

# TARGETING CIVIL LEGAL NEEDS: MATCHING SERVICES TO NEEDS

Vicky Kemp  
*BA(Hons) MPhil PhD*

Pascoe Pleasence  
*BA(Lond) MPhil DipLaw*  
*Barrister-at-law of the Middle Temple*  
*Legal Services Research Centre*  
*England and Wales*

## SUMMARY

The cost of administering and funding legal aid in England and Wales is in excess of two billion pounds. A recent study of private law family cases highlights how the current scheme tends to focus narrowly on particular legal issues and creates incentives for litigation rather than informal negotiation. Survey findings of legal need help to highlight that people experience a wide range of problems and often fail to receive proper help and support. Innovations taking place in both the developing and developed world can help to illustrate how legal services can expand and develop to reach out to those most vulnerable in society. To target civil legal needs and to match services to needs, it is argued that the legal aid scheme needs to broaden out and effectively link in with other forms of advice and support in order to provide joined up solutions to legal problems.

## 1 INTRODUCTION

In 2004/2005 the Government in England and Wales spent over two billion pounds on administering and funding civil and criminal legal aid. The development of legal aid in the United Kingdom has led predominantly to the funding of lawyers in private practice. From a recent study of publicly-funded private law family cases, we explore the type of legal issues dealt with by solicitors and examine how incentives within the current scheme appear to promote litigation rather than informal negotiation and may encourage the adoption of certain strategies in order to maximise case costs. Recent attempts by the Legal Services Commission to control costs and improve case management procedures, and the response of the legal profession to such proposals, are considered.

We then explore civil problems more generally and explain how surveys have indicated the breadth of problem experience and advice that falls outside the legal aid scheme. Findings from the United Kingdom, and also

from other jurisdictions, highlight not only that many people experience civil justice problems, but also that they seek advice from an array of advisers. There also appears to be confusion about where people should go for advice and assistance. As a consequence, even in England and Wales, with a well-funded legal aid scheme, it is evident that the demand for advice on civil justice matters among those people eligible for legal aid far exceeds the current delivery of legal services. In this context we consider how innovations in delivering legal services from countries in both the developed and developing world can help to influence alternative methods of delivery. Finally, we examine how legal aid might be targeted to match the "needs" of the public within a more integrated approach to social justice.

## 2 HISTORY OF LEGAL AID IN ENGLAND AND WALES

During the latter stages of the Second World War, as soldiers returned home, there was an increasing demand for divorce lawyers which helped to provide the impetus for establishing a substantial publicly-funded legal service.<sup>1</sup> The Lord Chancellor set up a review of existing legal aid provisions, chaired by Lord Rushcliffe. In seeking to influence the review, the Haldane Society of Socialist Lawyers, set up to promote civil liberties and human rights, proposed to base legal aid on the newly created Citizens Advice Bureaux. The Poor Man's Lawyer Associations (lawyers who gave advice from the university-based settlements) also called for different areas of law to be prioritised, particularly the Rent Restrictions Act, workmen's compensation, small claims and hire purchase. The Law Society, on the other hand, wanted a full legal aid scheme which was based on those types of cases where lawyers normally represent private clients.<sup>2</sup>

In 1945, the Rushcliffe Committee recommended that legal aid should be made available in those types of cases where lawyers normally represented private individual clients and that it should not be limited to the "poor", but should also include those of "small or moderate means". The Committee also suggested that legal advice centres should be set up in order to provide free access to legal advice. The concomitant Legal Aid and Advice Act 1949, while broadly reflecting the Rushcliffe Committee's recommendations, adopted a "judicare" model, which is where legal aid services are provided by private lawyers remunerated on a case by case basis to persons fulfilling the relevant eligibility criteria.

The setting up of the national legal aid scheme was to signal the Government's commitment to the principles of "equal justice for all" as part of the nation's post-war Welfare State. In these terms, as Stein notes, legal aid and advice "play a critical constitutional role in democracies ... by establishing for the poor and excluded a fundamental right to be heard and

<sup>1</sup> State support for legal aid funding at that time primarily consisted of the *poor person's procedure* which assisted only the very poor in cases heard at the High Court and with lawyers acting on a charitable basis.

<sup>2</sup> See the Legal Action Group *A Strategy for Justice* (1992) for a more detailed history of the legal aid scheme (London: Legal Action Group).

to obtain redress for grievances of the state and market place".<sup>3</sup> From the outset, however, the interests of the legal profession were more influential in how the legal aid scheme developed than broad aspirations of equality of justice. As a result, it was traditional areas of law such as family and crime which came to dominate legal aid work.

The Law Society had a dual role in both administering legal aid and acting as the solicitors' professional body up until 1988. During the 1970s, and much of the 1980s, legal aid expanded both in terms of the range of schemes funded and also in expenditure. The "Green Form" advice and assistance scheme was set up in 1973 to enable solicitors to give advice on any legal matter (up to a maximum of two hours advice), which was intended to encourage solicitors, among other things, to deal with areas of social welfare law. As noted by the Legal Action Group, however, the Green Form scheme was used largely to finance work in the fields of family and crime.<sup>4</sup> Legal aid remained concentrated in the fields of family, crime and personal injury work.

From its inception in the late 1940s through to the mid-1980s, the legal aid scheme was perceived as an almost universal service to be delivered predominantly through solicitors in private practice.<sup>5</sup> While the aspiration of the legal aid scheme had been to achieve 80 per cent coverage of the population throughout England and Wales, eligibility contracted throughout this period as eligibility thresholds remained largely static. In 1986, against a backdrop of rising legal aid costs, the Conservative Government then introduced the first *formal* reductions in eligibility since the legal aid scheme was created.<sup>6</sup> The Government also carried out a legal aid efficiency scrutiny which recommended that large areas of the Green Form scheme should be transferred to the voluntary advice sector. The Law Society was strongly opposed to such a change and, not wanting to antagonise the legal profession, the Citizens Advice Bureau refused to co-operate. Nevertheless, this represented the first Government-led challenge to the legal profession's dominance over all forms of legal aid with a move to broaden the range of advice providers.

