

The CLS Strategy – is this really evidence based policy making?

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1 Introduction

- 1.1 The CLS strategy¹ proposes wide ranging changes to the delivery of advice and representation services in social welfare law.
- 1.2 The LSC has claimed, in the strategy² and elsewhere,³ that it is based on evidence – notably the second edition of *Causes of Action*.⁴
- 1.3 Research recently published by Richard Moorhead and colleagues as *A trouble shared*⁵ provides supporting evidence on one important issue – the extent to which clients experience “clusters” of problems.
- 1.4 The aim of this paper is to consider the evidence provided in *Causes of Action* and *A trouble shared*, and assess the extent to which the CLS strategy can legitimately claim to be evidence-based.
- 1.5 We will do this by considering four propositions, which appear to us to underlie the strategy, either explicitly or implicitly:
 - That the need for legal advice is essentially the same everywhere
 - That too many people fail to get advice
 - That people, especially those with social welfare law problems, do not experience single problems as much as clusters of problems
 - That referrals do not work.
- 1.6 Our conclusions can be summarised as follows:
 - *Causes of Action* suggests that need varies significantly between different geographical areas, for reasons that remain unclear and require further investigation.
 - The evidence does not support the proposition that too many people fail to get advice. *Causes of Action* suggests that the proportion of people who obtained advice increased significantly between 2001 and 2004.
 - Whether people seek, and obtain, advice would seem to depend largely on the nature of the problem, the availability of advice, and the identity of the first adviser consulted.
 - The link between the nature of the problem and the availability of advice suggests that a key issue concerns the availability of advice for particular types of problems, notably those concerning neighbours, rented housing and unfair

¹ *Making Legal Rights a Reality: The Legal Services Commission's Strategy for the Community Legal Service 2006-2011*, Legal Services Commission, March 2006

² The strategy states that “We will continue to ensure that the way forward for the CLS is based on strong evidence. The publication of the second edition of *Causes of Action* (the most extensive analysis of the need for advice and the impact of justiciable problems available anywhere) drives our vision that people need access to an integrated and seamless service. People do not face ‘legal problems’ but clusters of problems to which the law may offer one solution.” *Ibid* p.3

³ See, for example, the presentation given by Emma Knights to the ASA Conference, 24.3.06, available at <http://www.asauk.org.uk/fileLibrary/pdf/confc1.pdf>, and Crispin Passmore “Client-focused CLS”, *Legal Action* May 2006, p.9

⁴ Pascoe Pleasence *Causes of Action: Civil Law and Social Justice*, second edition, TSO, 2006

⁵ Richard Moorhead and Margaret Robinson and Matrix Research and Consultancy *A trouble shared – legal problems clusters in solicitors’ and advice agencies*, DCA Research Series 8/06, November 2006

police treatment. A case could clearly be made that the priority should be to increase the availability and profile of advice in at least the last two of these areas.

- There remains a “hard core” of people who try to get advice and fail. In 2004, this amounted to 12% of those with problems who tried to get advice. The evidence suggests that this failure is, to some extent, specific to certain types of problems, and reflects a lack of supply of advice.
- The evidence suggests that the “hard core” also includes certain types of clients – specifically those living in temporary accommodation. A case could clearly be made for targeting services on people in this situation, but this is not currently part of the CLS strategy.
- Both *Causes of Action* and *A trouble shared* support the argument that people experience “clusters” of problems to some extent. The findings are not clear cut, however, nor are the solutions obvious. The two reports suggest that the strategy fails to consider a number of important issues and that there are significant alternatives to the proposals contained in the strategy.
- The simple claim that referrals do not work is not supported by the evidence. *Causes of Action* demonstrates the significance of “referral fatigue”, but does not place it in context. It may be that the “problem” is, again, specific to certain types of justiciable problems and reflects a lack of supply.
- It may be that the “referrals problem” is not so much that people fail to reach advisers to whom they are referred, but that too many advisers fail to refer when they should. There are elements of the strategy which should help in this situation, but it may be that the strategy does not go far enough in this respect.

1.7 At the end of this paper we consider briefly a number of issues arising from this discussion, including:

- How much do we really know about the need for specialist advice?
- How should “clusters” be dealt with?
- Is there a case for CLACs and CLANs?

1.8 Before considering the evidence in relation to the four propositions set out above, we need to place them in context by looking briefly at the key findings of *Causes of Action* and the key points of the CLS strategy.

2 People’s experience of justiciable problems

2.1 *Causes of Action* presents evidence from major surveys, conducted in 2001 and 2004, in which people were asked if they had experienced one or more “justiciable problem” during the previous three and a half years. 36% of respondents to the 2001 survey and 33% of respondents to the 2004 survey reported having experienced one or more justiciable problems in the three-and-a-half year reference period. [p.15]⁶ The reported incidence of problem types was as follows: [p.27]

⁶ Page references cited in the text of this paper in normal print refer to the second edition of *Causes of Action*. Page references in italics refer to the first edition.

