How People Resolve ‘Legal’ Problems

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Findings from -

“How People Resolve Legal Problems” by Prof. Pascoe Pleasence and Dr Nigel Balmer

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How people resolve ‘legal’ problems

Surveys of legal need

The current project

Results

Understanding responses to legal problems
Rationale for actions
Understanding problem outcome

Key messages

Key challenges
Since the mid 1990s, at least 26 large-scale national ‘legal need’ surveys have been conducted in at least 15 separate jurisdictions.

Mostly confront the contested concept of legal need by embracing the idea of the ‘justiciable problem’
Legal need

- Contested concept
- Traditionally - occasions when people experience legal problems but fail to obtain the services of lawyers
- However, legal mechanisms do not always provide the most appropriate route to solving problems that raise legal issues
- Increased emphasis on understanding of options/preferences

Legal Need Surveys

- Quantifying public experience of / response to legal problems
- Origins in Clark and Corstvet’s (1938) landmark study
- Gained momentum in 1990s following the conduct of high profile national surveys in the United States then England and Wales, New Zealand and Scotland
Why we do them

• To understand:
  ✓ the public’s experience of legal problems
  ✓ people’s understanding, aims and perceptions
  ✓ how legal professionals/processes are involved
  ✓ how problems interact
  ✓ and how they interact with other aspects of people’s lives

• A key objective is to examine disputes in the whole

Their impact

• Well known across legal aid / access to justice field
• Transformed thinking about legal advice
The English and Welsh Civil and Social Justice Surveys

Nationally representative household survey of people’s experience and response to problems involving rights.

- Face-to-face interviews in respondents’ homes
- Interviews average 50 minutes if problems identified

Replaced by the CSJPS in 2010

- Longitudinal panel format
- Waves in 2010 and 2012
- Around 4,000 respondents

Around 25,000 interviews since the surveys began
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CSJPS 2010

- Household questions (first household member)
- Hypothetical legal scenarios
- Problem identification and characterisation

Has had a problem?

- No
  - Demographics
  - Recontact questions

- Yes
  - Detailed loop questions – strategy, outcome, impact etc. (3 problems)
  - Detailed strategy questions (1 problem)

CSJPS 2012

- Updated for longitudinal respondents
- Replaced with legal empowerment and knowledge of advisers
- Updated for longitudinal respondents

New problems and ‘fed forward’ from wave 1 where relevant

Updated for longitudinal respondents
“Since (DATE) have you (has your partner) had any problems or disputes that were difficult to solve to do with any of the things on this card”
Problem prevalence

- Consumer
- Neighbours
- Employment
- Money
- Debt
- Welfare benefits
- Rented housing
- Education
- Personal injury
- Divorce
- Owned housing
- Relationship breakdown
- Clinical negligence
- Domestic violence
- Care proceedings

% respondents (wave 1 and 2)
What we knew about determinants of strategy and outcome

- Problem type swamps other considerations
- Cost may be an issue?
- ‘Seriousness’ plays a role
- Indications than capability may be important
- Previous analyses narrowly construed
- Little known about what drives form of outcome

This project

- Comprehensive analysis of determinants of strategy/outcome
- Simultaneously examining demographic, capability and problem factors
- Key findings for policy
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Results – Understanding responses to legal problems

- Did nothing: 10.9%
- Handled alone/Informal: 59.2%
- Other advice: 7.1%
- Advice sector: 5.2%
- Law firm: 17.6%

So what drives response to legal problems?
Results – Understanding responses to legal problems

Dominant factors

• Problem characterisation
• Problem type
• Cost (perceived or actual)

In addition,

• Problem severity
• Capability
• Problem duration
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Results – Understanding responses to legal problems

Problem characterisation
….and implications for strategy

![Graph showing how people resolve legal problems](image)

- Legal characterisation
  - Did nothing
  - Handled alone/Informal
  - Other advice
  - Advice sector
  - Law firm

- No 'legal' characterisation

Problems

0% 50% 100%
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Results – Understanding responses to legal problems

Problem characterisation
….and implications for strategy

![Diagram showing how people resolve legal problems](chart)

- **Legal characterisation**
  - Did nothing
  - Handled alone/Informal
  - Other advice
  - Advice sector
  - Law firm

- **No 'legal' characterisation**
  - Did nothing
  - Handled alone/Informal
  - Other advice
  - Advice sector
  - Law firm

*Note: The chart shows the percentage distribution of how people resolve legal problems.*
How people resolve ‘legal’ problems

Results – Understanding responses to legal problems

Problem characterisation
… and implications for strategy

![Diagram showing how people resolve 'legal' problems.]