A major turning point in legal aid followed with the Legal Aid Act 1988. This Act transferred the Law Society's administrative functions to a newly created Legal Aid Board, set up under the Lord Chancellor's Department. In doing so it shifted management of legal aid from the legal profession to the public service and heralded a period of fundamental review. The need for fundamental review was strikingly alluded to by Lord Mackay, the Lord

---

<sup>3</sup> Stein *The Future of Social Justice in Britain: A New Mission for the Community Legal Service* (2002) (paper presented to the 5<sup>th</sup> International Legal Services Research Centre Conference, Selwyn College, University of Cambridge).

<sup>4</sup> See fn 2 above.

<sup>5</sup> By 1986, there were 55 law centres in England and Wales and 869 Citizens Advice Bureaux compared to 7 833 solicitors' firms. Not all solicitors' firms, however, would undertake legal aid work.

<sup>6</sup> Eligibility cuts in 1986 meant that coverage decreased to around 60% of the population. Changes in 1993 led to a further decrease in eligibility to around 50% of the population, reducing again so that in 2002/03 the eligible population is estimated to be around 46%. See Buck and Stark *Means Assessment Options for Change* (2001).

Chancellor in 1991, when legal aid expenditure was expected to exceed £1-billion for the first time. Lord Mackay expressly warned that “resources are finite” and that the Government was “just about at the limit of what is possible without radical change”.<sup>7</sup> When the Labour Government came into office in the late 1990s the language of reform came to emphasise the role of legal aid in fighting social exclusion. Legal aid was openly characterised as a public service with a function to bring about social change.

### 3 ACCESS TO JUSTICE ACT 1999

The Access to Justice Act of 1999 was said to have created the “biggest shake-up in legal services in fifty years”.<sup>8</sup> A Legal Services Commission replaced the Legal Aid Board and two separate branches within it came to administer the civil and criminal legal aid funds: the Community Legal Service (CLS) and Criminal Defence Service (CDS).

In its aim to modernise legal aid, Lord Irvine, the then Lord Chancellor, stated that “Access to justice will become a reality to millions who currently feel excluded from justice”.<sup>9</sup> Through the CLS, a network of local “Community Legal Service Partnerships” (CLSPs) have been set up across England and Wales, intended to provide much greater co-ordination of the funding and delivery of legal services, and thus best meet the needs of local populations. While the CLSPs have the potential to encourage new methods of delivery it has been argued that the potential for radical reform, as heralded by the Access to Justice Act, is limited. Stein, for example, has argued that with an emphasis on “cost capping and private market management reforms, the CLS has inherited uncritical funding priorities and a privatised delivery system of individual case service that conflicts with the broad social policy agendas of the Government”.<sup>10</sup>

A recent review of the CLSPs has also found there to be limitations. In particular, despite initial enthusiasm for the new partnership working, disillusionment was to follow. Competing interests and a lack of clarity about the role of both the CLS and CLSPs has led to members leaving the partnerships.<sup>11</sup> The review also identified a dislocation between analysis of local needs and its translation into funding, with the partnerships not being able to influence significant new funding for unmet or un-prioritised needs.

There are also downward pressures on the civil budget which limit the potential for radical change. The CLS budget, for instance, contains a fixed amount of money which is set each year as part of the round of Government spending plans. In contrast, the CDS budget is almost entirely demand-led. With legal aid costs increasing significantly over recent years, maintaining a

<sup>7</sup> Speeches delivered by Lord Mackay on 22 September 1991 and 4 October 1991.

<sup>8</sup> Lord Goodhart *HL Deb* 14 December 1998 Vol 595 col 1119.

<sup>9</sup> Lord Chancellor's Department *Modernisation of How the Law Serves the Public* (1998) (Press Release, London: Lord Chancellor's Department).

<sup>10</sup> Stein 42.

<sup>11</sup> Johnstone, McGourlay, Shapland and Moorhead *The Community Legal Service and Community Legal Service Partnerships* (2005) (paper presented to the Socio-Legal Studies Association Conference held at the University of Liverpool).

demand-led criminal scheme has had major implications for the civil budget. From 1997/1998 to 2003/2004, for example, total expenditure on legal aid rose by around £500-million to just over £2-billion.<sup>12</sup> Much of the increase, however, has been driven by criminal work. Indeed, when removing asylum work, where there has been a significant increase in funding over recent years, spending on criminal work has increased by 39 per cent in real terms while spending on civil work (excluding asylum) has fallen by 22 per cent.<sup>13</sup>

While the majority of legal aid monies are paid to lawyers in private practice, since the mid-1990s legal aid has also been provided through the not-for-profit sector, comprising mainly Citizens Advice Bureaux and other advice agencies. Funds committed to the not-for-profit sector in 2004/05 were just over £60-million. This represents an increase in excess of four times general inflation.<sup>14</sup> Since 2001, the Legal Services Commission (LSC) has also been piloting a public defender service. There are presently eight public defender offices with the salaries of solicitors and accredited representatives being paid directly by the LSC. The cost of the public defender service in 2003/2004 was almost £4-million.<sup>15</sup>

The number of legal aid acts of assistance in relation to civil law matters has changed over recent years. As noted in Table 1 below, there have been significant shifts in legal aid work between 2000/2001 and 2003/2004 with both increases and decreases in the volume of work in different areas of civil law.<sup>16</sup> Notably, there have been significant rises in the number of immigration and community care cases and a significant decrease in welfare benefits and consumer law cases. Overall, however, while there are slightly fewer acts of advice and assistance, there has been a 66 per cent increase in net costs over the same period of time.<sup>17</sup> In civil representation cases, while the volume has reduced by 29 per cent, costs are down by just 8 per cent.<sup>18</sup> In addition, outside of family and immigration, overall acts of civil assistance have gone down by around a quarter and expenditure has reduced by around a third.

---

<sup>12</sup> See Legal Services Commission's Annual Report (London: TSO).

<sup>13</sup> Figures drawn from LSC Annual Reports and associated (unpublished) accounts.

<sup>14</sup> See fn 12 above.

<sup>15</sup> *Ibid.*

<sup>16</sup> This period of time is considered because the new Legal Help scheme was introduced in January 2000 which makes it difficult to compare earlier figures.

<sup>17</sup> See fn 12 above. Rising from £231,7-million in 2000/2001 to £383,8-million in 2003/2004.

<sup>18</sup> See fn 12 above. Reducing from £560,2-million in 2000/2001 to £514,1-million in 2003/2004.

