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## What Really Drives Advice Seeking Behaviour? Looking Beyond the Subject of Legal Disputes

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### Abstract

When faced with a broad range of justiciable problems, people seek advice for around half of them, and advice from lawyers on around 13% of occasions. Various factors have been found to link to advice seeking behaviour, but it is commonly recognised that problem type 'swamps' other factors. This study draws on an Internet survey of 1,031 respondents, aged between 16 and 66, in which respondents were presented with a range of problem scenarios and asked to place them on a severity scale, characterise them (as legal or otherwise) and suggest an appropriate source of advice. The study assesses the impact of problem severity and legal characterisation on the likelihood of identifying legal advice, advice sector advice or other advice as being appropriate. Even having controlled for problem type, both problem severity and characterisation have a highly significant impact on adviser choice. As severity increases, so does the likelihood of suggesting legal advice is appropriate. When problems are characterised as legal, there is a significant increase in the likelihood of suggesting a lawyer across problem types. However, choice of broader advice sector advice was relatively unaffected by characterisation. The findings move us beyond problem type being the primary explanation of advice seeking behaviour, and are discussed in the context of legal service delivery, as well as with reference to Felstiner et al's model of disputing behaviour.

### Key words

Lawyers; lawyer use; legality; legal characterisation; advice seeking.

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## 1. Introduction

### 1.1. *Justiciable Problems, Advice Seeking and the Impact of Problem Type*

We live our lives and conduct our business – whether we are aware of it or not – within an increasingly complex framework of legal rights and obligations. The law reaches deep into our family and work lives. It defines our entitlements to public services and benefits. It regulates our relationships as producers and consumers, landlords and tenants, and lenders and borrowers. It governs the education of our children. It even shapes the way in which we move about in the space around us. After half a century of legal expansionism, we live in a ‘law-thick’ (Hadfield 2009) world.

However, the most recent English and Welsh Civil and Social Justice Survey (CSJS) (Pleasence et al, 2010a) indicates that people seek formal advice for only about half of their justiciable<sup>1</sup> problems, and that advice is sought from solicitors’ firms in only thirteen percent of instances. Aside from solicitors’ firms, people seek advice from a broad range of sources – including Citizens Advice Bureaux, other independent advice agencies, local authorities, trade unions, social workers, the police, health professionals, employers, insurance companies, clerics, MPs and local councillors (Genn 1999, Pleasence 2006).

In looking to explain advice seeking behaviour, problem type has consistently been identified – across a broad range of jurisdictions – as the key driver of advice seeking and, specifically, whether ‘legal’ advice is sought (ABA 1994, Maxwell et al 1999, van Velthoven and ter Voert 2005, Coumarelos et al 2006, Ignite Research 2006, Pleasence 2006, Asia Consulting Group 2008, Murayama 2007, Sato et al 2007, Currie 2008). As Genn(1999, p.141) has noted, “problem type to swamp other considerations.” Moreover, there is a good deal of consistency in findings from around the world about which problems are most likely to involve lawyers. For example, it appears to be a hallmark of modern living that problems surrounding family breakdown are associated with lawyers. Even in Japan, where the help of lawyers is rarely sought in relation to justiciable problems, almost 40 per cent of family problems involve lawyer consultation (Murayama 2007, p.31). Elevated levels of lawyer use are also routinely reported for housing problems (particularly owned housing problems) (e.g. Genn 1999, Maxwell et al 1999, Genn and Paterson 2001, Dignan 2006, Pleasence 2006, Murayama 2007, Sato et al 2007, Asia Consulting Group 2008, Currie 2008) and problems concerning wills or probate (ABA 1994, Maxwell et al 1999, Coumarelos et al 2006, Currie 2008).

However, associations between problem type and use of lawyers do not always hold between jurisdictions. For example, problems concerning negligent accidents are strongly associated with lawyers in the United Kingdom and Canada (Genn 1999, Genn and Paterson 2001, Dignan 2006, Pleasence 2006, Currie 2008), while the reverse appears to be the case in Japan, Australia, New Zealand and Hong Kong (Coumarelos et al 2006, Ignite Research 2006, Murayama 2007, Asia Consulting Group 2008). Although, in the case of New Zealand, comparison is complicated by the existence of the country’s no-fault compensation scheme, administered through the Accident Compensation Corporation.

So, there must be more to the use of lawyers than mere problem type. The fact that people who have suffered as a result of negligent accidents in the United Kingdom are more likely to instruct a solicitor cannot be *explained* by the fact of the negligent accidents. As we have remarked elsewhere (Pleasence et al 2010b), there must be something lying beneath; something about the people who suffer personal injuries, the nature of personal injuries, people’s understanding of lawyers

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<sup>1</sup> A 15<sup>th</sup> century word, most notably defined by Genn (1999, p.12) as a matter that raises legal issues, whether or not these are recognised as being legal and whether or not any action taken to deal with the matter involves the use of any part of the civil justice system.

or the law in relation to personal injuries, the type or range of services that solicitors offer, or the legal remedies that are available in respect of personal injuries.

In fact, if we take the survey data used in the present study and try to predict solicitor use, as opposed to use of an adviser of another type, on the basis of problem type alone, only around thirty percent of those who instruct solicitors are correctly predicted to do so.

The question of what drives the use of lawyers therefore remains largely unanswered.

### *1.2. Demographics and Past Experience*

While demographics have been found to be only weakly associated with advice seeking behaviour, when compared to problem type (e.g. Miller & Sarat 1980-1981, Genn 1999, Kritzer 2008), there is some evidence that patterns of advice seeking vary by demographic characteristics. For example, men have been found to be less likely to obtain advice about justiciable problems than women (Genn 1999, Maxwell et al 1999), though this difference does not appear to extend to legal advice (Maxwell et al 1999, Pleasence & Balmer 2008), and is not always evident (e.g. van Velthoven and ter Voert 2005, Pleasence 2006). Young people have also been found to be less likely to obtain advice than others (Genn 1999, Pleasence 2006), and such a difference has been observed in relation to legal advice, but again is not always evident (Maxwell et al 1999). Similarly, ethnicity and disability status have been found to be associated with general and legal advice seeking behaviour, (Maxwell et al 1999, Washington State Task Force on Civil Equal Justice Funding 2003, Currie 2008, Pleasence and Balmer 2008), though again patterns have not been consistently revealed.

In addition to the above, income has been found to be connected to lawyer use (ABA 1994, Maxwell et al 1999, van Velthoven and ter Voert 2005, Pleasence & Balmer 2008, Pleasence & Balmer forthcoming), with good evidence that – in jurisdictions with established legal aid programs—those on lower middle incomes are least likely to access lawyers (Maxwell et al 1999, Genn and Paterson 2001, van Velthoven and ter Voert 2005, Pleasence & Balmer 2008, Pleasence & Balmer forthcoming). Respondents to various surveys have also reported cost as a significant barrier to instructing lawyers (Genn 1999, Genn and Paterson 2001, Genn and Paterson (2001). For example, Genn and Paterson reported that respondents to *Paths to Justice Scotland* quantitative and qualitative interviews “expressed a pervasive feeling that obtaining legal advice was hugely expensive and that for many kinds of problems obtaining such advice was simply not an option” (p.105). However, associations between income and lawyer use are modest compared to those between problem type and lawyer use; a matter highlighted by Kritzer (2008), using data from seven countries, who discounted income as having relatively little impact.

Further, social standing has been found to be connected with use of lawyers (Michelson 2007, Murayama 2008). Michelson (2007) highlighted social or family connections as a key predictor of use of the legal system in rural China. Specifically, those with connections to a village leader or higher-level cadre (e.g. a government agency at county level or higher) had far higher rates of disputes progressing to a lawyer, court or judicial office. Murayama (2008) also highlighted the importance of social connections in Japan, with 25% of those who were acquainted with a lawyer obtaining legal advice, compared to only 11% of those who did not know a lawyer but could be introduced to one and 8% of those who had no acquaintance or method of formal introduction.

