Paths to Justice

A past, present and future roadmap

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Paths to Justice:
A Past, Present and Future Roadmap

AN EXECUTIVE SUMMARY

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This report explores methodological issues, brings together findings, assesses the impact of, and provides guidance and resources for the future development of surveys of *justiciable* problems – problems which raise civil legal issues, whether or not this is recognised by those facing them and whether or not any action taken to deal with them involves the legal system (Genn 1999).

A tradition of surveys

Since the mid-1990s, at least 26 large-scale national surveys of the public's experience of justiciable problems have been conducted in at least 15 separate jurisdictions, reflecting widespread legal aid reform activity. Twenty-four of these surveys fall within a growing *Paths to Justice* tradition, having firm roots in, and following the structure of, Genn's landmark survey in England and Wales. This tradition recognises that law does not always provide the best context for problem solving, and sees the adoption of a neutral stance towards citizen experience and behaviour. The tradition is characterised by a focus on issues that *may* have a legal solution, but are not restricted to those familiar to lawyers or discussed in tribunals or civil courts. The aspiration is to observe the entire dispute pyramid, from everyday problems (whether or not they are understood as legal) to formal proceedings.

Similarities of approach: A world of difference

Despite being part of a single tradition, there are marked differences in the methods employed by recent surveys, concerning sample frames, sampling methods, response rates, modes of administration, data structure, units of analysis, reference periods, filtering, the justiciable problems included, framing and question formulation. Each of these differences can be expected to impact on survey findings. Only the *Paths to Justice* and *Paths to Justice Scotland* surveys were near (though not) identical in their implementation.

In the development of future surveys, the impact of design decisions should be considered carefully. Specifically:

- Efforts should be made to avoid under-coverage of the target population when adopting a sample frame, to promote generalizability.
- Stress should be placed on response rates.
- Particular heed should be paid to survey framing, and even subtleties, such as references to survey sponsors, should be considered in drawing up advance letters, survey introductions, etc..
- Unnecessary changes to tried and tested questions should be avoided.
- In relation to the 'difficult to solve' triviality filter, it is suggested that it is not used in future, owing to its conflation of problem experience and problem resolution behaviour.
- As far as possible, problem definitions and categories should be defined to allow comparison with other survey findings.
- Flexibility around the post-survey re-construction of categories is also something to consider.
- Problems should be selected for detailed follow-up on a random, or quasi-random, basis, to ensure the coherence of the sample.
- The trade-offs between longer and shorter reference periods should be properly considered in deciding on rules for problem selection.

- Increased focus should be placed on capturing the experience of groups who are typically excluded from sample frames, excluded by methodology/mode of administration or not sampled in suitable numbers to allow their experience to be examined accurately (despite their nominal inclusion).

While legal need surveys have been found to provide a rich source of data concerning people's experience of and basic responses to justiciable problems there are limits to their utility.

The big picture

There is evidently a need for real caution when bringing together and comparing headline findings stemming from different legal need surveys. However, this does not mean that there is *no* scope for exploring similarities and differences between the experiences of justiciable problems of people in different jurisdictions from past surveys.

For example, while the absolute rates of problem prevalence cannot by compared across jurisdictions, the relative rates of prevalence of particular problem categories provide some interest where there are equivalent definitions. Here, precise numbers are of less importance. Comparative analysis of this type is particularly persuasive when set within a theoretical framework, such as that provided by participation theory, as set out by Van Velthoven and ter Voert (2005).

Eighteen of the 20 surveys for which findings are available indicated that consumer problems were among the three categories of problems that were most often reported. Similarly, problems concerning neighbours were among the three most common problem categories for all 13 surveys that included neighbours problems as a distinct category. And problems concerning money were found to be among the three most common problem categories in 15 of 18 surveys for which findings are available.

The similarity of patterns of vulnerability to problems identified by recent legal needs surveys also provides interest, although a major obstacle to reviewing findings across jurisdictions in this area is that there has been little consistency in analytical approach and, quite incredibly (given the cost of surveys), sometimes very little analysis at all.

Looking at those analyses that have been undertaken, patterns are fairly similar across jurisdictions, with few conflicts (especially among the multivariate analyses). Problems are generally associated with ill-health/disability, particularly mental ill-health/disability.

Looking at specific problems, consumer problems have been found to be associated with both high income and unemployment, employment problems with working age and unemployment, family problems with mid-life, lone parenthood and being divorced, and money problems with lone parenthood.

Comparative analysis of problem resolution behaviour is even more treacherous than analysis of patterns of problem experience, and again there is a paucity of reported findings from recent surveys. However, a reasonably consistent story emerges. Inaction is generally more common among men, becomes less common with age, less common with higher levels of education and less common along with the value and seriousness of problems. Inaction is also associated with problems concerning anti-social neighbours, but not with family problems.

Multivariate analyses has also explored associations with advice. Again, a reasonably consistent story emerges. Women are more likely to seek help about a problem, with advice seeking rising with age and along with the value and

seriousness of problems. Advice is least often obtained in relation to consumer issues and most often obtained for problems concerning family breakdown, personal injury, employment and owned housing.