**Table 1: Number of Civil Legal Aid Acts of Assistance, 2000/2001 and 2003/2004**

<i>Types of work</i>	<i>Legal Advice 2000/2001</i>	<i>Legal Advice 2003/2004</i>	<i>Legal Rep. 2000/2001</i>	<i>Legal Rep. 2003/2004</i>
Family	297,125	304,730	164,746	146,438
Immigration	108,600	147,614	1,192	2,476
Welfare benefits	91,119	78,053	185	109
Housing	86,727	82,730	13,531	14,318
Debt	50,145	55,269	1,700	694
Mental health	23,886	30,753	82	162
Personal injury	23,152	5,781	59,571	11,712
Consumer	14,491	6,413	5,468	1,858
Employment	12,706	11,015	264	199
Actions against police	6,221	4,988	1,882	1,243
Clinical negligence	4,874	4,177	8,843	7,337
Education	3,184	3,219	90	649
Community care	1,660	3,088	28	480
Public law	1,290	1,609	2,089	1,134
Miscellaneous	36,403	17,130	13,088	4,773
<b>Total</b>	<b>761,583</b>	<b>756,569</b>	<b>272,759</b>	<b>193,582</b>

Changes in the volume and overall cost of cases can, of course, be influenced by a number of factors. Remuneration rate increases, for instance, will clearly increase case costs. Increases in remuneration alone, however, do not help to explain recent changes in family law work. Thus from 2000/2001 to 2003/2004, while the volume of legal representation in family law cases reduced by 11 per cent there was a 16 per cent increase in the overall cost.<sup>19</sup> From a recent study of publicly-funded private law family cases carried out by the Legal Services Research Centre it has been possible to consider how legal aid funding might influence solicitors' management of cases and thereby impact on both the volume and cost of cases.

#### **4 SOLICITORS' CASE MANAGEMENT DECISIONS IN PUBLICLY-FUNDED PRIVATE FAMILY LAW CASES**

The study involved examination of just over 650 legal representation files drawn from 40 firms of solicitors. The type of private law family work dealt with by solicitors was categorised as either divorce, ancillary relief, children arrangements and/or domestic violence.<sup>20</sup> The study found that while solicitors dealt with a range of legal issues arising out of a relationship

<sup>19</sup> See fn 12 above. The overall cost of family cases increased from £421-million in 2000/2001 to £488,9-million in 2003/2004.

<sup>20</sup> For further details of the study see Kemp, Pleasence and Balmer "What Drives the Cost of Family Cases?" 2004 Vol 34 *Family Law* 827-876; and Kemp, Pleasence and Balmer "Incentivising Disputes: The Role of Public Funding in Private Law Children Cases" 2005 Vol 27 2 *The Journal of Social Welfare and Family Law* 125-141.

breakdown, the issues tended to be narrowly defined. In relation to domestic violence, for instance, solicitors mainly focus on obtaining an injunction, possession proceedings, the divorce and/or arrangements for the children. Such an approach can ignore a wide range of civil law issues which might also arise out of, or accompany, domestic violence abuse. When considering the legal implications associated with domestic violence, for example, a working group identified potential problems such as discrimination, education law, emergency/long-term accommodation, employment terms and conditions, falling behind with payments, homelessness, multi-debt problems, rent and mortgage arrears, unfair dismissal and welfare benefits entitlement which might also need to be addressed.<sup>21</sup>

When dealing with finance and property issues solicitors were also found to adopt a narrow approach, with the majority tending to focus on the *assets* in dispute rather than addressing any other welfare issues. When asked if they would deal with the broader welfare issues arising out of a relationship breakdown just one solicitor (out of fourteen) said that he would do so and this was because his firm also held a welfare benefits contract with the LSC.<sup>22</sup> The other solicitors felt that it was not cost-effective for legal aid funding to address such welfare issues and instead they would refer clients on to the local Citizens Advice Bureau or other advice agency. Thus, although the LSC is attempting to promote holistic service provision through initiatives such as FAInS,<sup>23</sup> it appears that for the most part solicitors still largely perceive their role as advocates in relation to traditionally constructed legal disputes.

While focusing narrowly on particular legal issues the research study also found that the current legal aid system encourages litigation rather than informal negotiation. This is because higher remuneration rates associated with court work mean that many solicitors prefer to deal with cases through litigation rather than attempt to settle them informally. Instead of encouraging early settlement through the advice and assistance scheme, therefore, some solicitors said that they would apply for a legal aid certificate to enable them to proceed to court “as quickly as possible”. Indeed, one solicitor said that it was now a “hanging offence” in her firm for a fee-earner to try and deal with a case out of court.

As we have set out elsewhere,<sup>24</sup> this adversarialism is compounded by a range of practices that appear to constitute “supplier-induced” demand (the supply of more services than a purchaser would pay for if the purchaser had

<sup>21</sup> See <http://www.durham.gov.uk/durhamcc/usp.nsf/pws/social+care+-+domestic+violence>.

<sup>22</sup> Nationally, just 7% of solicitors' firms with a family contract also hold a welfare benefits contract (information supplied by the Operations Directorate, Legal Services Commission).

<sup>23</sup> Since 2002 the LSC has been working with experienced family law practitioners through the Family Advice and Information Service (FAInS) pilot project in order to improve the quality of family law work. Solicitors are also encouraged in the pilot project to network with other agencies and support services in order to assist people in accessing a range of services through a single point of reference, initially through family lawyers. For details of the FAInS project see Walker “FAInS – A New Approach for Family Lawyers?” 2004 Vol 34 *Family Law* 436-441.

<sup>24</sup> Kemp *et al* 2005 Vol 27 2 *The Journal of Social Welfare and Family Law* 125-141.

the supplier's knowledge).<sup>25</sup> Echoing the earlier findings of Davis, Cretney and Collins,<sup>26</sup> these practices include the use of junior staff, who may not have the experience to efficiently conclude disputes, "cherry-picking" of more profitable cases and, although it was heavily criticised by the great majority of practitioners, the intentional adoption of an overtly confrontational approach.

The pressure on legal aid rates of payments to solicitors, which is perceived as lying behind much of the above, is also having the effect of leading solicitors to withdraw, or thinking about withdrawing, from the legal aid scheme altogether. While this has not been observed to the extent that some have predicted, since the introduction of legal aid contracting in 2000 the total number of civil legal aid contractors has reduced from 5 220 at the end of March 2001 to 4 715 in April 2004. This is partly a deliberate move by the LSC to move away from a reliance on a large number of generalist firms towards a smaller number of specialist quality-assured providers. However, a number of family specialist providers have also withdrawn from legal aid work.<sup>27</sup> This may have important consequences for the overall quality of family law services in the future.