Past experience, both at the personal and household level have also been shown to influence advice seeking. For example, Miller and Sarat (1980-1981) demonstrated

that specific 'resources' such as previous use of a solicitor contributed a small but significant amount to an analysis of claim rates. More recently in Japan, Murayama (2008) demonstrated that prior use of a lawyer was a key predictor of subsequent legal advice when faced with a problem, with 40% of those who had used a lawyer before using one again compared to only 7% for those who had not used a lawyer before. Findings from the English and Welsh Civil and Social Justice Survey have also shown advice seeking strategies to cluster by respondent and within households, with past strategies more likely to be adopted again. (Pleasence 2006, Pleasence & Balmer 2008). Similarly, Sandefur (2007) has demonstrated that inaction in the face of justiciable problems can become entrenched, with lessons from the past leading to "frustrated resignation ... which grows out of experiences of difficulty or failure in trying to satisfactorily resolve certain kinds of problems, even though the particular other party or parties involved in the relationship might change" (Sandefur 2007, p.124).

### *1.3. The Legal Services Market*

Advice seeking behaviour may also be influenced by the availability of different forms of legal and advice services. For example, the range of services that solicitors offer may restrict the range of problems they are instructed about. It is notable, for example, that the great broadening of the scope of law over recent years is not fully reflected in the work undertaken by solicitors. For example, 25% of all English and Welsh solicitors' non-corporate income (and more than 20% of smaller firm solicitors' income) relates to negligent accidents (including clinical negligence), 9% relates to employment problems and less than 1% relates to problems concerning welfare benefits (Law Society 2003). This is despite incidence of problems being similar for all three problem types, all three problem types having a potentially serious impact on people's lives and all potentially involving complex legal issues.

This pattern of service delivery is also reflected by people's understanding of what solicitors do. For example, a recent Legal Services Board (2009) survey indicated that just 26% of people think that solicitors are "trained to help with" problems with benefits, compared to 88% in the case of divorce. Of course, the services offered by solicitors may be a simple reflection of the profitability of different types of work – which again raises the issue of cost.

### *1.4. Severity and Characterisation*

Aside from problem type and demographics, problem severity and people's characterisation of problems have also been suggested to influence advice seeking behaviour. As Currie (2009) has observed, "It should come as no surprise that the more seriously respondents perceive their problem, the greater the likelihood they will seek some form of assistance, particularly legal assistance." This is because, whether or not people recognise the legal dimensions of justiciable problems, in addition to the relative cost of advice diminishing as problem severity increases, the need to clarify legal positions and explore legal avenues increases as problem severity does the same.

Thus, in various jurisdictions evidence has emerged of a strong link between problem severity and advice seeking (Genn 1999, Pleasence et al 2004, Dignan 2006, Pleasence 2006, Currie 2009). In Northern Ireland, for example, it was found that, while over 70% of people sought advice for the most severe problems, just 20% did so for the least severe problems (Dignan, 2006). More recently, Pleasence et al. (2010a) have reported almost identical findings. Using a simple measure of severity, asking respondents to suggest how important it was for them to resolve problems, advice seeking was found to vary from almost 60% for the most important problems to less than 20% for the least important. Pleasence et al (2008) also found similar results in relation to how much of respondents' time was spent worrying about problems. However, in these examples severity was based on

relatively crude measures, lawyers were not explored separately and there was no simultaneous exploration of problem type. As Dignan (2006) observed, the findings are likely to reflect, in part, the relationship between problem type and problem importance. This is similar to Genn's earlier comment that most of the problem types associated with solicitors "have in common ... the likely importance of the matters to the parties and the relative intractability of the issues that might be involved."

Turning to people's characterisation of justiciable problems, there has been relatively little focus on the 'prefigurative' dimensions of legality (McCann, 2006). Yet the conditions under which life problems are transformed in people's minds into being legal problems must surely link to people's advice seeking behaviour. If people fail to recognise or characterise problems as 'legal', this is likely to impact upon their choice of adviser, making legal advice less common regardless of problem type. Conversely, recognition of a problem as legal is surely likely to be a component of many decisions to seek legal advice.

This issue has been touched upon in recent research exploring the legal capability of a small sample of thirty young people in the United Kingdom (Parle, 2009). Having been presented with a range of legal scenarios, many young people were unable to identify that they were dealing with legal issues, and they were consequently unable to plan courses of action to resolve them. It would appear that "a young person not able to spot that they are dealing with a law-related issue would most likely not take any appropriate action to resolve the problem" (Jones, 2009). More recently, Murayama (2010) has reported a link between people's consciousness of problems being "related to law" and use of lawyers, though the association was much weaker than that between problem type and lawyer use.

### *1.5. The Present Study*

The present study aims to determine whether, and the extent to which, problem severity and characterisation contribute to explaining people's choice of adviser when presented with justiciable problems.

It is hypothesised that choice of adviser will be associated with problem type. It is also hypothesised that individual respondents will tend towards choosing particular advisers. In addition, it is hypothesised that, after controlling for problem type, as problems are rated as increasingly severe, respondents will become more likely to choose legal advice than other forms of advice. Finally, it is hypothesised that, after controlling for problem type, respondents who characterise problems as legal will be more likely to choose legal advice than other forms of advice.

## **2. Methods**

### *2.1. The Internet Survey*

Our study draws on data obtained through a United Kingdom internet survey of 1,031 people, aged between 16 and 66 years old. The survey was programmed using Adobe Flash and conducted using the ipoints™ online reward scheme, which enables access to a panel of 950,000 people across the United Kingdom.<sup>2</sup> A subset of ipoints™ members received an email containing a link to the URL for the survey and information that they would receive 100 ipoints™ (worth around 40 pence to them) for taking part. As part of the survey, each respondent was presented with a series of 30 problem descriptions, randomly selected from a pool of 95

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<sup>2</sup> In 2009, 70% of UK households had internet access (ONS 2009).

problems<sup>3</sup>. Table 1 groups the problems into 21 categories (as used in the second analysis), with some example problems (from the pool of 95 problems).

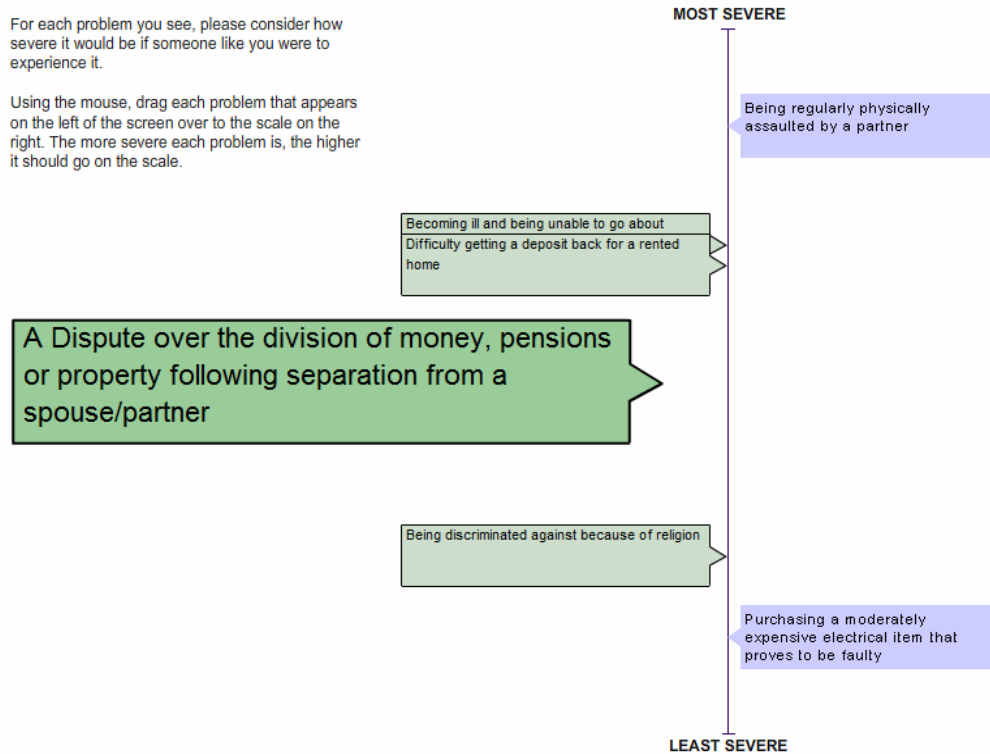
Table 1  
Broad Problem Categories Included in the Internet Survey with Example Problems