Legal characterisation
- Did nothing
- Handled alone/Informal
- Other advice
- Advice sector
- Law firm

No 'legal' characterisation
- Did nothing
- Handled alone/Informal
- Other advice
- Advice sector
- Law firm
How people resolve ‘legal’ problems

Results – Understanding responses to legal problems

Problem type
Remains a key factor – in part, not a great mystery

Problem type responses:
- Consumer
- Employment
- Neighbours
- Owned housing
- Rented housing
- Debt
- Money
- Benefits
- Education
- PI/Clinical negligence
- Divorce
- Relationship b'down
- Violence/care

- Did nothing
- Handled alone/Informal
- Other advice
- Advice sector
- Law firm

Problems
How people resolve ‘legal’ problems

Results – Understanding responses to legal problems

Problem type
…because legal supply does not mirror experience

- Negligent accidents
- Employment
- Welfare benefits

How people resolve ‘legal’ problems

% in England & Wales

0%  5%  10%  15%  20%  25%

Non-corporate income
Problems (CSJS)
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Results – Understanding responses to legal problems

Cost

- Where legal aid is most available – U-shaped
- Cost benefit calculations? (Kritzer, 2008)
How people resolve ‘legal’ problems

Results – Understanding responses to legal problems

Cost

Cost is a live issue
• Historically not well understood (Pleasence & Balmer 2010)
• New design of CSJPS allowed more detailed examination

57% of those using an advice agency rather than a lawyer did so because of cost
• Could be perceived or actual cost
• Reduction in up front cost may encourage use
• But, public understanding of cost is not particularly nuanced and other strategy factors also play a key role
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Problem severity

For each problem you see, please consider how severe it would be if someone like you were to experience it.

Using the mouse, drag each problem that appears on the left of the screen over to the scale on the right. The more severe each problem is, the higher it should go on the scale.

MOST SEvere

- Being regularly physically assaulted by a partner
- Becoming ill and being unable to go about
- Difficulty getting a deposit back for a rented home

LEAST SEvere

- A Dispute over the division of money, pensions or property following separation from a spouse/partner
- Being discriminated against because of religion
- Purchasing a moderately expensive electrical item that proves to be faulty
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Results – Understanding responses to legal problems

Problem severity

- Market rationing (e.g. Kritzer)
- Much inaction is rational inaction
- Though some is characterised by helplessness/powerlessness
How people resolve ‘legal’ problems

Results – Understanding responses to legal problems

- Other aspects of capability (e.g. understanding of rights and ‘legal’ characterisation) also important
- Behaviour is learned – frustrated resignation (Sandefur, 2007)
How people resolve ‘legal’ problems

Results – Understanding responses to legal problems

Problem duration

- Lengthier problems sometimes a failure of self-help
- More often, respondents recognised that they needed help in order to resolve their problems
More generally, people seek advice from a broad range of sources

• 15% beyond the recognised advice sector

• Confusion and desperation is sometimes evident in choices, with some seemingly inappropriate and unpromising

• Results in having to start again or signposting/referral to another adviser, leading to….

Referral fatigue

• The likelihood of [people] obtaining advice from an adviser to whom they had been referred declines as respondents visit more advisers (Pleasence et al., 2004)

• With implications for resolution of problems
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Results – Understanding problem outcome

- Court/tribunal/3rd party process: 32.0%
- Agreement: 28.9%
- Resolved independently/resolved self: 23.4%
- Putting up with it: 9.1%
- Ongoing: 6.7%

So what drives form of outcome?
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Results – Understanding problem outcome

Key factors included - strategy

<table>
<thead>
<tr>
<th>Strategy</th>
<th>Problems</th>
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<tbody>
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<td>Law firm</td>
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(Chart showing the distribution of strategies and their outcomes)
How people resolve ‘legal’ problems

Results – Understanding problem outcome

Key factors included - severity

- Severe problems and those involving law firms have a greater tendency to involve formal process
- Problems handled alone are less likely to end in court
- Market rationing exposed in relation to legal advice is also apparent in relation to formal process
How people resolve ‘legal’ problems