Problem type	2001 [percent]	2004 [percent]
Consumer	13.3	10.0
Neighbours	8.4	6.6
Money/debt	8.3	5.6
Employment	6.1	5.2
Personal injury	3.9	4.9
Rented housing	3.8	2.7
Owned housing	2.4	2.4
Welfare benefits	2.3	1.9
Relationship breakdown	2.2	1.7
Divorce	2.2	2.1
Children	1.9	1.5
Clinical negligence	1.6	1.6
Domestic violence	1.6	0.8
Discrimination	1.4	2.2
Unfair treatment by police	0.7	0.8
Homelessness	0.6	1.2
Mental health	0.5	0.2
Immigration	0.3	0.3

- 2.2 Reflecting the significant decrease in the general reporting of problems between 2001 and 2004, reported incidence decreased in 11 problem categories and increased in just four. [p.27]. The study suggests that the four observed increases, in personal injury, discrimination, unfair treatment by the police and homelessness were each understandable, for different reasons. [p.28]

3 The CLS Strategy

- 3.1 The key points of the CLS strategy are as follows:⁷
- 3.2 The “direction” is described as “purchasing bundles of services together, establishing Centres and Networks and contracting at a regional and sometimes national level”. This “will, over time, lead to fewer but larger contracts for legal aid work.”
- 3.3 When commissioning services, the LSC will “work to ensure that services are provided in an integrated way that reflects clients’ needs.” This means services that are:
- delivered across different categories of law (including linking social welfare law to family and crime)
 - available from initial advice to legal representation in complex cases
 - linked to other services.
- 3.4 CLS Direct will be expanded to deliver “a large proportion of LSC funded information, diagnosis and basic advice” and “a significant proportion of specialist legal advice on social welfare law.” It will also link up to Community Legal Advice Centres and Networks (CLACs and CLANs) to ensure a seamless service, with referrals in both directions.

⁷ *Making Legal Rights a Reality*, pp. 5-11

- 3.5 The LSC will commission face-to-face services in social welfare areas of law in “bundles”. The core bundle will include community care, debt, employment, housing and welfare benefits.
- 3.6 In urban areas with high social deprivation the LSC expects over time to contract with suppliers that provide a service in all five categories. In less densely populated and larger geographical areas the LSC will develop ways in which suppliers can co-operate to provide these services.
- 3.7 CLACs and CLANs are the models for delivery of these services. They will integrate funding streams to provide a full service. They will be responsive to local needs and will take legal services to groups of people that do not access mainstream services, such as certain BME groups and clients that are particularly vulnerable, such as those with mental health problems.
- 3.8 Where CLACs and CLANs are established the LSC may reduce or not renew social welfare law contracts of suppliers that are not involved in the CLAC or CLAN.
- 3.9 The “direction of travel” is summarised as “clearly one where all legally aided social welfare advice and representation is provided by a combination of Centres, Networks and CLS Direct subject to continuing evaluation to ensure quality, access and value.”
- 3.10 Many services in the other civil non-family areas of law (actions against the police, clinical negligence, education, immigration and asylum, mental health and public law) will, over time, be regionally based and contracted with large providers that operate either at a regional or national level.

4 The first proposition: need is essentially the same everywhere

- 4.1 The CLS strategy claims that need is “broadly the same across England and Wales”⁸, with the implication that the LSC can have one commissioning strategy, and one policy of CLACs and CLANs, that can be applied across both countries.
- 4.2 “Broadly the same” can mean different things to different people. *Causes of Action*, however, found significantly different proportions of people reporting justiciable problems as between Wales and England, and between the different regions of England, with the highest rates in London. The figures are as follows [p.23, 23n]

	2001	2004
Wales	32%	28%
England	38%	34%
London	47%	40%

- 4.3 *Causes of Action* states that:

“Outside of London, though, there was no discernable pattern. Also, there was no difference in incidence between urban and rural areas, although there was some suggestion that incidence was lower in areas of lowest population density.” [p.23]

⁸ Ibid p.16

Comment

- 4.4 The differences between Wales, England generally, and London are clearly significant, and require further investigation. The fact that there was “no discernable pattern” in the distribution of need in the regions outside London does not mean that these differences can just be ignored. Further research is clearly called for in order to establish what lies behind these differences.

5 The second proposition: too many people fail to get advice

- 5.1 There appear to be two separate arguments being proposed here:

- That too many people who have problems do not seek advice
- That too many people try to get advice and fail to get it.⁹

What does *Causes of Action* say?

- 5.2 *Causes of Action* provides evidence about the number of people who seek advice, and the number who are successful in obtaining it.

- 5.3 Overall, advice was obtained in relation to 43% of problems in 2001 and 52% of problems in 2004. [p.103]

- 5.4 *Causes of Action* analyses people’s responses to problems in five categories:

- Did nothing
- Handled alone
- Obtained advice
- Tried to obtain advice and failed
- Tried to obtain advice, failed, and handled alone.

- 5.5 The percentages of people’s responses, in each category, is as follows:¹⁰

Response	2001 [percent]	2004 [percent]
Did nothing	19.0	10.5
Handled alone	30.4	31.0
Obtained advice	43.1	51.6
Tried to obtain advice and failed	2.3	2.0
Tried to obtain advice, failed and handled alone	5.2	5.0
Total	100.0	100.0

- 5.6 The most important findings can be summarised as follows:

- There was a dramatic drop between 2001 and 2004 in the proportion of people who did nothing, and an equivalent increase in the proportion who obtained advice.
- Where advice was sought, 15% of those seeking advice were unsuccessful in 2001 and 12% in 2004.¹¹