The Government has set out proposals for reform of the family justice system in its White Paper, *Parental Separation: Children's Needs and Parent's Responsibilities*,<sup>28</sup> which are intended to promote the early resolution of family disputes. The 1996 Family Law Act, however, was also intended to reduce the number of cases proceeding to court following introduction of publicly funded mediation which was to be used as an alternative to litigation. In their evaluation of the LSC's pilot project for publicly funded mediation, however, Davis *et al* found that mediation tended not to be used as an alternative to formal proceedings.<sup>29</sup> Instead, they argue that the reforms led to an expansion of the legal aid scheme with mediation being used in some cases which would not have gone forward under a legal aid certificate. Despite the intention of the 1996 Act to radically reform the family justice system, it is striking that findings of the Legal Services Research Centre on private law family cases, considered above, found similar evidence of supplier-induced demand to that observed by Davis *et al* in 1994.<sup>30</sup>

---

<sup>25</sup> It was in the 1990s that the assumption that people who received legal services always needed them started to be challenged through the phenomenon of "supplier-induced demand". See Bevan, Holland and Partington *Organising Cost-Effective Access to Justice* (1994); Gray "The Reform of Legal Aid" 1994 10 *Oxford Review of Economic Policy* 51; and Bevan "Has There Been Supplier-induced Demand for Legal Aid?" 1996 Vol 15 *Civil Justice Quarterly* 98-114.

<sup>26</sup> *Simple Quarrels* (1994).

<sup>27</sup> See Davis, Finch and Barnham "Family Solicitors and the LSC – Part 1" 2003 Vol 33 *Family Law* 240-248.

<sup>28</sup> Department for Constitutional Affairs, Department for Education and Skills, Department for Trade and Industry *Parental Separation: Children's Needs and Parent's Responsibilities* (2004) Green Paper: CM 6273 (London: HMSO).

<sup>29</sup> See Davis, Bevan, Clisby, Cumming, Dingwall, Fenn, Finch, Fitzgerald, Goldie, Gretabatch, James and Pearce *Monitoring Publicly Funded Family Mediation* (2000) (London: Legal Services Commission).

<sup>30</sup> Davis *et al Simple Quarrels* (1994).



## 5 SURVEYING LEGAL NEED IN THE UNITED KINGDOM

While substantial sums of public money are being spent on legal aid in England and Wales, findings of large-scale surveys suggest that there are many people for whom access to justice remains no more than an aspiration. The surveys also highlight the wide range of problems that people experience, the array of advice providers that people turn to and the narrow focus on legal aid in addressing civil justice problems. The first empirical study of legal need was carried out by Clark and Corstvet in the 1930s, in response to a recession at the American Bar.<sup>31</sup> It was in the 1960s that the idea of quantifying and surveying legal need became popular. Until the 1970s, however, the approach adopted to empirical studies of legal need changed very little. Survey respondents were presented with a series of problems with potential legal solutions. If they were found to have experienced a problem, but not obtained the help of a lawyer in resolving it, they were deemed to have had an unmet need. Not surprisingly, it was surmised that there was a considerable amount of need for legal services which went unmet.<sup>32</sup> However, in the 1970s it became appreciated that the mere potential of a legal resolution to a problem could not, on its own, warrant a finding of legal need. An individual may, for example, legitimately prefer not to go to law. More importantly, even if an individual wishes to go to law, it may be that the law provides an inefficient route to resolution. Lewis, for example, once famously asked whether a tenant with a leaking roof really needed a lawyer, or just a ladder.<sup>33</sup>

Arguments over what constitutes legal need today have reached far greater levels of sophistication. It is appreciated that there are many stakeholders in the legal process and the talk of need must be clarified with a description of whose need is being discussed.<sup>34</sup> The functioning of the court process, for example, benefits greatly from the professional representation of those appearing in the courts. So, the institutions of law might themselves have “needs” relating to the legal assistance that is provided to individuals. As the huge legal aid budget in this country suggests, however, reliance on lawyers and formal processes is extremely costly. The concept of “need” is better understood as an essentially functional concept which does not exist independently of an associated end. That is, people do not need legal services, they need the ends which legal services can bring about, even if this is a sense of fairness.<sup>35</sup>

Recent empirical studies have sought to identify those persons who have experienced problems which could potentially involve legal process, and

---

<sup>31</sup> Clark and Corstvet “The Lawyer and the Public: An AALS Survey” 1938 47 *Yale Law Journal* 1972-1993.

<sup>32</sup> See Abel-Smith, Zander and Brooke *Legal Problems and the Citizen: A Study in Three London Boroughs* (1973).

<sup>33</sup> Lewis “Unmet Legal Need” in Morris, White and Lewis *Social Needs and Legal Action* (1973).

<sup>34</sup> See Pleasence, Buck, Goriely, Taylor, Perkins and Quirk *Local Legal Need* (2001) (London: Legal Services Commission).

<sup>35</sup> *Ibid.*

then characterise the problems and explore people's reasons for either going or not going to law. Following Genn's groundbreaking survey, *Paths to Justice*, Genn and Paterson's *Paths to Justice Scotland* and Pleasence *et al's Causes of Action*, a great deal more is known about people with civil and social justice problems.<sup>36</sup> Genn introduced the term "justiciable problems" in order to provide a legal *need* neutral description of problems which have a potential legal solution.<sup>37</sup> Justiciable problems, therefore, are simply those that might be resolved through legal process. The three surveys were designed to show how often people experienced justiciable problems "which were difficult to resolve", what they did about them and with what result. This has then been put into the context of people's motivation for taking action and the perceived barriers to justice as well as their perceptions of the legal system.