Two analyses that specifically explored lawyer use found that it was associated with income, with lawyer use generally rising with income, although the most recent findings suggest a U-shaped association.

Lawyers have also been found to be most commonly used in relation to family problems, and (though less consistently) problems concerning housing and personal injury.

Common interests and emerging themes

The fact that there is limited potential for comparative analysis on the basis of past surveys is not to diminish the richness and utility of findings that have been reported from individual surveys to date. For example, there is now a significant literature that describes and seeks to explain the clustering of justiciable problems, and the clustering of justiciable problems and problems (such as morbidity/disability) more generally. The most visible clusters have consistently been seen in the context of family breakdown, but other clusters have also been identified.

There is also a significant literature exploring obstacles to advice. It is evident that many people who 'lump' justiciable problems are unsure about their rights, their prospects, and the availability of help, and there is mounting interest in exploring how problem resolution behaviour is influenced by people's framing of the problems they face.

Once people are within the advice system, the importance of quick and effective referral has also repeatedly been highlighted through the uncovering and investigation of the phenomenon of referral fatigue.

And of course, the 26 recent legal need surveys combine to present a compelling picture of law being very much on the periphery of most experiences of justiciable issues, and a powerful case for developing related policy from the client, rather than the service deliverer perspective.

Lack of easy comparability does not, therefore, detract from the wealth of findings that have originated from recent legal need surveys. Nor does it detract from the importance of the emerging themes of research in the *Paths to Justice* tradition. Furthermore, the lack of easy comparability should not detract from the influence of the *Paths to Justice* tradition of surveys.

The impact of the surveys: official documents

Paths to Justice tradition survey findings have been referenced in a succession of English and Welsh government publications since the publication of *Paths to Justice*; although the 2010 consultation paper *Proposals for the Reform of Legal Aid in England and Wales* provides a notable exception (though findings were referred to in the response to the consultation and related impact assessments).

Findings from *Paths to Justice* and the CSJS have also been commonly referred to in select committee deliberations and reports. However, while findings were originally introduced by government to support policy change, they are now introduced primarily from other quarters to support criticism of policy change.

Elsewhere, the CSJS has been formally integrated into government performance management, and has been seen by the Legal Services Commission as central to discharging its statutory duty under Section 4(6) of the Access to Justice Act 1999.

The impact of the surveys: The views of UK stakeholders

To assess the impact of *Paths to Justice* tradition surveys in the UK, interviews were conducted with legal aid and legal services policy stakeholders.

Four themes emerged. First, *Paths to Justice* tradition research is well-known across the legal aid and advice field. Second, *Paths to Justice* tradition research has transformed thinking about legal aid and advice. Third, stakeholders' assessment of the usefulness of particular bodies of empirical research, including *Paths to Justice* tradition research, was shaped by their particular research needs at the time of the interviews. In this case, the interviews occurred during a time of historic economic, political, and regulatory change affecting the legal aid and advice field. Fourth, *Paths to Justice* tradition research is generally well received. Critiques are disparate, reflecting respondents' specific perspectives and research needs rather than broadly shared concerns.

Respondents spoke of a number of survey findings, such as the existence of problem clusters, as common knowledge throughout the field. They also attributed the policy response of "joined-up services" to assist the public with the research discovery of "joined-up" problems.

Overall, *Paths to Justice* tradition research was seen as persuasive and influential, and as having transformed understanding of public justice needs, of not-for-profit service provision, and of market service provision.

However, as already indicated, the utility of any specific piece of research is shaped by a number of factors outside the research itself, and use of the surveys' findings has changed since the onset of the global financial crisis. Respondents' discussion of empirical research and its usefulness showed the powerful influence of government fiscal austerity in response to a deep global recession; of regulatory changes in the legal services market; and, of shifting political ideologies linked to the change in national government.

Respondents felt that research evidence had become more important for understanding the impact of policy changes and less important for guiding policy changes themselves. However, in contrast with England and Wales, Scottish respondents described an ideology that included a continuing commitment to legal aid, which had to be put into practice under new conditions of austerity.

For some respondents, the changed political and economic context meant that *Paths to Justice* research was useful in new ways. For example, respondents described turning to the research to learn about the dynamics of legal services markets, or to identify ways that people could pursue resolutions to problems without the need for (particularly legal aid) lawyers.

There was no broad-based critique of *Paths to Justice* tradition research. Rather, critiques and desiderata were disparate. Some indicated a need for more *Paths to Justice* style research and some indicated a need for additional approaches to supplement the evidence base.

A number of areas were identified for further investigation, such as ways to maintain (or expand) access to services in a changed regulatory and fiscal context, the impact of regulatory changes on legal services markets, and the economic and whole-system impact of legal aid. There was also a call for qualitative research to supplement Paths-style work, to provide more explanation of survey findings.

When asked about those who were doubtful or suspicious of *Paths to Justice* tradition research, most respondents said stakeholders held generally favourable views of such research.