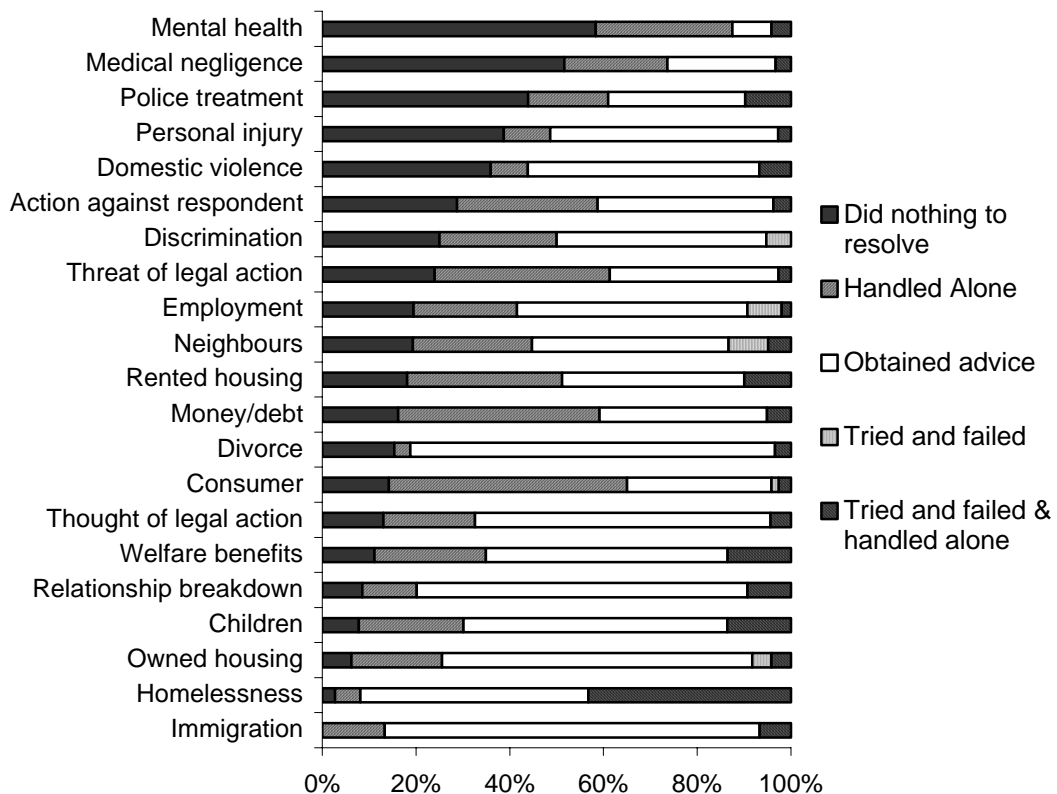
⁹ See, for example, the second slide of Emma Knights’ presentation, referred to in note 3.

¹⁰ We are very grateful to Pascoe Pleasence for providing us with these figures.

¹¹ Pascoe Pleasence has confirmed that the 2004 figure of 16%, cited at p.96 of the second edition of *Causes of Action*, is incorrect and that the correct figure is 12%.

- These figures are affected by the high proportion of those with neighbour problems who were unsuccessful in obtaining advice. Excluding neighbour problems, the proportions that were unsuccessful were 13% in 2001 and 11% in 2004. [p.96-97]
- The survey of people in temporary accommodation in 2001 showed a different pattern. Of those with problems, 28% took no action. Of those who took action, 95% sought advice. However, of those who sought advice, 26% were unsuccessful in doing so. [p.127]

5.7 A number of factors are linked to whether respondents did nothing to resolve their problems, handled them alone, obtained advice, or tried to obtain advice and failed. The key factor however was the type of problem experienced. [p.86, 90] This can be demonstrated most clearly from the following chart, in relation to the 2001 findings:¹²



5.8 *Causes of Action* makes three important points about people's responses to problems:

- Whether people seek advice reflects how serious they think a problem is [p.93-94]
- There was a strong link between people's awareness of local advice services and whether or not they took action. Inaction was far more common among respondents who were unaware of advisers in their locality than among respondents who were aware of local advisers. [p.82]

¹² We are grateful to Pascoe Pleasence for allowing us to reproduce this chart, which appears in an article by Pascoe Pleasence and colleagues, "Multiple justiciable problems: common clusters and their social and demographic indicators", *Journal of Empirical Legal Studies* Vol.1 No.2 (2004). Pascoe Pleasence has informed us that the proportions were similar in 2004 in respect of the larger problem categories.

- Success in obtaining advice varies considerably depending on the type of problem and the type of adviser consulted.

Type of problem

- 5.9 Unsuccessful attempts to obtain advice were most likely to be reported in connection with problems relating to housing: particularly problems concerning neighbours and rented housing. [p.96]
- For neighbour problems the failure rate (of those who sought advice) was 24% in 2001 and 18% in 2004.[p.96-7]
 - For rented housing problems the failure rate (of those who sought advice) was 20% in 2001 [p.97n] and 16% in 2004.¹³
- 5.10 High proportions of unsuccessful attempts to obtain advice were also found in relation to
- Homelessness problems in 2001 [p.62; p.96n]
 - Welfare benefits problems in 2001 [p.62]
 - Problems of unfair police treatment, where the failure rate (of those who sought advice) was 25% in 2001 and over 40% in 2004 [p.96n - 97n].
- 5.11 By contrast, unsuccessful attempts were least likely to be reported in connection with family problems – particularly divorce – and personal injury. [p.97]
- 5.12 Unsuccessful attempts were also rare in relation to
- Consumer matters in 2001 [p.62]
 - Problems relating to children in 2004 [p.97n].
- 5.13 *Causes of Action* suggests that “these different rates of success can in large part be explained by the fact that different types of advice service are commonly used in relation to different problem types.” [p.97]

Type of adviser

- 5.14 Respondents who attempted to obtain advice from solicitors and health professionals – and to a lesser extent CABx and trade unions – were more likely to report actually obtaining it. [p.101]
- 5.15 Lower success rates were achieved in relation to local councils, employers, the police and “other” advisers. [p.101]
- 5.16 Generally, *Causes of Action* suggests that
- Respondents’ choices of first advisers varied greatly between problem types. [p.108]
 - The “fit” of first advisers to problem type was nevertheless generally sensible and appropriate. [p.111]
 - Respondents’ final advisers differed between problem types to almost as great an extent as first advisers.
 - Final advisers were much more likely to be solicitors. They were also more likely to be “other” advisers. [p.112] This indicates in part a progression from generalist to specialist advisers but also some confusion as respondents tried to navigate an advice maze. [p.131]

¹³ We are grateful to Pascoe Pleasence for providing us with the 2004 figure.

