advice obtained for a divorce or relationship breakdown problem less frequently than other people...

ineligible people experience would be needed to answer this important question.

Poorer people report a health improvement as a result of advice obtained for a divorce or relationship breakdown problem less frequently than other people. This could be because the ways in which their problems end are, overall, less satisfactory than their wealthier counterparts. To an extent, this hypothesis and other potential factors can be investigated through further analysis of Civil and Social Justice Survey (and Civil and Social Justice Panel Survey) data, by looking for any association between whether a respondent's problem reaches court and their satisfaction with the outcome.

Regardless of this, but especially if court usage is linked to satisfaction rates (and potentially health improvement rates) there is a need to make sure that poorer people have equal access to the courts if and when such a path to justice represents the most cost-effective method of family and relationship dispute resolution.

Conclusion

If the Ministry of Justice implements its proposals, and if consequently fewer people will be able to access professional independent legal services – either because they would no longer be eligible for legal aid, or because a service has closed as a result of lack of funding – we might expect:

- ▶ Fewer social welfare legal issues, problems of 'everyday life', and especially housing problems, to end in agreement between the parties. Policies that promote Alternative Dispute Resolution or ADR (as opposed to litigation) as a substitute for legally aided social welfare services need to take account the fact that the problems of poorer people are less likely than other peoples' to reach agreement, regardless of where they seek assistance.

- ▶ More people to give up trying to bring their divorce and relationship breakdown problems to a satisfactory conclusion. Poorer people will be disproportionately affected, since they are more vulnerable than other people to give up (and not necessarily because of the cost of taking action).
- ▶ Fewer people experiencing housing problems will experience an improvement in their health. This does not represent so much an 'opportunity cost' as an *actual future cost* to health services, and one which has not been acknowledged or quantified in the Ministry of Justice's impact analysis. Since improvements are currently reported most frequently among poorer people (who have been shown to generally be in poorer health than other people), they would be particularly affected. A failure to invest in independent professional legal services may have a cumulative effect on the health of people vulnerable to housing problems, and may, over time, result in cumulative healthcare costs.
- ▶ An increase in the demand for tribunal hearings, for a variety of inter-related reasons. The risk that poorer people will have a reduced level of access to justice in relation to employment problems compared with the present will also need very careful quantification and mitigation. This will be particularly important if demand for employment and employment appeal tribunals increases beyond a level that the system can cope with; since their problems are already more likely to reach tribunal than those of their wealthier counterparts, in such a scenario the impact of any backlog in hearings will affect poorer people more than others.

¹ Ministry of Justice (2010) *Proposals for the Reform of Legal Aid in England and Wales*, available at:

www.justice.gov.uk/consultations/legal-aid-reform-151110.htm

² As they are described in Legal Services Commission (2004) *Causes of Action: Civil Law and Social Justice*, p.1

³ Ministry of Justice (2010) *Proposals for the Reform of Legal Aid in England and Wales*, available at:

www.justice.gov.uk/consultations/legal-aid-reform-151110.htm
<http://www.justice.gov.uk/consultations/legal-aid-reform-151110.htm>

⁴ Being a household survey, the CSJS contains no information on the law-related problems of the non-household population, which includes, for example, people currently resident in mental health hospitals, in prison, in other institutions such as the armed forces, or homeless people. Thus, while any results that are statistically significant can confidently be expected to reflect the true picture of the household population of England and Wales, they cannot be assumed to apply to the entire adult population, and particularly not to those people not residing in residential households.

⁵ There is a caveat to this approach. Due to limitations in the data, the differentiation between only seeking, and actually obtaining, advice will not always be specific to the Group number of the problem. Where more than one source of assistance is cited, the variable used to identify those who obtained advice ('strategy') does not identify *which* attempted source(s) provided the assistance sought. The implication for our findings is that, where assistance has been obtained from more than one Group, it may not always have been obtained from a source in the Group to which the problem has been allocated. There is therefore a risk, albeit small, that a problem for which advice is obtained is counted as part of a Group where no source in that Group actually provided any of the acknowledged assistance.

However, since the potential effect in terms of misrepresenting any Group in any test may be *either* unduly positive or unduly negative (that is, a Group might attract undeserved 'credit' or undeserved 'blame', depending on the outcome being investigated), and given that the numbers involved are very small, in our view the risk to the validity of the findings is, overall, negligible, and is in any case more

than offset by the desirability of being certain that a respondent received the advice they sought.

⁶ Ministry of Justice (2010) *Proposals for the Reform of Legal Aid in England and Wales*, p85-100:

www.justice.gov.uk/consultations/legal-aid-reform-151110.htm

⁷ Research using CSJS data for the Public Legal Education Network found that people on lower incomes (£10,000 per annum or less) are more likely to do nothing about their problem, but are also more likely than other people to *want* to have done something about it. Among people who wanted to act but did not, cost was cited no more frequently by people on low incomes compared with other people, and lack of time was cited less frequently only a third as often; fear (being 'too scared to act'), however, was cited approximately twice as often by people on low incomes compared with other respondents. See *Knowledge, Capability and the Experience of Rights Problems*, N.J. Balmer et al, 2010, p25 available at: www.plenet.org.uk/data/files/knowledge-capability-and-the-experience-of-rights-problems-lsrc-may-2010-255.pdf

⁸ Although limiting this analysis to respondents who reported obtaining advice is, in theory, desirable, in practice no regression model using a more limited sample that controlled for all (indeed any) of these factors was significant (that is, improved the ability to predict a health improvement being reported), nor did any model yield any individual results that were statistically significant.

⁹ Note that this actually **excludes** some of the housing problems particularly likely to be stressful or otherwise 'bad for your health' - eviction; repossession; homelessness; unsafe living conditions. Thus receiving advice for even those housing problems that are not the most obviously health-related has a positive impact on health.

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