When comparing the English *Paths to Justice* findings and those set out in *Causes of Action* it is striking how similar they are, with just over a third of the population identified with a "justiciable" problem (being a civil or social justice problem).<sup>38</sup> There appear to be different findings in *Paths to Justice Scotland* where just 23 per cent of the population were identified with a "justiciable" problem. Genn and Paterson consider that this is largely due to underreporting owing to cultural differences between the two countries.<sup>39</sup> However, while there may be cultural differences, there are also demographic differences and differences in the provision of public services which also influence incidence rates. Nevertheless, both the English and Scottish findings (and indeed those from elsewhere), indicate that a substantial proportion of all people experience civil justice problems.<sup>40</sup>

In all these surveys the distribution of those respondents reporting one or more justiciable problem was far from random. As noted in *Causes of Action*, a number of predictors were found to be significantly influential: health/disability status; family type; tenure type; housing type; age; economic activity; income; qualifications. In particular, long-standing ill-health or disability was the most influential predictor of justiciable problems being reported. So, whereas 43 per cent of respondents who reported long-standing ill-health or disability also reported having one or more justiciable problem, this was compared to 35 per cent of the remaining respondents.<sup>41</sup>

---

<sup>36</sup> Genn *Paths to Justice: What People Do and Think About Going to Law* (1999); Genn and Paterson *Paths to Justice: What People in Scotland think and do about Going to Law* (2001); and Pleasence, Buck, Balmer, O'Grady, Genn and Smith *Causes of Action: Civil Law and Social Justice* (2004).

<sup>37</sup> Genn (1999).

<sup>38</sup> The figures are comparable after adjusting for the longer reference period in *Paths to Justice* and slightly different problem types. See Pleasence, Genn, Balmer, Buck and O'Grady "Causes of Action: First Findings of the LSRC Periodic Survey" 2003 Vol 30 *Journal of Law and Society* 11-30.

<sup>39</sup> Genn and Paterson (2001). The authors consider that with its strong socialist traditions, Scotland is more community-oriented than England and thus less likely to perceive disputes as being individual matters rather than collective problems.

<sup>40</sup> A follow-up study in Scotland had similar findings to the *Paths to Justice Scotland* study. See Palmer and Monaghan *The Public Perspective on Accessing Legal Advice and Information: Key Findings from a Microcosm Study* (2001).

<sup>41</sup> Pleasence *et al* (2004).

Also, all these surveys found that the incidence of different types of problems varied greatly. Consistently between surveys, problems such as consumer problems, noisy or anti-social neighbours, money and debt, employment and housing were most frequent. In contrast, problems such as immigration and nationality, unfair treatment by the police, homelessness and mental health were very infrequent.

The experience of multiple problems by some respondents was another feature of all three surveys. In particular, experiencing justiciable problems was found to have an additive effect. Each time a person experiences a problem, therefore, they were increasingly likely to experience additional problems. In *Causes of Action*, for example, of 38 per cent of respondents who reported one or more justiciable problems, 46 per cent reported two or more, and of those 47 per cent reported three or more.<sup>42</sup> Once again, respondents with multiple problems tended to be found in the vulnerable groups. In relation to family problems, for example, Pleasence *et al* found clear evidence that those who tended to experience them did so, not in isolation but in combination. In particular, “at the heart of the experience of multiple problems” they “repeatedly” found domestic violence.<sup>43</sup> As people experience multiple problems they were also found to become increasingly likely to experience problems that can contribute towards social exclusion.<sup>44</sup>

In the British surveys respondents were found to seek advice from a vast array of places. In *Causes of Action*, for example, although around a quarter of people (26%) first obtained advice from a solicitor and around a further quarter (23%) from the Citizens Advice Bureau (CAB) or other advice agencies, the remainder obtained advice from all over.<sup>45</sup> The five most common other advisers were local councils, trade unions and professional bodies, employers, the police, and insurance companies. However, these together accounted for only 28 per cent of advisers. While the “other” category accounted for 23 per cent of advisers, no one organisation or person accounted for more than 2 per cent of the advisers.

Some advisers, particularly Citizens Advice Bureaux, the police and insurance companies, routinely referred respondents on to other advisers (often to solicitors). However, the broad range of “other” advisers only infrequently referred respondents on (19%). Given the fact that many seemed unlikely sources of good advice, this is a cause for concern. It is also cause for concern that respondents referred on by “other” advisers were the least likely to actually go on and obtain advice from another adviser.

While those referred on to other advisers by Citizens Advice Bureaux, the police and local councils were very likely to obtain advice from the adviser to whom they had been referred, two-thirds of those referred by solicitors and

---

<sup>42</sup> *Ibid.*

<sup>43</sup> See Pleasence, Balmer, Buck, O’Grady, Maclean and Genn “Family Problems – What Happens and to Whom” 2003 Vol 33 *Family Law* 497-501.

<sup>44</sup> In the second survey the LSRC asked respondents if they had been a victim of crime. The findings highlight victimisation as a key predictor of civil and social justice problems, particularly for those who have been a victim of more than one type of offence. See Kemp, Pleasence and Balmer, unpublished findings from the Legal Services Research Centre’s Civil and Social Justice Survey.

<sup>45</sup> Pleasence *et al* (2004).

“other” advisers failed to obtain advice from the adviser to whom they had been referred. There are concerns raised about people who are referred on but fail to obtain advice and assistance. Indeed, the phenomenon of “referral fatigue” is identified in *Causes of Action*, which means that the likelihood of respondents obtaining advice from an adviser to whom they had been referred sharply declines as they visit more advisers. This suggests a degree of exhaustion as people are pushed from adviser to adviser.

The substance of advice and assistance offered to respondents by different types of adviser was also found to vary greatly. In terms of the subject matter of advice, for instance, solicitors and the police most often explored the legal positions of respondents. Reflecting the subject matter of advice they tended to provide, solicitors, the police and advice agencies most often suggested legal action. Indeed, solicitors suggested threatening or commencing legal action to over half of those to whom they provided advice, the police to over one-third.

While it is rare for formal legal action to be pursued in relation to civil justice problems, differences exist in the rates of use of legal action between problem types, with legal action common in family matters, but not in consumer matters, for example. Although much of this difference stems from the nature of the problems themselves and the legal context within which they occur it may be that some adviser types are more prone to commencing legal process.

Van Velthoven and Ter Voert in the Netherlands carried out a similar survey of legal needs,<sup>46</sup> replicating Genn's *Paths to Justice*. Similar to findings in the United Kingdom studies, a very wide range of general or specialist advisers were used by respondents. In all, 1 276 persons or organisations appeared to have been approached for 752 problems. The choice and number of advisers used was heavily associated with the type of problem experienced. The majority of respondents, for example, approached a trade union or professional association (for work-related problems) at some point, followed “at some distance” by the legal profession, the police, the legal aid centres and the legal expenses insurance companies. Similar to *Causes of Action*, however, there was a vast array of “other” advisers. Thus, in addition to being presented with a list of 22 persons and organisations where people could go for legal advice, the category of “other” was the largest single category at just under a quarter of all advisers.