Comment

- 5.17 It is difficult to comment on the overall percentage of people with problems who seek advice. The fact that someone has a justiciable problem does not mean that they “should” seek advice. Whether people seek advice reflects how serious they think a problem is. Many handle their problems alone and do so successfully.¹⁴
- 5.18 The more important issue concerns those who seek advice and fail to get it.¹⁵ The importance of the type of problem and type of adviser (and the link between the two) highlights a number of issues concerning the availability of legal advice.
- 5.19 Certain problems are easier to get advice about – especially those that are normally handled by solicitors, such as family and personal injury problems.
- 5.20 Other problems are more difficult to get advice about, notably problems to do with neighbours, rented housing and unfair police treatment. It is likely that this also reflects the availability of legal advice.
- 5.21 Neighbour problems are difficult to resolve. Solutions are often hard to find. There is no obvious source of advice to help with such problems. No advice source sees neighbour problems as a major focus of their role, with the exception of community mediation services, which have a very low profile within the CLS and receive no CLS funding.
- 5.22 Rented housing problems are rather different. They potentially affect a significant proportion of the population.¹⁶ The law is complicated due to the number of different housing statuses. Advice on such problems is given by some NfP agencies, some solicitors and by Shelter, but there is no clear market leader or first port of call.¹⁷ Difficulties in obtaining advice are likely to result from:
- A lack of availability of good housing advisers
 - A lack of knowledge about those that do exist
 - The lack of any clear message about who to contact.
- 5.23 Unfair police treatment is different again. It is a specialist area of law, with very few specialists, who are probably unknown to most other advisers, who may know very little about this area of law.¹⁸
- 5.24 It seems likely that the variations in success in obtaining advice reflect the availability of legal advice, and people’s knowledge of it. The question in policy terms is what to do about it. Neighbour problems are not a priority within the CLS,¹⁹ an issue that has never been properly debated. Rented housing problems and problems of unfair police treatment are, or should be, priorities. A case could clearly be made that the

¹⁴ Those who handle their problems alone have similar success rates to those who obtain advice. See table 4.1 at p.144

¹⁵ They are much less likely to obtain their objectives. Ibid

¹⁶ In England, the 2001 census shows 31% of dwellings within the rented sector – 12% privately rented, 13% rented from local authorities and 6% rented from housing associations.

¹⁷ In October 2006, there were 393 solicitors’ offices and 167 Not for Profit agencies with housing contracts with the LSC. During 2005-06, 60% of new housing cases were started by solicitors’ firms, and 40% by NfP agencies.

¹⁸ In October 2006, there were 72 solicitors’ offices with contracts in “actions against the police”. Approximately one third of these were in London.

¹⁹ The government agenda in relation to anti-social behaviour does of course represent an important part of the picture, but has not included an increased priority for advice on neighbour problems within the CLS.

priority should be to increase the availability and profile of advice in these two areas at least.

- 5.25 An important finding in *Causes of Action* concerns the situation of people in temporary accommodation. In 2001, at least, they were significantly more likely to take no action, or, if they sought advice, to fail to obtain it. This would suggest that targeting people in this situation should also be a priority.

6 The third proposition: people, especially those with social welfare law problems, do not experience single problems as much as clusters of problems

Introduction

- 6.1 The CLS strategy claims that people “do not face ‘legal problems’ but clusters of problems to which the law may offer one solution”²⁰ and that services in social welfare areas of law should be commissioned “in bundles that recognise the multiple nature of clients’ problems.”²¹
- 6.2 We need therefore to consider very carefully what evidence there actually is about “clusters” and whether it suggests the need for any particular changes to the ways in which legal advice services are delivered.

What does *Causes of Action* say?²²

- 6.3 *Causes of Action* makes a distinction between the experience of multiple justiciable problems and the occurrence of “clusters”. The former merely records the fact that people experienced more than one justiciable problem within the three-and-a-half year reference periods covered by the studies conducted in 2001 and 2004.
- 6.4 “Clusters” however are essentially statistical constructs, indicating a significant correlation between the occurrence of two or more types of problems within a particular set of data. It is therefore possible to find different “clusters” in different data sets.
- 6.5 The first edition of *Causes of Action* identified four “principal problem clusters” – a family cluster, a homelessness cluster, a health and welfare cluster and an economic cluster. [p.48] The 2004 survey however did not confirm the existence of the health and welfare cluster, although it did find a connection between discrimination and clinical negligence. Thus, according to the second edition:

“While other problem clusters emerged from hierarchical cluster analysis – such as one, in 2001, involving clinical negligence, mental health and immigration problems and one, in 2004, involving discrimination and clinical negligence – these were not consistent between the two surveys.” [p.72]

²⁰ *Making Legal Rights a Reality* p.3

²¹ *Ibid* p.7

²² The following analysis also draws on the article by Pascoe Pleasence and colleagues, “Multiple justiciable problems: common clusters and their social and demographic indicators”, see note 12 above. We are very grateful to Pascoe Pleasence for providing us with a copy of this article.