Problem category	Example problem
Neighbours problems	Regular and excessive noise by neighbours
Problems with benefits, grants and pensions	Being refused welfare benefits
Problems with children's education	A serious concern over the safety of a child while on a school trip
Faulty goods and services	Having major building work done that proves to be faulty
Problems with financial services	Receiving repeated incorrect bank charges
Homelessness (threat or actual)	Becoming homeless and ending up living on the street
Employment problems	An employer not recognizing rights at work eg maternity leave, sick pay, holiday entitlement or working hours
Debt problems	Severe difficulties managing to pay money owed
Problems lending money	Difficulties getting someone to pay back a significant sum of money that they owe
Problems with rented housing	Living in rented housing that is so poorly maintained that it is unsafe
Child protection	A child being placed on the Child Protection Register
Discrimination	Being discriminated against because of disability
Problems with owned housing	Being several mortgage payments in arrears
Problems renting out housing	Problems with squatters at an owned property
Problems to do with nationality	Being threatened with having to leave the UK
Assault by the police	Being assaulted by a police officer
PI caused by another	An accident caused by someone else that leads to a whiplash injury and long term moderate back pain
Clinical negligence	Suffering a significant decline in health as a result of negligent or wrong medical treatment
Problems ancillary to relationship breakdown	Difficulty agreeing where children should live following separation from a spouse or partner
PI not caused by another	An accident that leads to a whiplash injury and long term moderate back pain
Divorce	A divorce or dissolution of a Civil Partnership involving a dispute over division of money or assets

Respondents were asked to drag and drop the problems, in three sets of ten, onto a vertical severity scale, which also included two reference problems towards each end of the scale (see Figure 1). The position of each problem could also be easily altered at any stage. Positioning problems on the scale produced a severity score of between 0 (least severe) and 550 (most severe).

<sup>3</sup> Of the 95 problem descriptions included in the survey, 88 could be described as 'justiciable problems', with a further 7 covering issues around crime victimisation and detrimental changes in health status. These 7 descriptions were excluded from our analysis.

Figure 1.  
Online Survey Problem Severity Scale



Respondents were then asked whether they would characterise each of the *first* ten problems as being “moral”, “legal”, “bad luck”, “private”, “social” or “criminal”, with respondents free to indicate as many (or few) of the options as they wished (Figure 2). Finally, they were asked where they would go to get help to deal with each of the ten problems (Figure 2).

Figure 2.  
Online Survey Problem Characterisation.

Being discriminated against because of religion

How would you characterise this problem:  
(Tick all that apply)

Moral	Legal	Bad Luck	Private	Social	Criminal	None of these
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Where would you go to get help to deal with this problem:

There are a number of advantages of online surveys over large household surveys, such as the CSJS. First and foremost, they are cheap and quick to administer. Once they are programmed, surveys can be completed in a matter of days with data immediately available for analysis. They also allow for considerable flexibility in the way in which questions are posed, may obtain sensitive information more readily than other forms of survey (Tourangeau & Yan, 2007), and allow dispersed populations to be more readily approached. They therefore provide an excellent means to conduct pilot work and initial investigations. However, drawbacks may include poor quality responses as respondents attempt to advance quickly to payment (if applicable), though this may be less of a problem than for paper and pencil self-completion surveys (Johnson, 2005) and can be limited through survey



design and detection of faulty responses (e.g. through patterns in answers or time to complete a survey). A further issue revolves around the external validity of Internet survey samples, which may differ, demographically, from the general population and be based upon sample frames that are more difficult to relate to the population as a whole. For example, the sample in this study included a greater proportion of male, younger and university educated respondents than the general population. It was also limited to members of the iPoints scheme. However, it nonetheless provided a good spread of personal incomes, and represented a reasonably diverse and cost-effective sample of the general public.

## 2.2. Analysis

Two models were fitted examining choice of adviser (legal adviser, advice sector, 'other'). The first examined the impact of problems being characterised as 'legal' and problem severity on choice of adviser. The model took account of the data structure. Rather than being a strictly hierarchical data structure, categorical adviser choice could be 'classed' by respondents (since each respondent was presented with a number of problem types) and by problem type (since multiple choices of adviser were made for each problem type). This type of data structure can be described as cross-classified (Goldstein 2003) and can be conveniently modeled using Markov Chain Monte Carlo methods within MLwiN (Browne 2009). In addition to fixed effects for problem characterisation and severity, the cross-classified multinomial logit model also included random parameters for the two classifications (by respondent and by problem type). This acknowledged that particular respondents and particular problem types may have been more or less likely to involve particular forms of advice<sup>4</sup>.

The model aimed to determine whether, having controlled for problem type and individual preferences for particular types of advice (as random effects), problem characterisation and/or severity were related to choice of adviser.

The second model predicted categorical adviser choice (legal adviser, advice sector, 'other') on the basis of whether or not the problem was characterised as legal, problem type (as a fixed rather than a random term, with 21 broad categories) and their interaction. As problem type was included as a fixed effect, the data had a simple two-level hierarchical structure, with categorical adviser choice nested within respondent. The model fitted was a multilevel multinomial logit model, again using Markov Chain Monte Carlo methods (Browne, 2009). The model aimed to assess whether legal characterisation was related to choice of adviser (particularly an increase in legal advice), and whether any tendency toward legal advice varied across type of problem.

Both models were fitted using the multilevel modeling software MLwiN (Rasbash et al., 2009).

## 3. Results

### 3.1. Problem Type and 'Legal' Characterisation

There was considerable variation in the extent to which different types of problem were characterised as being 'legal'. Figure 3 shows the percentage of problems characterised as being legal for a range of problem types (here collapsed into 21 categories). As can be seen, whereas almost 80% of problems concerning personal

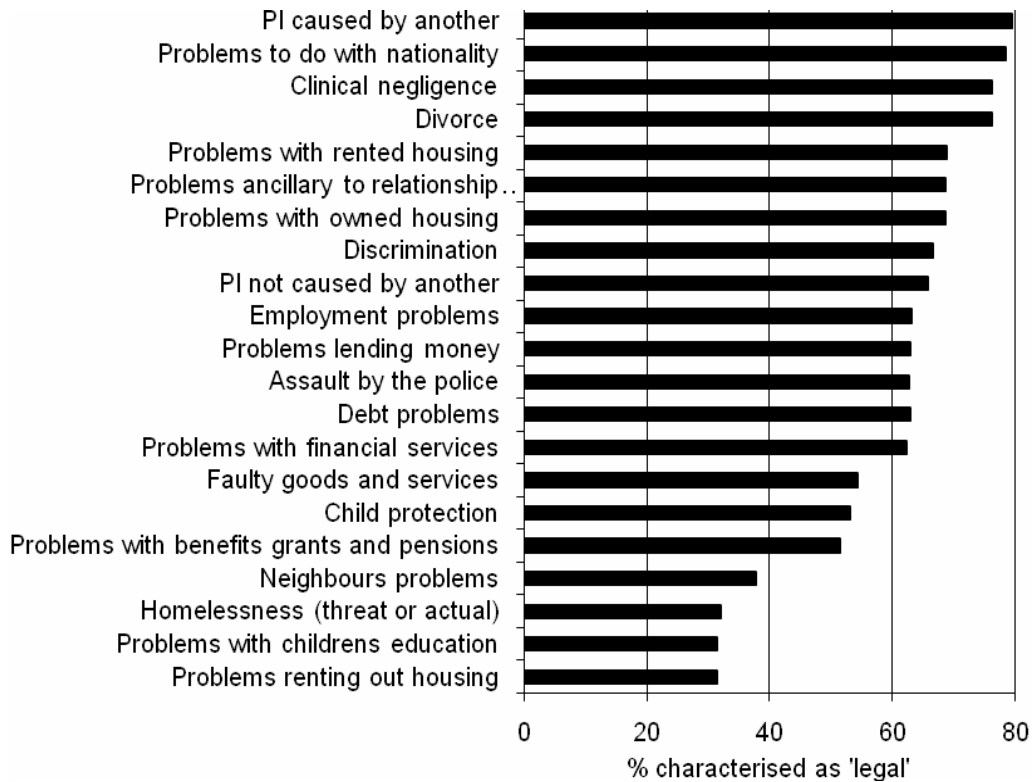
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<sup>4</sup> More generally, failure to account for this type of data structure overlooks the importance of group effects and is likely to render traditional statistical analyses for studying data relationships invalid. Moreover, ignoring clustering will generally result in underestimation of standard errors of regression coefficients (Goldstein, 2003).