The impact of the surveys: an international perspective

To explore recognition and use of surveys by policy makers internationally an online survey of 21 governmental stakeholders in 6 English-speaking jurisdictions was conducted.

Eleven of the 21 survey respondents reported having personally made use of the findings of at least one *Paths to Justice* tradition survey, with 16 reporting that use was made of the surveys in their area of responsibility, and 18 reporting that they were at least 'quite familiar' with findings.

All respondents felt that it was at least 'quite important' that legal need surveys were conducted regularly, and the great majority felt that survey findings were at least 'quite important' to their work.

When asked about how legal need survey findings were used, responses focussed primarily on policy development and designing legal service programmes. The idea of "public and stakeholder persuasion" was also aired, as was the idea of understanding change.

Sixteen respondents were able to set out specific policies that survey findings had influenced.

Policies influenced by legal need surveys fell into three broad, though interrelated groups; policies designed to argue for and prioritise spending, policies aimed at redesigning existing services and policies dictating the direction or development of new services. Beyond these three broad groups, other responses focussed on supporting the direction of policy travel.

It was indicated that only a minority of the policy changes mentioned would have been the same in the absence of *Paths to Justice* style evidence.

In general, respondents agreed with how survey findings had been used, and there were no respondents who clearly disagreed, though this might be a function of the governmental roles of the respondents.

Respondents were asked to describe the most important findings to come from surveys of legal need. Respondents most frequently highlighted problem clustering, along with findings that certain groups were disproportionately exposed to a higher problem incidence by virtue of their demographic characteristics. More generally, responses referred the fact that surveys presented the "client perspective."

Turning to evidence gaps, a number of respondents pointed to the need to more effectively measure the impact of advice and the cost/benefit of services (although it is doubtful whether surveys are able to deliver conclusive findings to this end). Others reported a need for more evaluative information on 'what works' in respect of policy responses in the field of civil justice and how legal need could better be addressed through policy interventions. Others felt more specific information relating to the problem-solving behaviour of individuals would be useful, or referred to how information could be effectively communicated to those with civil justice problems.

As regards the limitations of *Paths to Justice* tradition surveys, responses were often specific to the particular form of survey conducted in the respondent's jurisdiction. Nevertheless, respondents identified a number of general limitations, particularly with respect to the extent to which sample frames excluded disadvantaged groups, limitations in the granularity of data collected, and common delays in reporting. It was also observed that "legal needs surveys … are very expensive," and "they lead to more questions."

There was some suggestion, on the part of a small minority of respondents, that surveys now had less utility and alternative approaches to broadening the evidence base should be explored.

Finally, on the dissemination of survey findings, two respondents referred to the need to make reports more accessible.

Looking to the Future

In England and Wales, economic constraints and major policy shifts (such as the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012) are creating a very different policy context for the use and application of *Paths to Justice* tradition survey findings. Those key findings describing problem clustering, documenting and quantifying referral fatigue and pointing to the potential benefits of holistic/integrated services have lost influence in domestic legal aid policy, but remain important pillars of access to justice debate and are finding greater relevance in the context of the major market changes following on from the Legal Services Act 2007. Also, *Paths to Justice* tradition research is likely to remain a standard method used to document the public experience of the law more generally. It may, however, require some reinvention (in focus or audience) to maintain policy relevance, and is likely to be less of a focus in the access to justice field, now that the implications have become well understood, with evaluation of policy and practice change taking a more centre stage.

It is also possible that economic constraints will reduce investment in *Paths to Justice* tradition research in countries such as the UK, leading to reliance on more economical survey methods and/or increased use of administrative data. Any efforts to retain the *Path to Justice* approach using revised methodologies should, though, recognise the implications of methodological change as set out in this report. Also, where increased reliance is placed on administrative data, what is missed should be acknowledged; the base of the dispute pyramid, perhaps the major strength of the *Paths to Justice* approach.

In conclusion

Overall, it is evident that findings from *Paths to Justice* tradition surveys have been profoundly influential on legal aid, legal services and access to justice policy and thinking. It is also clear that the surveys have collectively built up a substantial evidence base around the 'client perspective' of justiciable problem experience, which continues to be incrementally built upon.

However, comparative analysis of justiciable problem experience across jurisdictions is hampered by many differences in survey design and implementation. Some of these are unavoidable – relating to language, system, cultural and budgetary differences. But others are more a product of individual discretion. To promote greater opportunity for comparative research, and also to continue to improve the quality of *Paths to Justice* style surveys, we urge that survey designers heed the lessons of the past. There is vast experience now existing in the field that can be drawn from. In supporting this aim, it is also important that technical survey details are transparent, reports using survey data accessible and where possible, survey data made publicly available.

We restate the words of Cantril (1996, p.7), who said, after the completion of the *Comprehensive Legal Needs Study,* that people should draw on the experience gained "to improve the methodology of legal needs surveys and identify important topics for further study." With 26 national surveys undertaken over the past two decades, regard to this sentiment is all the more critical.