- 6.6 Given the distinction between the experience of multiple justiciable problems and the findings about clusters, it is worth considering each in turn.²³

The experience of multiple justiciable problems

- 6.7 Respondents to the 2001 survey averaged just over two problems per respondent who reported a problem over the three-and-a-half year reference period, as compared to around 1.75 in 2004. [p.52-3] Moreover:

“In both 2001 and 2004, problems were distributed unevenly among those who reported them. Experiencing justiciable problems has an additive effect. Each time a person experiences a problem they become increasingly likely to experience additional problems.” [p.53]²⁴

- 6.8 The proportions of people reporting problems in England and Wales, according to *Causes of Action*, can be summarised as follows:

	2001	2004
One or more problems	37%	33%
Two or more problems	17%	12%
Three or more problems	8%	5%

- 6.9 Put another way:

	2001	2004
One problem	20%	21%
Two problems	9%	7%
Three or more problems	8%	5%

Clusters

- 6.10 *Causes of Action* explains clusters in the following terms:

“Problem types do not have to cause or follow on from one another in order for there to be a connection between them. Connections can also stem from coinciding characteristics of vulnerability to problem types, or coinciding defining circumstances of problem types.” [p.65]

- 6.11 Since clusters consist of combinations of problem types, the number of people that experience more than one type of problem within a cluster is principally determined by the frequency of the constituent problem types.²⁵
- 6.12 While clusters are not necessarily mutually exclusive, the experience of multiple problems in multiple clusters was rare.²⁶

²³ *Causes of Action* also considers whether some problems “trigger” others. The only “triggers” found to be statistically significant however were domestic violence, divorce and problems ancillary to relationship breakdown. P.58-59

²⁴ In 2001, 37% of respondents reported one or more problems. Of these, 46% reported two or more. Of these, 47% reported three or more. In 2004 the equivalent figures were 33%, 37% and 44%. P.53, 53n

²⁵ This point is made most clearly in the clusters article, see n.12 above [p.20]

²⁶ *Ibid* [p.21]

- 6.13 The second edition of *Causes of Action* identifies three distinct clusters. Firstly there is a **family cluster**
- “As anticipated – given that family type problems appear to follow on from one another, are each most frequently reported by people aged between 25 and 44, and have substantially overlapping defining circumstances - a distinct cluster of family problems is evident, comprising domestic violence, divorce and relationship breakdown problems. In 2001, the cluster also included problems regarding children. This same cluster was also revealed by a secondary hierarchical cluster analysis of Paths to Justice data. In fact, almost half of all family problems were reported as having occurred in combination with one or more other family problems.”* [p.66]
- 6.14 The family cluster is described as “the most distinct” of the clusters. [p.77]
- 6.15 80 respondents reported multiple family cluster problems in 2001 and 46 in 2004. [p.73]
- 6.16 Secondly there is a **homelessness cluster**
- “Hierarchical cluster analysis of 2001 data also indicated a problem cluster involving homelessness, unfair treatment by the police and action being taken against the respondent. Factor analysis also revealed this cluster, although it suggested an additional component in problems relating to rented housing. In fact, over half of all homelessness problems reported in 2001 were reported in combination with a rented housing problem, and the expanded cluster principally embodied a cycle of rented housing and homelessness problems. Hierarchical cluster analysis of 2004 data also connected homelessness and problems concerning rented housing and, further, indicated that both are linked to benefits problems.”* [p.69]
- 6.17 69 respondents reported multiple homelessness cluster problems in 2001 and 46 in 2004. [p.73]
- 6.18 Thirdly there is an **economic cluster**. This is described in three different forms: a “broad range of problem types”,²⁷ a “wider cluster” of six or seven problem types; and a “core” cluster of four problem types.
- 6.19 The “broad range” is defined in the following terms:
- “A third cluster identified by hierarchical cluster analysis involved a broad range of problem types including those relating to consumer transactions, money/debt, employment, neighbours, personal injury, rented housing, welfare benefits and discrimination.”* [p.70]
- 6.20 The first edition of *Causes of Action* contains a similar list, including owned housing but excluding discrimination. [p.40-41]
- 6.21 Both editions define a “core” cluster of four problems: consumer, money/debt, neighbours and employment, within a wider cluster including personal injury, rented housing problems (in 2001) and owned housing (in 2004).
- 6.22 The second edition emphasises the significance of rented housing problems:
- “Although rented housing problems were more closely associated with the homelessness cluster in 2004, 55 per cent of respondents reporting rented housing*

²⁷ This is also referred to as the “nine-problem cluster” in the clusters article, see n.12 above.

problems also reported one or more problems relating to consumer transactions, money/debt, employment, neighbours, personal injury or owned housing.” [p.70]

6.23 It also states that:

“Of the seven core problems in this ‘economic’ cluster, money/debt problems most often overlapped with consumer problems, perhaps reflecting the overreaching economic activity of some of those who face money/debt problems.” [p.71]

6.24 The complexity of the relationships between the different problems within this cluster is illustrated by the following:

“Reporting of problems with neighbours did not overlap substantially with reporting of any of the other individual economic cluster problems. However, problems with neighbours are associated with high-density housing – which is more common in the rented housing sector (leading to respondents in the sector being more vulnerable to such problems) – and with extended periods being spent at home, a possible consequence of both employment and personal injury problems. Interestingly, though, factor analysis of 2001 survey data suggested that, where problems concerning consumer transactions and neighbours occur in combination, it is unlikely that employment and personal injury problems will also occur, and vice versa.” [p.72]

6.25 510²⁸ respondents reported multiple four-problem economic cluster problems in 2001 and 275 in 2004. [p.74]

6.26 671 respondents reported multiple seven-problem economic cluster problems in 2001 and 417 in 2004. [p.74]

What does *A trouble shared* say?

6.27 In *A trouble shared* Richard Moorhead and his colleagues set out specifically to examine the existence of clusters amongst clients of a small number of advice organisations: three solicitors firms, three Citizens Advice Bureaux, three Law Centres/specialist advice agencies and three local authority advice providers. They focused on three areas of social welfare law where research suggested that clusters were particularly likely to occur, namely housing, welfare benefits and debt.²⁹ They observed mostly initial interviews with 178 clients and conducted follow up interviews with a number of those clients. They also asked advisers to provide information about the problems experienced by clients in a number of recent cases, which provided information on 487 additional cases.