injury caused by another, nationality, clinical negligence and divorce were characterised as legal, the same was true of fewer than 40% of neighbours problems and only slightly more than 30% of problems concerning homelessness, children's education and renting out housing.

Figure 3.

Percentage of a Range of Problem Types that were Characterised as Legal.



### 3.2. Model 1 - The Impact of Severity and Characterisation on Choice of Adviser

Table 2 shows results from the cross-classified multinomial logit model, predicting categorical adviser choice (legal, advice sector, other) on the basis of problem severity score and whether or not the problems were characterised as 'legal'. Adviser choice was also classified by problem type and respondents, resulting in two random parameters.

For severity, as scores increased respondents became significantly more likely to choose legal rather than other advice ( $\chi^2_{1} = 46.72, p < 0.001$ ). For example, for a severity score of 100, legal advice would be expected to be chosen 34.3% of the time for problems characterised as legal and 5.0% of the time for other problems. For a severity score of 400, these percentages would be expected to rise to 46.6% and 8.3% respectively (using the model estimates in Table 2). As severity scores increased, respondents also appeared to become more likely to choose advice sector advice rather than other advice, though the difference did not reach significance ( $\chi^2_{1} = 2.12, p < 0.15$ ).

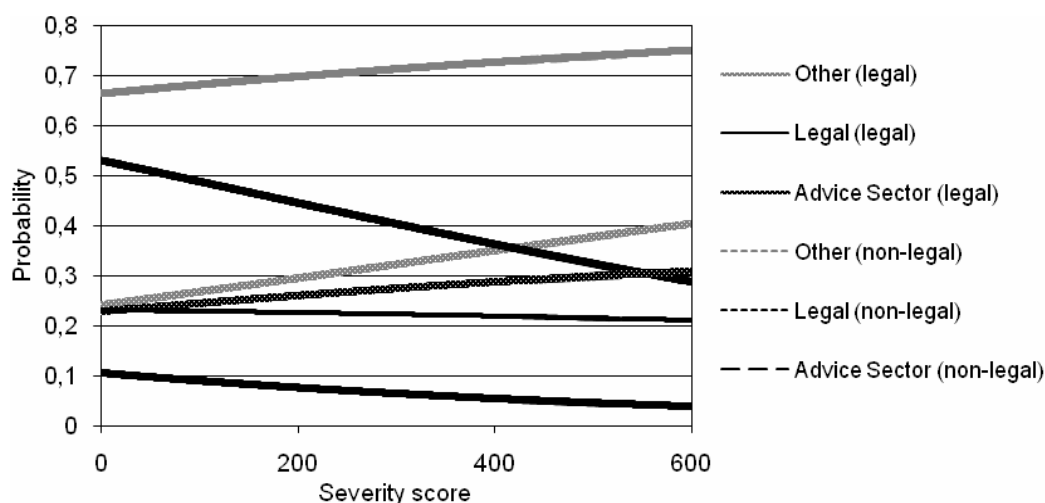
Table 2.  
Cross-Classified Multinomial Logit Model of Adviser Choice (Legal Advice and Advice Sector Compared to 'Other') on the Basis of Legal Characterisation and Problem Severity Score. Choice was 'Classified' by Respondent and Problem Type.

		Choice of adviser			
		Legal		Advice sector	
<i>Fixed effects</i>		Estimate	SE	Estimate	SE
Constant		<b>-1.839***</b>	<b>0.136</b>	-	<b>0.094</b>
Characterisation	Not legal	0.00	-	<b>1.055***</b>	-
	Legal	<b>2.627***</b>	<b>0.090</b>	<b>1.001***</b>	<b>0.069</b>
Problem severity score		-	<b>0.000275</b>	-0.000358	0.000246
		<b>0.00188***</b>			
<i>Random effects</i>		Legal		Advice sector	
<i>Problem type level</i>		Estimate		SE	
Legal x Legal variance		<b>0.192***</b>		<b>0.055</b>	
Adv. sector x Adv. sector variance		<b>0.059*</b>		<b>0.027</b>	
Legal x Adv. sector covariance		<b>0.102***</b>		<b>0.030</b>	
<i>Person level</i>					
Legal x Legal variance		<b>1.574***</b>		<b>0.159</b>	
Adv. sector x Adv. sector variance		<b>1.104***</b>		<b>0.109</b>	
Legal x Adv. sector covariance		<b>0.396***</b>		<b>0.098</b>	

\*p < 0.05, \*\*p < 0.01, \*\*\*p < 0.001.

Figure 4 shows predicted adviser choice on the basis severity score and whether or not the problem was characterised as being legal (using the estimates in Table 2). As can be seen, where problems were characterised as legal, there was a significant increase in the likelihood of opting for legal advice and a sizeable reduction in other advice. In comparison, characterisation had far less impact on likelihood of choosing advice sector advice. For problem severity, the likelihood of choosing legal advice can be seen to increase with severity.

Figure 4.  
Predicted Adviser Choice on the Basis of the Fixed Effects (Severity and Characterisation) Shown in Table 1.



This is not to say that problem type had no impact on choice. The presence of significant problem level variance terms for advice sector and particularly for legal advice, compared to 'other' advice (see Table 2), indicated significant evidence of clustering in choice by problem type. Moreover, a significant covariance term suggested some evidence of problems associated with high levels of legal advice/advice sector choice also having higher levels of advice sector/legal advice choices (rather than 'other' advice). Essentially, as well as legal or advice sector advice, alone, tending to be chosen for some problem types, there was also a tendency for both sectors to be chosen for some (i.e. problems generally tending towards 'formal' advice). Similarly, personal preferences played a significant role. Again, choice tended to cluster by respondent, with evidence of respondents tending towards legal or advice sector choice as compared to 'other' advisers (indicated by the significant variance terms in Table 2). As with problem type, as well as particular respondents tending towards the legal or advice sector alone, particular respondents also appeared to more generally gravitate towards the wider legal and generalist advice sector, with the likelihood of choosing one increasing the likelihood of choosing the other (rather than 'other' advice).

### *3.3. Model 2 - The Impact of Problem Type, Characterisation and Their Interaction on Choice of Adviser*

Table 3 shows results from the multilevel multinomial logit model, predicting categorical adviser choice (legal, advice sector, other) on the basis of problem type (collapsed into 21 types), whether or not the problem was characterised as being 'legal' and their interaction. Adviser choice was nested within respondent.