## 6 MATCHING SERVICES TO NEEDS: LESSONS FROM ABROAD

Despite such a wealth of information derived from these surveys, and similar surveys conducted in the United States and New Zealand,<sup>47</sup> legal aid in

---

<sup>46</sup> Van Velthoven and Ter Voert *Paths to Justice in the Netherlands* (2004) (Leiden: Leiden University).

<sup>47</sup> See the American Bar Association *Legal Needs and Civil Justice: A Survey of Americans – Major Findings from the Comprehensive Legal Needs Study* (1994) (Chicago: American Bar Association); and Maxwell, Shepherd and Morris *Meeting Legal Service Needs: Research Report* (1999) prepared for the Legal Services Board (Wellington: Legal Services Board).

England and Wales remains focused on a narrow range of problems and advisers who are highly resource-intensive. Other countries have encountered similar problems in managing a dominant judicare system which has led to reforms in the delivery of legal aid services. In the Netherlands, for example, the Legal Aid Act 1994 set up a new salaried legal aid service which was required to provide front-line assistance. There were two main providers funded under this scheme: the Legal Advice and Assistance Centres (LAACs), which were intended to provide generalist advice and assistance, and the Dutch Bar, providing mainly follow-up assistance. In the late 1990s, an Advisory Report of the Committee on the Future Organisation of the Legal Aid System (named the Ouwerkerk Committee after its chairman) found that those most vulnerable to social exclusion, at whom the new scheme was targeted, were not making use of the LAACs, partly because they were not aware that such centres existed. In addition, the evaluation found that salaried lawyers working within the LAACs were not content with providing front-line advice and assistance but instead were tending to operate an extended and full service. Accordingly, in 2004 the LAACs were dismantled and Legal Service Counters set up to provide generalist advice and assistance and to refer cases on as appropriate.<sup>48</sup>

In moving towards the new legal aid model it is recognised in the Netherlands that there needs to be a sufficient number of lawyers in private practice who are willing to provide subsidised advice and assistance. There is cross-national evidence of changes within the legal profession, however, which are leading to fewer newly qualified lawyers wanting to become involved in legal aid work, mainly because of the low level of remuneration. This has led the Ministry of Justice in the Netherlands, in parallel with the above reforms, increasing hourly rates in order to encourage more young people to take on legal aid work.<sup>49</sup> There are similar problems in England and Wales, and in seeking to encourage new entrants to get involved in legal aid work the LSC has set up a scheme which provides funding aimed at increasing the number of training contracts held with legal aid firms and also the number of firms offering such contracts.<sup>50</sup>

Legal aid reform in Ontario, Canada, was also considered necessary because of rising legal aid costs and recognition of limitations within the judicare model in addressing unmet legal needs. In Ontario almost 80 legal clinics were set up which brought together lawyers, legal academics and community leaders committed to providing people on low incomes with adequate access to justice.<sup>51</sup> A network of community legal workers (CLWs)

---

<sup>48</sup> Van den Biggelaar *The Value-Added of a Good Gateway to the Legal Aid System* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa).

<sup>49</sup> See Fleming and Daly *Private Practitioners and the Australian Mixed Model* (2003) (paper presented to the 5<sup>th</sup> International Legal Services Research Centre Conference, Selwyn College, University of Cambridge).

<sup>50</sup> See fn 12 above.

<sup>51</sup> Currie *Legal Aid Delivery Models in Canada: Past Experience and Future Developments* (1999) (paper presented at the International Legal Aid Conference, Green College, Vancouver, British Columbia); and Zemans *Community Legal Workers in Ontario: A*

helps to extend the work of clinics into local communities by involving community-based volunteer paralegals.<sup>52</sup>

In South Africa, recent innovations in managing legal aid reform have been quite remarkable. With the breakdown of apartheid and the constitutional promise of “justice for all”, the South African Legal Aid Board found the challenges presented by the new democratic order seemingly insurmountable.<sup>53</sup> Under the *judicare* system the Board was having severe problems in processing a significant rise in the volume of legal aid applications and the cost of such applications was becoming increasingly prohibitive. Instead, a salaried scheme was set up comprising full-time lawyers and paralegals working in a network of 58 Justice Centres based throughout South Africa. In a relatively short period of time, the South African legal aid system changed from a dominant *judicare* model to one where the Justice Centres were undertaking 75 per cent of the work, *judicare* 20 per cent and co-operation partners 5 per cent.<sup>54</sup> Instead of relying on one method of legal aid delivery, therefore, there is now a mixed system in South Africa with the bulk of the work undertaken within a salaried scheme. The majority of legal aid work in South Africa, however, is criminal with civil accounting for just 12 per cent of legal aid work.<sup>55</sup>

Competition for scarce resources in developing countries means that spending on legal aid is limited. Not surprisingly, it is criminal work which tends to be prioritised in trying to ensure that at least those facing the most serious charges are legally represented. Accordingly, much less money is spent on civil legal aid and only a few people with legal needs are assisted. There appears to be an increasing awareness, however, of the limitations of the formal legal system and its failures to provide access to justice, particularly among the most disadvantaged sections of society.<sup>56</sup> In order to address these failures, and to extend access to justice, innovations in many developing countries are adopting a “grass-roots” approach to working with communities in order to reach the poorest and most vulnerable in society.

---

*Paralegal Case Study* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa).

<sup>52</sup> Zemans (2005).

<sup>53</sup> See Van As *Taking legal aid to the people* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa); and McQuoid-Mason *Lessons from South Africa for the delivery of legal aid in small and developing Commonwealth countries* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa).

<sup>54</sup> Legal Aid Board (2004) *Annual Report 2004* <http://www.legal-aid.co.za/about/report2004/index2004.htm>. The Legal Aid Board has cooperation agreements with various universities that have law clinics which provide legal assistance to their communities.