6.28 The methodology of this study is therefore very different from that of *Causes of Action*. Instead of investigating the problems experienced by a sample of the general population, *A trouble shared* investigated

- the problems experienced by clients who presented to advice organisations primarily with problems concerning housing, welfare benefits and debt³⁰
- the problems experienced by clients whose cases had been taken on as casework by those organisations.

²⁸ Pascoe Pleasence has informed us that the 510 figure may be an error and that the appropriate weighted figure may be 429.

²⁹ *A trouble shared* p.7

³⁰ The study does not explain how clients came to those interviews, and the extent to which previous filtering or triage had taken place before the clients had the (mostly) initial interviews with the organisations concerned.

- 6.29 As far as the general prevalence of cluster problems is concerned, therefore, the findings of this study cannot be compared directly with the findings of *Causes of Action*. It is worth noting nevertheless that
- 43% of clients whose interviews were observed had two or more problems – which the study describes as “consistent” with the *Causes of Action* findings³¹
 - 56% of clients whose cases had been taken on had two or more problems.
- 6.30 *A trouble shared* provides important information about the extent to which clients of advice organisations present with multiple problems that are being experienced at the same time. The study also found that a significant number of problems had not been reported to or picked up by the advice organisations studied. Subsequent interviews of 58 clients revealed that 29 had further problems over and above those presented. About half of these problems appeared to have some link with the presenting problems.³²
- 6.31 Amongst the clients whose interviews were observed, rented housing problems and benefits problems were commonly associated. Debt problems were also closely associated with these problems.³³ The report points out that “this is not surprising given the nature of suppliers recruited to the study.”³⁴
- 6.32 Amongst the wider sample of clients whose cases had been taken on by the organisations the strongest clusters found were
- Rented housing, benefits and debt, and, to a lesser extent, mental health problems
 - Relationship breakdown, children, home ownership and domestic violence
 - Discrimination and employment.³⁵
- 6.33 The authors suggest that the clusters found “present a reasonably strong similarity” to those found in *Causes of Action*.³⁶ They comment as follows:
- “As one would expect, given the specialisms of the advisers observed, the problems we observed clustered around housing, benefits and debt, but there was a wide range of problem types, most notably with benefits, homelessness, relationship and employment problems linked with a wide range of other problems. Mental health problems also had linkages across a range of problems.”³⁷*
- 6.34 They note also that
- “Interestingly, the three main foci of the study (benefits, debt and housing) were not the problem types associated with the largest problem clusters for either data set, although they were the most prevalent problem types. In particular, problems that involved relationship breakdown/children, home ownership, mental health, domestic violence, employment and homelessness gave rise to the most complex (and arguably the most serious) problems.”³⁸*

³¹ *A trouble shared* p.17

³² *Ibid* p.52

³³ *Ibid* p.21

³⁴ *Ibid* p.20

³⁵ *Ibid* pp.22-23, 34

³⁶ *Ibid* p.34

³⁷ *Ibid* p.89

³⁸ *Ibid* pp.26. The study does not explain the ways in which such problems are ‘complex’ or ‘serious’.

6.35 In considering the ways in which advisers responded to clusters of problems, *A trouble shared* analysed how problems were identified and how advisers responded, depending on whether the adviser was

- A generalist
- A specialist faced with a problem within her/his expertise
- A specialist faced with a problem outside her/his expertise.

6.36 According to the report ³⁹

- Clusters were generally presented explicitly as part of the main issue. About 12% were raised implicitly.
- The evidence suggests that generalist advisers and specialists faced with problems outside their expertise are less able or willing to deal fully with such problems.
- Generalists were most likely to signpost and refer clients.
- Generalists were most likely to advise clients to deal with problems themselves.
- Specialists advising outside their specialism were more likely to indicate a limited willingness to help or that no action was available.
- The evidence suggests a reluctance by specialists to refer/signpost outside their own organisations.
- There may well be a relationship between interviewing style and/or competence and the likelihood that clients reveal more than one problem.
- Overall, however, the evidence suggests that adviser characteristics and roles are more important determinants of advice strategy than the organisation's capacities.

Comment

The prevalence of multiple problems

6.37 It is rather misleading to say, as the strategy does, that “people do not face ‘legal problems’ but clusters of problems to which the law may offer one solution”.⁴⁰ According to *Causes of Action* most people do not face any problems within a three-and-a-half year period. Of those that do, most (54% in 2001 rising to 63% in 2004) face one problem only.

6.38 Some surveys find even fewer multiple problems. The Scottish surveys found “quite unexpectedly” that 82% of respondents who had experienced justiciable problems reported only one serious problem.⁴¹

6.39 The *Causes of Action* findings reveal significant changes between 2001 and 2004. While the percentage of people experiencing problems is lower in 2004, the percentage of people experiencing multiple problems is lower still. The percentage experiencing one problem only is slightly higher in 2004 than in 2001, whilst the percentage experiencing two or more or three or more problems is significantly lower.

³⁹ Ibid, pp.42-45, 48, 49, 51, 52, 92

⁴⁰ *Making Legal Rights a Reality* p.3

⁴¹ J. Law et al *Community Legal Service: Assessing Need for Legal Advice in Scotland – Overview Report*, 2004 p.40

6.40 Most problems were experienced by people who experienced more than one problem within the three-and-a-half year reference period.⁴² Nevertheless, the low proportions of people reporting multiple problems raise two questions:

- whether it is right to base a national legal aid policy on the assumed access difficulties of such proportions of the population
- whether the CLS strategy will in fact produce a situation in which suppliers are able to overcome such difficulties.