Characterisation, problem type and the interaction of the two all had a significant impact on choice of adviser. One way to confirm this is to compare Deviance Information Criteria (DIC)<sup>5</sup> for the model as shown in Table 3, a model without the interaction term, a model with only problem type and a model with only legal characterisation. The DIC (a combination of model complexity and fit) became greater as terms were removed from the model, and particularly if problem type or legal characterisation main effects were removed<sup>6</sup>. Figures 5, 6 and 7 simulate the probability of choosing legal advice (Figure 5), advice sector advice (Figure 6) and 'other' advice (Figure 5) on the basis of characterisation and problem type, using model 7 as shown in Table 3.

<sup>5</sup> The deviance statistic, a common measure of model fit, is used with MCMC sampling to derive the DIC (Spiegelhalter et al., 2002), a generalisation of Akaike's Information Criteria (AIC). The DIC statistic can be used to compare models as it consists of a combination of terms measuring the fit and complexity of models. Lower values indicating superior models.

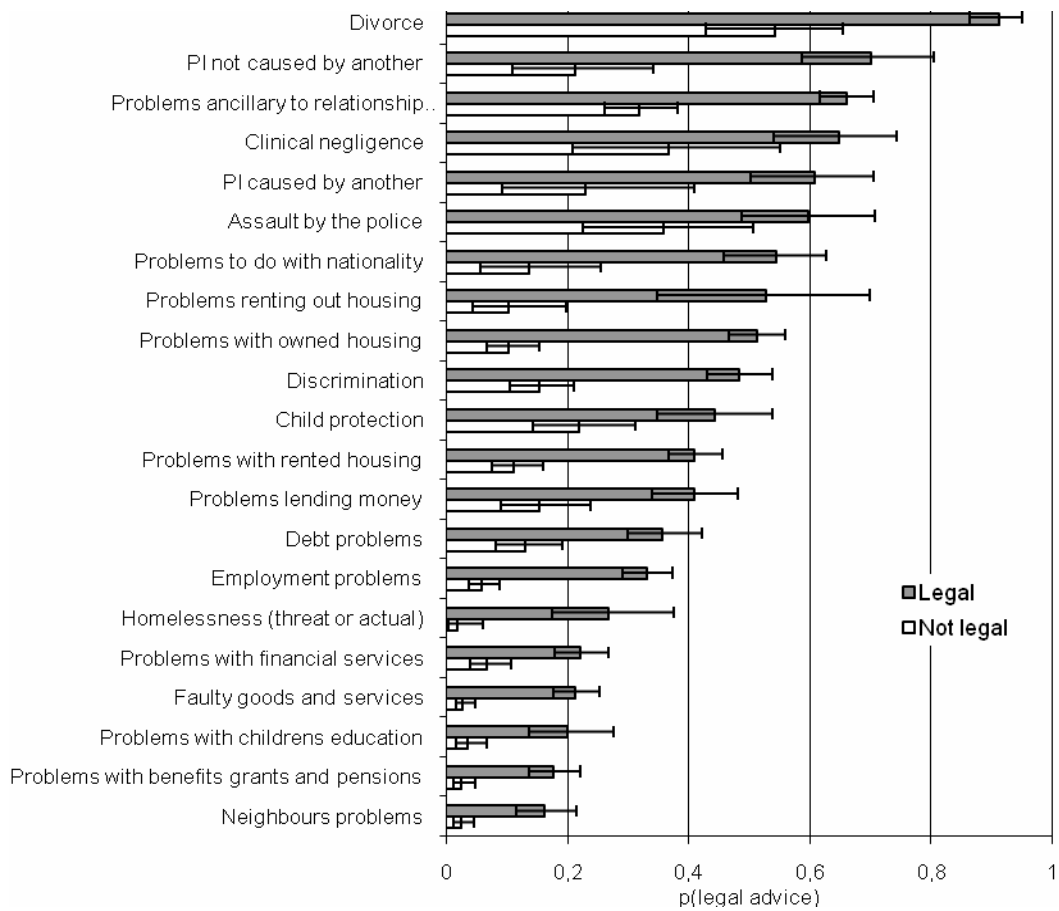
<sup>6</sup> DIC statistics were; full model = 11766.76, with the interaction term removed = 11769.97, with problem type only = 12668.05 and with legal characterisation only = 13693.65.

Table 3.  
Multilevel Multinomial Logit Model of Adviser Choice (Legal Advice and Advice Sector Compared to 'Other') on the Basis of Problem Type, Characterisation and Their Interaction. Choice was Nested Within Respondent.

		Choice of adviser			
		Legal		Advice sector	
<i>Fixed effects</i>		Est.	SE	Est.	SE
Constant		-4.00***	0.32	-1.05***	0.15
Characterisation	Not legal	0.00	-	0.00	-
	Legal	2.98***	0.35	0.71***	0.22
<i>Problem type</i>					
Faulty goods and services		0.00	-	0.00	-
Discrimination		2.38***	0.42	0.50	0.26
Employment problems		1.32**	0.42	1.08***	0.21
Neighbours problems		-0.60	0.50	-3.32***	0.45
Problems with owned housing		1.64***	0.41	0.05	0.26
Problems with rented housing		2.01***	0.43	0.72**	0.23
Problems renting out housing		1.24*	0.61	-1.95**	0.61
Debt problems		2.46***	0.45	1.26***	0.28
Problems lending money		2.25***	0.48	0.15	0.33
Problems with financial services		1.10*	0.43	0.11	0.25
Problems with benefits grants and pensions		-0.11	0.51	0.07	0.22
Divorce		4.45***	0.45	-1.58*	0.78
Problems ancillary to relationship breakdown		3.57***	0.38	0.32	0.27
Problems with children's education		-0.07	0.49	-1.91***	0.32
Child protection		2.42***	0.45	-1.78***	0.49
PI caused by another		2.41***	0.71	-2.59*	1.27
PI not caused by another		2.39***	0.56	-1.67*	0.74
Clinical negligence		3.36***	0.62	-2.86*	1.30
Problems to do with nationality		1.83**	0.68	-0.51	0.62
Assault by the police		3.62***	0.53	-0.31	0.54
Homelessness (threat or actual)		-0.52	0.88	0.45	0.27
<i>Problem type X characterisation</i>					
Faulty goods and services x Legal		0.00	-	0.00	-
Discrimination x Legal		-0.35	0.49	0.17	0.36
Employment problems x Legal		0.26	0.46	0.30	0.30
Neighbours problems x Legal		-0.48	0.57	0.44	0.59
Problems with owned housing x Legal		0.10	0.46	-0.30	0.34
Problems with rented housing x Legal		-0.25	0.49	0.19	0.33
Problems renting out housing x Legal		0.48	0.83	1.23	0.99
Debt problems x Legal		-0.90	0.54	-0.15	0.38
Problems lending money x Legal		-0.70	0.56	0.42	0.45
Problems with financial services x Legal		-0.58	0.49	0.78*	0.33
Problems with bens., grants and pensions x Legal		0.03	0.56	0.39	0.32
Divorce x Legal		1.14	0.75	2.73**	1.05
Problems ancillary to rel. breakdown x Legal		-1.08*	0.43	-0.90*	0.38
Problems with children's education x Legal		-0.53	0.59	0.12	0.48
Child protection x Legal		-1.43**	0.54	0.22	0.66
PI caused by another x Legal		-0.39	0.77	1.44	1.35
PI not caused by another x Legal		0.06	0.69	-0.39	1.13
Clinical negligence x Legal		-0.85	0.73	2.53	1.39
Problems to do with nationality x Legal		-0.05	0.76	-0.15	0.74
Assault by the police x Legal		-1.63*	0.65	-0.72	0.74
Homelessness (threat or actual) x Legal		1.32	0.97	0.36	0.48
<i>Random effects</i>					
<i>Person level</i>		Estimate		SE	
Legal x Legal variance		2.18***		0.21	
Adv. sector x Adv. sector variance		1.49***		0.16	
Legal x Adv. sector covariance		0.48***		0.13	