<sup>55</sup> *Ibid.*

<sup>56</sup> Muralidhar undertook a comparative study of the United States, the United Kingdom, India, South Africa and Bangladesh. He found a variety of reasons for failures within the formal legal systems which include: “excessive legal formalism; delays and expenses in pursuing litigation in courts; distrust of the legal system including its processes and institutions which are mystifying, alienating and intimidating; distaste of lawyers and courts as they are seen imposing and authoritarian”. See Muralidhar *Legal Aid Practice: Comparative perspectives* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa).

University Legal Aid Clinics in South Africa play an important role in promoting legal education by informing people about their different constitutional and legal rights and remedies that are available to them and providing legal aid services to local communities. Clinical legal education is a key facet of this university based model. Not only does it benefit those who receive help through it, it also helps to develop substantive and procedural skills at an early stage. Furthermore, it helps to foster a commitment in students to building a society based on democratic values, social justice and human rights.<sup>57</sup>

Also important in South Africa has been the role of paralegals in extending legal services into local communities. Post-apartheid, the paralegal model has been transformed by the setting up of the National Community-Based Paralegal Association, through which paralegals have been given the platform to influence the design and implementation of new legal aid delivery models. Building on this, a “cluster” model has recently emerged in South Africa, which is aimed at extending access to justice by adopting a partnership model. In a case study of a cluster model in the Eastern Cape, for example, Campbell describes how the coming together of the University Legal Aid Clinic, the Legal Resources Centre and the Paralegal Advice Offices means that it can pursue its shared objective to provide access to justice for poor and marginalized people, particularly in remote areas.<sup>58</sup>

With limited resources, it is not surprising that there is a greater use of voluntarism through the involvement of universities, the development of legal aid clinics and the use of paralegals in many developing countries. In India, it is the Legal Aid Clinic which mainly deals with the poor who cannot afford a lawyer. Instead of being offered a “second-class” service, however, the clinics are said to be preferred by many people because there is a common belief private practice may not give a good service to those who can pay only moderate fees.<sup>59</sup> The aim of the law clinics is to serve society and also to provide legal education by informing people about their different constitutional and legal rights and remedies that are available to them.

Similar innovations in Ghana have stemmed from concerns about the narrow focus and great cost of judicare systems. One innovation has been the setting up of the Legal Resources Centre (LRC), a human rights organisation providing free legal assistance to deprived communities. The main focus of the LRC has been to develop a grass-roots approach focusing

---

<sup>57</sup> See Haupt *Thinking Outside the Box: Reconciling the Demands of Clinical Legal Education and Community Service with Reference to Two Up Law Clinic Projects* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa).

<sup>58</sup> See Campbell *Case Study: A Cluster Model in the Eastern Cape Province, South Africa* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa). The cluster model can provide back-up legal services to community-based paralegal advice offices throughout the Eastern Cape and provide specialist land-legal services to farm workers and occupiers.

<sup>59</sup> Rajkhowa and Bhuyan *Societal Obligations of University Law Clinics* (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa).

on the most vulnerable.<sup>60</sup> For Atta-Kesson and Atuguba, the development of public legal education in Ghana has been one of the most effective tools of empowerment by touching on the areas of the law that are most relevant to the daily lives and problems of communities.<sup>61</sup> In the future, it is intended that the LRC will broaden its role in defining and articulating the wider interests of the communities. Instead of focusing on individual cases only, it intends to press for structural changes by making demands on relevant agencies, which include the Government, for reforms.<sup>62</sup>

Innovations of these kinds, taking place in both developed and developing countries, suggest that there may be a shift in the traditional paradigm from what Golub describes as the “rule of law” to one of “legal empowerment”.<sup>63</sup> Such a shift may even be taking place in England and Wales, although the *judicare* model remains central. As noted above, for instance, legal aid funding is provided to a range of front-line advice agencies, predominantly Citizens Advice Bureaux. The role of paralegals is increasing within private practice. There is also increasing interest and involvement by university law schools in providing *pro bono* work. While this has been a feature of some universities, such as Kent and Northumbria, over a number of years, there are now many more universities setting up law clinics.<sup>64</sup>

## 7 TARGETING LEGAL NEEDS: AN INTEGRATED APPROACH

With a particular focus on “social exclusion”, there is a growing recognition that the current legal aid scheme in England and Wales is too narrow in its concentration on traditional areas of law and reliance on the court process. Indeed, the Law Society, which has successfully championed legal aid as almost the sole preserve of solicitors, now argues that Government needs to take a more holistic view of access to justice. In particular, the Law Society states that:

For too long, greater emphasis has been placed on funding legal action through the courts – which should be the action of last resort – than on trying to resolve problems at the earliest possible stage. The current legal aid scheme is funded in such a way that expert advisers can rarely afford to

<sup>60</sup> See Atta-Kesson and Atuguba *Innovative Legal Aid Provisioning in Developing Countries: The Case of the Legal Resources Centre in Ghana*. (2005) (paper presented to the International Conference on Legal Aid, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa). Working in the LRC are young lawyers, community organisers and student interns who work as volunteers, providing free legal advice and counselling to communities.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> Golub *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* (2004) (paper presented to the 5<sup>th</sup> International Legal Services Research Centre Conference, Selwyn College, University of Cambridge).

<sup>64</sup> The LSC has provided funding to a small number of schemes run by universities. The law school at Northumbria University, for example, receives legal aid funding to help support the community law clinic which is run by law student volunteers. In addition, the College of Law, which provides post-graduate vocational legal education and training, has legal aid funding to support legal advice centres which are based in three city centres. A web search on “*pro bono* work+universities+England” highlights the involvement of many university law schools.



---

become involved in matters at an early stage, since better remuneration rates are associated with [Legal Representation] – where it appears that a matter may have to progress by way of court proceedings.<sup>65</sup>

Pleasence *et al*'s findings indicate that the dominant *judicare* model fails to reach many people who might be regarded as in need of advice.<sup>66</sup> They have suggested that legal aid services should better mirror the needs and behaviour of those who wish to use them, and embrace a broader range of providers. They also emphasise the importance of equipping those from whom people initially seek advice with the means to quickly and effectively refer them on when necessary, and the importance of accessible general advice services that act as gateways to formal advice and legal services. Within an integrated approach, they also highlight the role of education and information in raising awareness of the civil context of civil justice problems and the methods that can be used to resolve them.