The significance of clusters

6.41 The findings about clusters are very important. The question, however, is whether they are strong enough to justify a wholesale restructuring of legal advice services.

6.42 The numbers of people reporting cluster problems in 2001 and 2004 can be compared to the numbers of respondents in the two *Causes of Action* surveys: 5,611 in 2001 and 5,015 in 2004. The results can be summarised as follows:

	2001	2004	2001	2004
	Percent of all respondents	Percent of all respondents	Percent of those respondents reporting one or more problems	Percent of those respondents reporting one or more problems
Family cluster	1.4%	0.9%	3.9%	2.7%
Homelessness cluster	1.2%	0.9%	3.4%	2.7%
<i>4 problem economic cluster</i> ⁴³	<i>9.1%</i>	<i>5.5%</i>	<i>25.1%</i>	<i>16.4%</i>
7 problem economic cluster	12%	8.3%	33%	24.9%

6.43 We have put the figures for the four problem economic cluster in italics since these figures are of course included within the figures for the seven problem economic cluster.

6.44 It should be noted that all the clusters are less evident in 2004, as compared to 2001. In 2004 they are experienced by smaller proportions of people with problems, and not just smaller proportions of all respondents (which you would expect, given the lower reporting rate of problems overall). This reflects the decline in the proportion of people experiencing multiple problems, discussed above.⁴⁴

6.45 *Causes of Action* does not contain any information about the length of time that occurred between the experiences of problems that fell within the three clusters. It

⁴² In 2001, the 17% of respondents who experienced two or more problems accounted for approximately 73% of the problems. In 2004, the 12% who experienced two or more problems accounted for approximately 63% of all problems.

⁴³ The 2001 percentages are calculated from the figure of 510 given in *Causes of Action*, which may not be correct. See n 28 above.

⁴⁴ See paras 6.8-6.9 above

does not tell us how often problems appeared contemporaneously as compared to over longer periods.

6.46 *Causes of Action* suggests to us that relatively few people experience “clusters” of problems.

6.47 *A trouble shared* however argues that

*“In the areas of work we looked at – principally debt, housing, benefits and some family work – clusters of justiciable problems did present regularly amongst the clients we looked at.”*⁴⁵

The nature of clusters

6.48 *A trouble shared* also suggests however that

*“the precise details of individual clusters are in some ways less important than the tendency for different problems to occur for the same clients in broad and unpredictable ways.”*⁴⁶

6.49 While this may be important as a finding, it appears to us to be highly problematic as far as the planning and organisation of legal advice services are concerned. If different problems occur for similar clients in unpredictable ways, it makes it more difficult to plan legal advice services in order to reflect the clusters of problems that clients experience.

6.50 If one considers the findings of the two reports together the position is quite complicated.

6.51 Both studies suggest that there is a cluster concerning relationship problems, which includes relationship breakdown, divorce, domestic violence, children,⁴⁷ and home ownership.⁴⁸ This **family** cluster does not seem to be problematic. As *Causes of Action* points out, family type problems appear to follow on from one another and have “substantially overlapping defining circumstances”. The cluster should not represent a problem in terms of access to legal services, since such problems are typically taken to solicitors, who should be able to deal with all of them. In any event, *Causes of Action* suggests that the proportion of people reporting this cluster is relatively small.

6.52 The other clusters are more problematic.

6.53 Both studies suggest a link between housing, debt and benefits problems, but the position is not as clear-cut as one might expect.

⁴⁵ Moorhead et al *A trouble shared*, p.89

⁴⁶ Ibid

⁴⁷ Though only in 2001, according to *Causes of Action*

⁴⁸ *A trouble shared* only

- *Causes of Action* identifies a small⁴⁹ “homelessness cluster”, related to problems with rented housing, with an “indication” that both are linked to benefits problems.
- The “core” of the “economic cluster” identified by *Causes of Action* is a four-problem cluster consisting of consumer transactions, money/debt, neighbours and employment. The strongest overlap is stated to be between money/debt and consumer problems. However, the implications of this “core” cluster are not clear, since neither consumer nor neighbour problems are a priority within the CLS.
- This “economic cluster” contains debt problems within its “core”, housing problems within the “wider cluster”, but it only includes benefits problems within the “broad range” of (nine) problem types.
- The “wider” economic cluster is so wide that it is hard to assess its significance. It seems to encompass many of the problems experienced by people on low incomes, although its incidence is also related to higher incomes. It is surprising that the cluster does not include welfare benefits. The connections between the problems may in any event have more to do with “coinciding characteristics of vulnerability to problem types” rather than to any more direct connections between the problems themselves.
- *A trouble shared* identifies a clear link between housing, debt and benefits problems, but notes that “this is not surprising given the nature of suppliers recruited to the study.”⁵⁰

6.54 *A trouble shared* also identifies a third cluster comprising employment and discrimination problems, but it is not clear whether this really is a cluster of two distinct problems, as distinct from a finding that a number of clients had problems of discrimination at work.⁵¹

6.55 Both studies refer to people experiencing a wide range of problems. The “economic cluster” in *Causes of Action* includes consumer, neighbour and employment problems in its “core”, personal injury and housing problems in the “wider” cluster, and benefits and discrimination in the “broad range” of problem types.