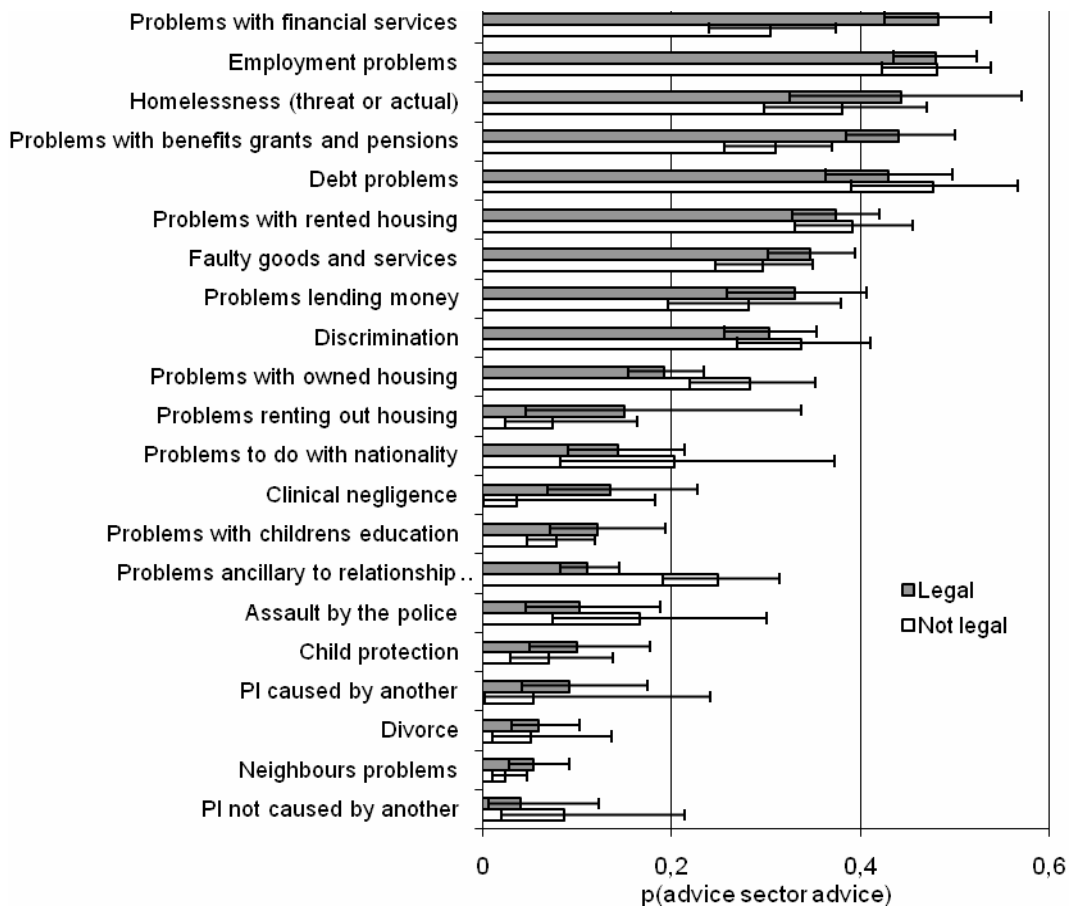
\* $p < 0.05$ , \*\* $p < 0.01$ , \*\*\* $p < 0.001$ .

Figure 5.  
 Simulated Probability of Seeking 'Legal' Advice on the Basis of Problem Type and Whether or not the Problem was Characterised as 'Legal'.



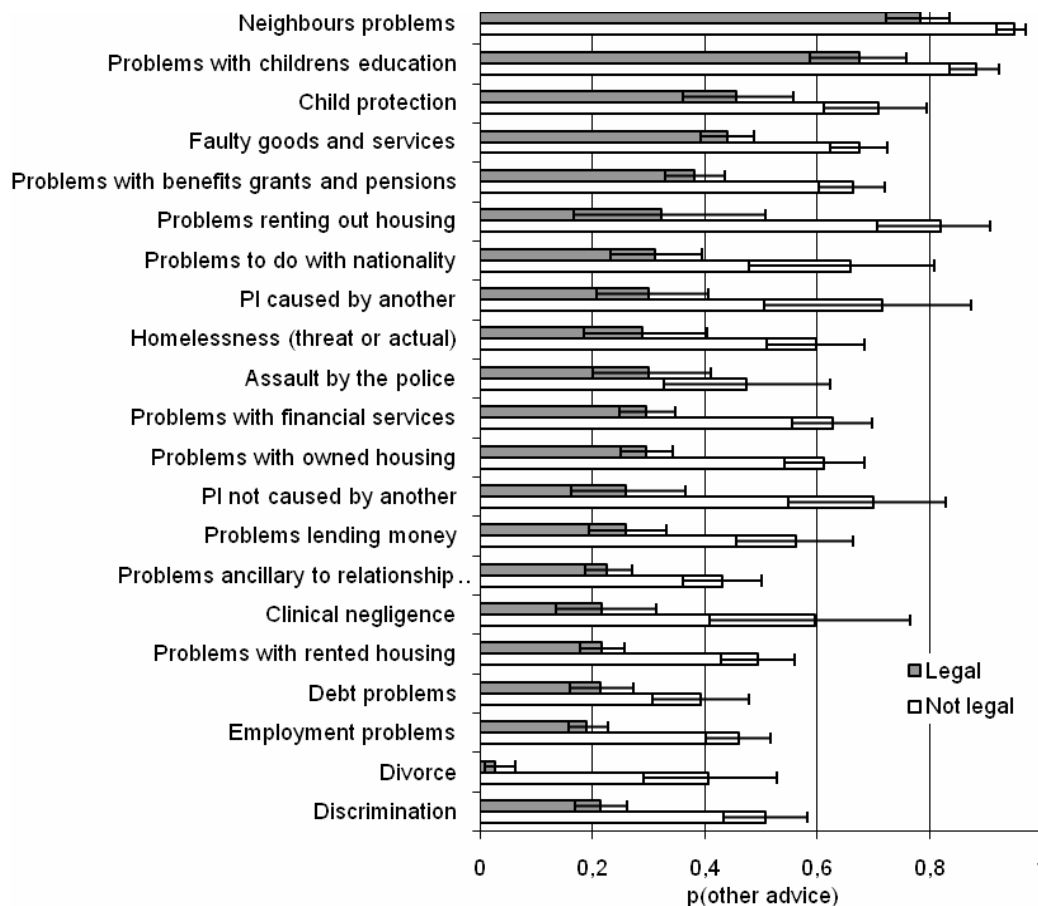
As can be seen in Figure 5, characterising a problem as 'legal' resulted in large increases in choosing legal advice for all problem types. Evidently legal characterisation made an important contribution to explaining choice of adviser in addition to problem type. For some problem types this increase was particularly large (e.g. divorce or homelessness – note the large positive coefficients in Table 3), while for others the increase was relatively small (e.g. problems ancillary to relationship breakdown, child protection, assault by the police – note the large negative coefficients in Table 3).

Figure 6.  
 Simulated Probability of Seeking 'Advice Sector' Advice on the Basis of Problem Type and Whether or not the Problem was Characterised as 'Legal'.



As shown in Figure 6, while choice of advice sector advice varied by problem type, legal characterisation made relatively little difference for the majority of problems. In two cases, 'problems with financial services' and 'problems with benefits, grants and pensions', legal characterisation appeared to result in a significant leap in advice sector advice. For problems ancillary to relationship breakdown, legal characterisation had the opposite effect, with advice sector advice decreasing with legal characterisation.

Figure 7.  
Simulated Probability of Seeking 'Other' Advice on the Basis of Problem Type and Whether or not the Problem was Characterised as 'Legal'.



In contrast to choosing legal advice, choice of 'other' advisers fell for all problem types once they were characterised as 'legal' (Figure 7).