The survey findings examined above help to illustrate how important it is for Government to provide “joined-up solutions to joined-up problems”. With civil legal aid funding actually reducing at present, this is helping to stimulate interest in adopting alternative methods of delivery and encouraging new providers into the market place. As noted in *Causes of Action*, for example, one of the most influential predictors of justiciable problems is long-standing ill-health or disability.<sup>67</sup> In recognising the vulnerability of people suffering from ill-health or disability, partnerships have been developed between health centres and advice agencies (enabling general and legal advice to be provided on-site in health centres). Advice on a range of justiciable problems is also available through Patient Advice and Liaison Services, set up across National Health Service hospitals.

A major task for Government in providing an integrated approach would be to identify what services currently exist in the public, private and voluntary sectors and to see how these can be co-ordinated in order to identify and address social justice problems. When looking at the range of problems that people experience, such an approach is likely to encourage new ways of working. Indeed, the LSC is encouraging new methods of delivery and a major development has been the setting up of CLS Direct, a telephone and Internet helpline which provides help and support in relation to a wide range of legal issues. Computerised information points are also being made available in some rural locations.<sup>68</sup>

## 8 CONCLUSION

The *judicare* system of legal aid in England and Wales is expensive in international terms and yet still has only limited reach in areas of social

---

<sup>65</sup> Law Society *Protecting Rights and Tackling Social Exclusion* (2004) (London: Law Society) 24. As noted above, the LSC is proposing changes to the family legal aid scheme which are intended to provide financial incentives to encourage the early settlement of cases.

<sup>66</sup> Pleasence *et al* (2004).

<sup>67</sup> *Ibid.*

<sup>68</sup> See Legal Services Commission *Improving Access to Advice in the Community Legal Service* (2004) (London: Legal Services Commission) for details of a telephone advice pilot, housing possession court duty solicitor scheme and specialist support pilot.

welfare law. By concentrating resources mainly on lawyers in private practice, the judicare system has acted to limit the number of people who can be assisted and narrowly focused resources on traditional areas of legal practice. Instead of legal aid expenditure having been determined by need for legal services, it has been determined by the distribution of legal service suppliers. This, in turn, has been determined by historical demand levels (at the supply location), professional interest and profitability.

Current LSC proposals to reform the legal aid scheme are intended to provide cost efficiencies. Within the family legal aid scheme, for example, it was noted above that the Government is encouraging the early settlement of cases rather than court action. Alongside this, the LSC is proposing a new level of service in family cases intended to encourage "early resolution" and "discourage unnecessary litigation" by front-loading case costs.<sup>69</sup> If more cases are settled without recourse to the courts then significant cost savings could be achieved. In order to encourage early settlement, however, there need to be sufficient incentives to bring expert advisers into the early stages of cases. If this were to be achieved, problems of supplier-induced demand might also be addressed.<sup>70</sup>

The LSC is also proposing broader changes to the way that services are funded. Under the civil non-family Legal Help scheme, for example, "tailored fixed fees" are being piloted. The pilot project represents a move away from the current scheme of paying for time spent on cases (inputs), to one where payment is fixed for each case undertaken (outputs).<sup>71</sup> There are also proposals to pilot "competitive tendering" for criminal work (excluding Crown Court cases) for solicitors' firms in the London area.<sup>72</sup>

However, major change to legal aid in England and Wales will be difficult to bring about, especially over a relatively short period of time. General concern over funding in publicly funded criminal cases, for example, has now led to solicitors and barristers threatening industrial action if the remuneration rates are not improved.<sup>73</sup> The threat of industrial action by the legal profession helps to highlight its powerful position within a legal aid scheme which relies predominantly on a judicare model.

When commenting on the recent legal aid reforms, the former Lord Chancellor, Lord Irvine, stated that legal aid should be used for the "millions" who currently felt excluded from justice.<sup>74</sup> With the majority of the civil budget currently being spent on lawyers managing a narrow range of problems

---

<sup>69</sup> See Legal Services Commission *A New Focus for Civil Legal Aid* (2004) (London: Legal Services Commission).

<sup>70</sup> The changes would need to be closely monitored to ensure that they were having the desired effect in changing solicitors' behaviour.

<sup>71</sup> The fixed fee is based on the average cost of that type of work carried out by the firm during 2003/2004 (see [http://www.legalservices.gov.uk/docs/cls\\_main/TFF\\_Q\\_and\\_A.pdf](http://www.legalservices.gov.uk/docs/cls_main/TFF_Q_and_A.pdf) for details of the scheme).

<sup>72</sup> For details of competitive tendering see the LSC's website <http://www.legalservices.gov.uk/criminal/lcct/lcct.asp>.

<sup>73</sup> Baksi "Solicitors Back Bar Fees Strike Threat Over Fees" 9 June 2005 *The Law Society Gazette*; and Gibb "Barristers Threaten to Strike if Legal Aid Pay Does Not Improve" 6 June 2005 *The Times*.

<sup>74</sup> See fn 9 above.

---

identified within family cases and with the demand-led criminal budget shrinking the resources available for other civil cases, it is not clear how such an aspiration will be achieved unless the legal aid scheme is radically transformed. Pleasence *et al*'s findings suggest that such a radical transformation is needed within the civil justice system in order to address social justice problems.<sup>75</sup> There have been innovations in the delivery of legal services in both the developed and developing countries which can assist in taking forward reform of the legal aid scheme. In particular, innovations in expanding the provision of front-line generalist advice, the extension of paralegal services and extending services in order to reach out to those most vulnerable in society can help to broaden the scope of legal aid.

In order to achieve such radical change, less reliance needs to be placed on the formal justice system and a greater emphasis needs to be placed on the socially excluded and those most vulnerable in society. In relation to developing countries, Golub argues that the "rule of law" orthodoxy focuses too much on law, lawyers and state institutions, and too little on development, the poor, and civil society. Further, he finds it doubtful whether the dominant rule of law paradigm, which underlies many legal aid systems, should be the main means for integrating law and development. Instead, he suggests that the alternative approach of "legal empowerment" is often preferable.<sup>76</sup> Accordingly, he asserts the need for a paradigm shift towards a legal empowerment programme which should include rigorous research that can help determine the most effective strategies and activities as well as contribute knowledge to governance. Such a shift may not be restricted to the developing world in a climate of increasing concern over the cost and reach of legal aid schemes.

---

<sup>75</sup> Pleasence *et al* (2004).

<sup>76</sup> Golub (2004).