Results – Understanding problem outcome

Key factors included – problem type

- Cultural norms are likely to in part inform parties’ decisions
- Other important factors included mental health and psychological characteristics
<table>
<thead>
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<td>3. Most inaction in response to a problem is rational…. but …</td>
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<td>4. Civil law and social injustice</td>
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<td>5. Determinants of advice (and its impact)</td>
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<td>6. Wider advice sector makes a critical contribution to justice</td>
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<td>7. Counting costs</td>
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<td>8. How problems conclude</td>
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Key messages

1. Courts and law are peripheral to everyday justice.

- Fewer than one in ten people experiencing legal problems instruct solicitors.
- Consumer experience does not mirror traditional legal services provision (e.g. reserved activities / profitability).
- Deficiencies in the civil justice system in meeting consumers’ needs are largely due to difficulty enabling vulnerable populations with limited capability/resources access appropriate help from a complex market.
How people resolve ‘legal’ problems

Key messages

2. Increasing severity/duration funnels problems towards law

- People are more likely to go to a lawyer in relation to more severe problems, and problems taken to lawyers are more likely to involve the courts.
- But, people also often take no action to resolve more severe problems.
Key messages

3. Most inaction in response to a problem is rational…. but …

- A significant minority of inaction is characterised by helplessness.
- Inaction is associated with poorer prospects of effective problem resolution.
4. Civil law and social injustice

- Links between social disadvantage, legal capability and inaction are well illustrated by the Civil and Social Justice Panel Survey.
- Problem solving behaviour becomes entrenched over time.
How people resolve ‘legal’ problems

Key messages

5. Determinants of advice (and its impact)

- Problem characterisation, problem type and cost are key drivers of strategy.
- The importance of problem type is a function of both market structure and peoples’ understanding of legal services.
- People who characterise problems as ‘legal’ are less likely to ‘lump’ them and far more likely instruct a solicitor.
- Choices of sources of help can be unpromising, and where people are forced to look elsewhere they can suffer referral fatigue, getting lost in the system.
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Key messages

6. Wider advice sector makes a critical contribution to justice

• Failure to characterise problems as legal does not bear on use of the wider advice sector, with people using it regardless of their understanding.

• However, traditional legal practices provide few welfare related services.
A majority of respondents who obtained help from an advice agency rather than a lawyer said they did so because of the perceived cost.

People’s perceptions of cost can be inaccurate.

Making lawyers cheaper to access may not greatly change consumer behaviour. Public legal education and/or the development of services that meet the public’s perceived needs may also be necessary (Sandefur 2012).

Marketing (private sector form of PLE) of personal injury services appears to overcome concerns about cost.
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Key messages

8. How problems conclude

- It is rare for problems to conclude through a legal process.
- Problem resolution strategy, problem severity, problem type, psychological factors and respondent mental health are key drivers of form of outcome.
- Emotional stability was associated with both a greater tendency to put up with problems and lesser tendency to go to court.
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Key challenges

1. Of ensuring fair and equal access to justice
2. Of improving the civil justice rationing process
3. Of further innovation
4. For gateway services
5. Of timely intervention
6. For research
1. Ensuring fair and equal access to justice

- The legal services market and civil justice system do not ensure fair and equal access to justice
- Deficiencies attributable largely to the difficulty of enabling vulnerable populations with limited capability and resources to access appropriate help
- Exacerbated by a complex legal services market in which innovations to broaden service reach have often emanated from outside of the traditional legal professional sphere
- Not just individuals – similar issues for small businesses (Pleasence and Balmer, 2013)
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Key challenges

2. Of improving the civil justice rationing process
   • Whether through targeted services, public legal education (or marketing) or the development of new forms of services that better meet the needs of the public
   • May look very different from traditional legal services
   • While PLE faces a tough task, the success of marketing offers some hope

3. Of further innovation
   • To provide legal services for people with different levels of resources
   • Never has this been so important than at the time when civil legal aid is undergoing such considerable change.
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Key challenges

4. For gateway services
   • In making services more visible
   • In making the legal services market more navigable

5. Of timely intervention
   • Longer duration problems are more likely to involve lawyers,
   • Problems involving lawyers are more likely to be determined through the courts
   • Need for more timely forms of intervention to enable earlier resolution of legal disputes.

6. For research....
6. For research….

Measurement

• What do people really know about their rights and options?
• Where (and for who) is improvement particularly needed?
• How does this change over time and with shifts in policy?
• Best research tool to look at this?

Evaluation

• Attaining/increasing knowledge – what works?
• What is the impact of knowledge on action and outcome – cost effectiveness of intervention?
• Best research tool to look at this?
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