As with model 1, there was also evidence of personal preferences in adviser choice. As previously, choice tended to cluster by respondent, with evidence of respondents tending towards legal or advice sector choice as compared to 'other' advisers (indicated by the significant variance terms in Table 3). Again, as with model 1 the significant covariance term also highlighted a preference for legal and advice sector advice rather than 'other' advice (i.e. legal and advice sector advice co-varied).

#### 4. Discussion

As hypothesised, and as with previous studies (ABA 1994, Maxwell et al 1999, van Velthoven and terVoert 2005, Coumarelos et al 2006, Ignite Research 2006, Pleasence 2006, Asia Consulting Group 2008, Murayama 2007, Sato et al 2007, Currie 2008) problem type had a highly significant impact on choice of adviser. This was shown by the significant problem type random effects in model 1 and, more directly, by the significant variation in adviser choice by problem type in model 2.

Also as hypothesised, and as seen previously (e.g. Pleasence & Balmer, 2008), there was evidence of highly significant clustering in choice of adviser by respondent. Of course, in the present study there was also far greater opportunity for clustering, as each respondent was asked to detail advisers for ten hypothetical scenarios. Nonetheless, these confirmatory findings on the entrenchment of advice preferences – whether they stem from a lack of familiarity with local services (Patel, Balmer & Pleasence, 2008), issues of trust (Pleasence 2007, Buck 2009), or whatever else – provide further support (especially when looked at in conjunction



with findings on referral fatigue and inappropriateness of adviser choice (e.g. Pleasence et al 2004)) for the development of greater integration of legal and advice services, through initiatives such as the implementation of Community Legal Advice Centres and Networks (Legal Services Commission 2006, Buck 2009, Fox et al. 2010).

As with previous studies (Genn 1999, Pleasence et al 2004, Dignan 2006, Pleasence 2006, Currie 2009), severity was also related to advice seeking, with an increase in the likelihood of respondents identifying legal advice as appropriate as problems became increasingly severe. However, while previously (e.g. Dignan, 2006) it was acknowledged that problem type may in part be driving the relationship, in the present study problem type was controlled as a random effect. As hypothesised, after controlling for problem type, problem severity remained a highly significant driver of choice of legal advice.

It appears that legal advice is seen as increasingly important as problems become increasingly severe, whether or not they are perceived as being legal in nature. This lends support to the idea that people facing more serious problems will look to explore a range of dimensions of those problems in looking for solutions.

Finally as hypothesised, regardless of problem type, characterising a problem as 'legal' led to a large significant increase in the likelihood of respondents suggesting they would choose a legal adviser. Legal characterisation also resulted in a significant decrease in respondents specifying 'other' advisers. However, choosing the broader advice sector was relatively uninfluenced by characterisation.

Why people characterise some problems as legal, but not others, is therefore a matter of considerable interest, with important policy implications. To the extent characterisation is linked to people's understanding of the law, questions arise around public legal education. To the extent that it may be linked to problem severity, or the stage that problems have reached, questions arise around the accuracy of people's cost-benefit assessments and the appropriateness of characterisations. To the extent it is linked to the supply of traditional legal services, it raises questions around the functioning of the legal services market (our finding that respondents were significantly more likely to see advice sector advice as appropriate for problems concerning benefits, grants and pensions may reflect the dominance of the wider advice sector in this area of legal advice). As Rose (2010) suggested, "there is a significant latent demand for legal services, it will probably take a fresh approach to 'doing' law to unlock it."

Our findings also demonstrate the importance of the broad advice sector (and notably Citizen's Advice Bureaux, which were frequently singled out within the 'advice sector' category) to the accessibility of legal services and, ultimately, justice. As people's recourse to the broader advice sector is relatively uninfluenced by whether or not problems are characterised as legal, it facilitates access to legal services for those who do not see the legal dimensions of the justiciable problems they encounter (e.g. the young people identified by Parle, 2009). This is on top of the evident benefit of having more diverse and affordable elements of the legal services market; a point made recently by Hadfield (2009) in noting that "the extreme approach to the unauthorised practice of law in the United States drastically curtails the potential for ordinary folks to obtain assistance with their law-related needs and problems." Moreover, while income has been cited as having relatively little impact on access to legal advice (Kritzer, 2008), there is evidence that low to middle income respondents (i.e. those likely to be marginally ineligible for legal aid) are less likely than others to access lawyers, once problem type and legal aid availability are controlled for (Pleasence and Balmer, forthcoming). The broad advice sector in the United Kingdom is predominantly free to clients, and as a consequence may also provide an important resource for those ineligible for legal aid and yet unable to afford legal advice (a group specifically highlighted by pro bono charities such as LawWorks and ProBonoUK).

Finally, our findings throw new light upon Felstiner, Abel and Sarat's (1981) framework for understanding the emergence and transformation of disputes. Their framework allows for the examination of the various factors that influence whether an "injurious experience" becomes transformed into a dispute through being recognised ("naming"), attributed to another ("blaming"), and communicated to that other along with a request "for some remedy" (p.635) ("claiming") that is refused. Crucially, our findings demonstrate the importance of avoiding conflation of different forms of attribution, and a sequential interpretation of Felstiner, Abel and Sarat's framework that sees blame of another party commence a journey that will eventually end in a lawsuit, given time and resources, provided that the "confrontation" (Kritzer et al. 1991, p.502) barrier is overcome. Attribution may be, for example, causal, moral or legal, and the consequences may be very different depending upon which it is. Our results show that legal attribution is substantially more likely to result in accessing traditional legal advice, a matter of significant import in the context of Felstiner, Abel and Sarat's (US oriented) assertion that "of all the agents of dispute transformation lawyers are probably the most important ... the result of the lawyer's central role as gatekeeper to legal institutions and facilitator of a wide range of personal and economic transactions" (p.645). Only by issues being characterised as legal (or in the domain of lawyers), therefore, does the path that potentially leads to litigation become the more likely.

Our findings here have echoes in Kritzer's (1991) discussion, albeit in the context of disputes, of the findings of the Pearson Commission's (1979) study of personal injury claims. He noted that the Pearson Commission's study addressed attribution in two ways. First, respondents were asked about whether somebody else caused the injury in question and, separately, whether there was "any way in which someone else might have been held responsible" for it. The first question concerns causal attribution, the latter hints at legal attribution. Analogous to our findings, causal attribution, on its own, was associated with the same rate of legal claiming as the absence of both causal attribution and the perception that somebody else could be "held responsible." A much higher rate was observed where there was a perception that somebody else could be "held responsible."

Kritzer (1991) also observed, in seeking to explain differences in claim rates between jurisdictions, that "culture establishes and reflects a set of predispositions for interpretation [of injurious experiences], and these predispositions in turn influence action" (p.420). This evidently applies also in the context of advice seeking, and our findings provide a further insight into these dispositions.

## References

- American Bar Association, 1994. *Legal Needs and Civil Justice: A Survey of Americans*. Chicago: American Bar Association.
- Asia Consulting Group, 2008. *Consultancy Study of the Demand for and Supply of Legal and Related Services*. Hong Kong: Department of Justice.
- Browne, William J., 2009. *MCMC Estimation in MLwiN Version 2.13*. Centre for Multilevel Modelling: University of Bristol.
- Buck, Alexy, 2009. Reaching Further Through Outreach Advice. In: Buck, A., Pleasence, P. and Balmer, N.J., eds. *Reaching Further: Innovation, Access and Quality in Legal Services*. Norwich: TSO.
- Coumralos, Christine, et al., 2006. *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas*. Sydney: Law and Justice Foundation of New South Wales.
- Currie, Albert, 2008. The Legal Problems of Everyday Life. In: Sandefur, R., ed. *Access to Justice*, San Diego: Elsevier

- Currie, Albert, 2009. *The Legal Problems of Everyday Life. The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*. Canada: Department of Justice, Government of Canada.
- Dignan, Tony, 2006. *Northern Ireland Legal Needs Survey*. Belfast: Northern Ireland Legal Services Commission.
- Felstiner, William L.F., et al., 1981. The Emergence and Transformation of Disputes: Naming, Blaming, Claiming... [online]. *Law and Society Review*, 15 (3-4), 631-54. Available from: [http://media.leidenuniv.nl/legacy/Felstiner\\_Abel\\_Sarat%20%281981%29\\_Naming.pdf](http://media.leidenuniv.nl/legacy/Felstiner_Abel_Sarat%20%281981%29_Naming.pdf) [Accessed 22 Sep 2011]
- Fox, Chris, et al., 2010. *Community Legal Advice Centres and Networks: A Process Evaluation*. London: LSRC.
- Genn, Hazel, 1999. *Paths to Justice: What People Do and Think about Going to Law*. Oxford: Hart Publishing.
- Genn, Hazel, & Alan Paterson, A., 2001. *Paths to Justice Scotland: What People in Scotland Do and Think About Going to Law*. Oxford: Hart Publishing.
- Goldstein, Harvey, 2003. *Multilevel Statistical Models*. 3<sup>rd</sup> Edition. London: Arnold.
- Hadfield, Gillian K., 2009. "Higher Demand, Lower Supply? A Comparative Assessment of the Legal Landscape for Ordinary Americans." Paper presented at the American Law and Economics Association Conference, San Diego.
- Ignite Research, 2006. *Report on the 2006 National Survey of Unmet Legal Needs and Access to Services*. Wellington: Legal Services Agency.
- Johnson, John A., 2005. Ascertaining the Validity of Individual Protocols from Web-Based Personality Inventories. *Journal of Research in Personality*, 39, 103-29.
- Jones, Martin, 2009. *Legal Capability*. London: Plenet.
- Kritzer, Herbert M., et al., 1991. The Aftermath of Injury: Cultural Factors in Compensation Seeking in Canada and the United States. *Law and Society Review*, 25, 499-543.
- Kritzer, Herbert M., 1991. Propensity to Sue in England and the United States: Blaming and Claiming in Tort Cases. *Journal of Law and Society*, 18, 452-79.
- Kritzer, Herbert M., 2008. To Lawyer or Not to Lawyer: *Is that the Question?* *Journal of Empirical Legal Studies*, 5, 875-906.
- Law Society, 2003. *Solicitors' Firms*. London: Law Society.
- Legal Services Board, 2009. *YouGov Survey Results* [online]. Available from: [http://www.legalservicesboard.org.uk/news\\_publications/press\\_releases/2009/pdf/30122009\\_consumer\\_research.pdf](http://www.legalservicesboard.org.uk/news_publications/press_releases/2009/pdf/30122009_consumer_research.pdf) [Accessed 25 Aug. 2010].
- Legal Services Commission, 2006. *Making Legal Rights a Reality: Our Strategy for the Community Legal Advice Service*. London: Legal Services Commission.
- McCann, Michael, 2006. On Legal Rights Consciousness: A Challenging Analytical Tradition. In: Fleury-Steiner, B. and Nielsen, L.B., eds. *The New Civil Rights Research*. Aldershot: Ashgate.
- Maxwell, Gabrielle M. et al., 1999. *Meeting Legal Service Needs*. Wellington: Victoria University of Wellington Institute of Criminology.
- Michelson, Ethan, 2007. Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China. *American Sociological Review*, 72, 459-85.

- Miller, Richard E., & Austin Sarat, 1980-1981. Grievances, Claims, and Disputes: Assessing the Adversary Culture. *Law and Society Review*, 15, 525-66.
- Murayama, Masayuki, 2007. Experiences of Problems and Disputing Behaviour in Japan. *Meiji Law Journal*, 14, 1-59.
- Murayama, Masayuki, 2008. Japanese Disputing Behaviour Reconsidered. *Academia Sinica Law Journal*, 98, 261-98.
- Murayama, Masayuki, 2010. Individual Behaviour and Institutional Conditions: How Could We Measure Institutional Factors in Survey? Paper presented at the IISJ Workshop *Current Socio-Legal Perspectives on Dispute Resolution*, Onati, Spain, 15<sup>th</sup> – 16<sup>th</sup> July 2010.
- Office for National Statistics, 2009. *Internet Access 2009*. Newport: Office for National Statistics.
- Parle, Lewis J., 2009. *Measuring Young People's Legal Capability*. London: Plenet.
- Patel, Ashish, et al., 2008. Geography of Advice Seeking. *Geoforum*, 39, 2084-96.
- Pearson, Colin, 1979. *Report of the Royal Commission on Civil Liability and Compensation for Personal Injury*. London: HMSO.
- Pleasence, Pascoe, 2006. *Causes of Action: Civil Law and Social Justice*. 2<sup>nd</sup> ed. Norwich: Stationery Office.
- Pleasence, Pascoe 2007. "Trust Me. I'm a Lawyer" Outreach Advice and the Integration of Public Services. *Focus*, 54, 20-1.
- Pleasence, Pascoe, et al., 2004. *Causes of Action: Civil Law and Social Justice*. Norwich: Stationery Office.
- Pleasence, Pascoe, et al., 2008. *Civil Justice in England and Wales: Report of the 2007 English and Welsh Civil and Social Justice Survey*, London, Legal Services Commission/
- Pleasence, Pascoe, et al., 2010a. *Civil Justice in England and Wales: Report of the 2006-9 English and Welsh Civil and Social Justice Survey*. London: Legal Services Commission.
- Pleasence, Pascoe, et al., 2010b. Horses for Courses: People's Characterisation of Justiciable Problems and the Use of Lawyers. *In: Legal Services Board, ed. The Future of Legal Services*, London: Legal Services Board.
- Pleasence, Pascoe, & Nigel J. Balmer, 2008. Understanding Advice Seeking Behaviour: Findings from New Zealand and England and Wales. *Academia Sinica Law Journal*, 98, 219-58.
- Pleasence, Pascoe, & Nigel J. Balmer (2011) Caught in the Middle: Income, Justicible Problems and Use of Lawyers. *In: Trebilcock, M., Duggan, T. and Sossin, L. (eds.) Middle Income Access to Justice*, Toronto: University of Toronto Press.
- Rasbash, Jon, et al., 2009. *MLwiN Version 2.1*. Centre for Multilevel Modelling: University of Bristol.
- Rose, Neil, 2010. When is a problem a legal problem?. *The Guardian Online* [online]. Available from: <http://www.guardian.co.uk/law/2010/jun/22/recognising-legal-problems-as-legal> [Accessed 25 Aug 2010].
- Sandefur, Rebecca, 2007. The Importance of Doing Nothing: Everyday Problems and Responses of Inaction. *In: Pleasence, P., Buck, A. and Balmer, N.J., eds. Transforming Lives: Law and Social Process*, Norwich: TSO.

- Sato, Iwao, et al., 2007. *Citizens' Access to Legal Advice in Contemporary Japan: Lumpers, Self-Helpers and Third-Party Advice Seekers*. Paper presented at the Law and Society Conference, Berlin, 26 July 2007.
- Spiegelhalter, David J., et al., 2002. Bayesian Measures of Model Complexity and Fit. *Journal of the Royal Statistical Society*, 64, 583-639.
- Tourangeau, Roger & T. Yan, 2007. Sensitive Questions in Surveys. *Psychological Bulletin*, 133, 859-83.
- Velthoven, Ben C.J. van & Marijketer Voert, 2005. *Paths to Justice in the Netherlands*. Paper presented at the International Legal Aid Group Conference, Killarney, Ireland, 8<sup>th</sup>-10<sup>th</sup> June 2005.
- Washington State Task Force on Civil Equal Justice Funding, 2003. *The Washington State Civil Legal Needs Study*. Olympia, WA: Washington State Supreme Court.