6.56 *A trouble shared*, as we have noted, states that

*“there was a wide range of problem types, most notably with benefits, homelessness, relationship and employment problems linked with a wide range of other problems. Mental health problems also had linkages across a range of problems.”*⁵²

6.57 It notes also that

⁴⁹ The clusters article suggests [p.25] that this may be partly due to the sampling procedures used in the survey, since all respondents had a private address. It suggests that further analysis of rough sleepers or those in temporary accommodation could further evaluate this cluster, particularly with a view to linking homelessness, family breakdown and domestic violence. *Causes of Action* cites evidence that 4% of respondents to the Survey of English Housing in 1994-5 had experienced homelessness in the preceding 10 years. [p.28n] It also suggests that slightly over 15% of respondents to its survey of people in temporary accommodation had experienced homelessness problems within the reference period. [p.51]

⁵⁰ *A trouble shared* p.20

⁵¹ The report states that, out of 10 clients with discrimination problems and 51 with employment problems, 8 had discrimination and employment problems. Ibid p.23

⁵² Ibid p.89

*“problems that involved relationship breakdown/children, home ownership, mental health, domestic violence, employment and homelessness gave rise to the most complex (and arguably the most serious) problems.”*⁵³

6.58 The position therefore seems to be far from clear-cut.

7 The fourth proposition: referrals do not work

Introduction

7.1 The CLS strategy clearly reflects a concern that referrals do not work.⁵⁴

7.2 This proposition seems to assume that there are appropriate sources of advice available to deal with all types of problems, but that a significant proportion of people fail to reach the appropriate source of advice.

What does *Causes of Action* say?

7.3 Some advisers routinely referred respondents to other advisers. This was particularly true of:

- CABx and other advice agencies
- The police
- Insurance companies
- Trade unions
- Health professionals. [p.117]⁵⁵

7.4 However, this was less often the case in 2004 than 2001. [p.117-18]

7.5 Referrals were most often to solicitors, but were commonly also to specialist advice agencies and local councils, and in the latter case, most frequently to specific council departments. [p.118, 118n].

7.6 Overall, more than one quarter of referrals were to solicitors. [p.118]

7.7 CABx and solicitors tended to be used in combination, reflecting frequent referrals from the former to the latter, as well as, perhaps, public perception of both adviser types being focused on “legal” problems. [p.113]

7.8 However, solicitors infrequently referred respondents on. The same was true of “other” advisers. [p.118]

7.9 In general, it appeared that those adviser types that most frequently referred respondents on were the same as those whose referrals were most likely to be acted upon. [p.118] In particular:

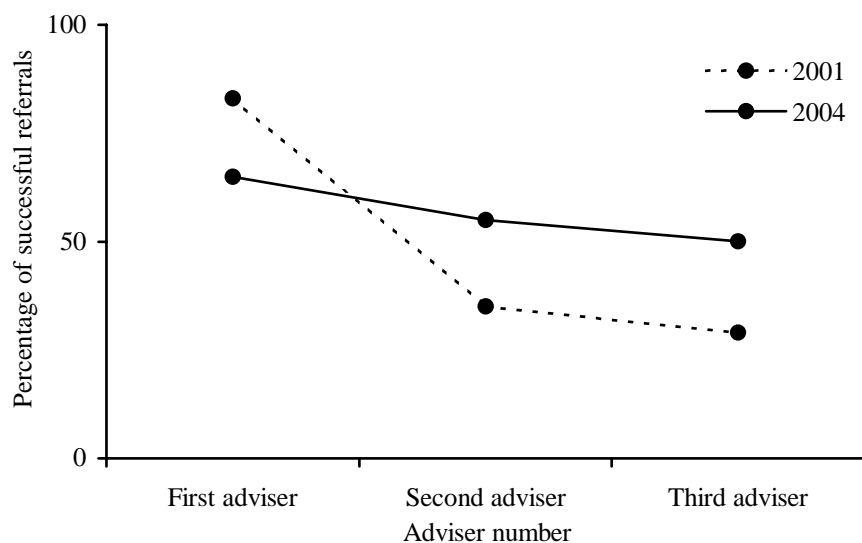
⁵³ Ibid p.26

⁵⁴ The strategy itself refers to “the inherent difficulties in referral”. *Making Legal Rights a Reality* p.7. See also the references to referral problems in Emma Knights’ presentation referred to in note 3 above.

⁵⁵ The first edition of *Causes of Action* contains a chart – figure 3.15 on p.76 – called ‘Success and Volume of Referrals by Adviser Type’. This shows the percentage of advice recipients whose cases are referred on by different types of advisers, and the proportion of those referrals that are successful.

“in both 2001 and 2004, more than two thirds of those referred on by Citizens Advice Bureaux successfully obtained advice elsewhere, compared to only around one third of those referred on by ‘other’ advisers.” [p.118] ⁵⁶

- 7.10 *Causes of Action* also identifies the problem of referral fatigue – that the likelihood of respondents obtaining advice declines as respondents visit more advisers. [p.119] This “suggests a degree of exhaustion among members of the public as a result of being pushed from adviser to adviser.” [p.119]
- 7.11 The picture in 2004 is different however from that in 2001. This is demonstrated by the following chart: ⁵⁷



*Figure 3.11
The Phenomenon of Referral Fatigue*

Comment

- 7.12 We must be careful not to draw too much from the different shape of the referral fatigue curve between 2001 and 2004. The problem of fatigue would still be substantial even if the line in the chart became flat or even upward.⁵⁸ On the other hand, some referrals are bound to be unsuccessful, for various reasons.
- 7.13 Nevertheless, *Causes of Action* does suggest that there are a number of different issues concerning referrals
- The variation in success rates between different advisers
 - The low referral rate of solicitors
 - The declining number of referrals between 2001 and 2004
 - The reduced success rate of first referrals between 2001 and 2004
 - The increased success rate of subsequent referrals between 2001 and 2004.

⁵⁶ The chart in the first edition of *Causes of Action* suggests that CAB referrals had an 80-85% success rate in 2001. The passage cited here seems to indicate a reduction in that success rate between 2001 and 2004.

⁵⁷ Figure 3.11 from p.119 of the second edition. We are grateful to Pascoe Pleasence for allowing us to reproduce this figure.

⁵⁸ We are grateful to Pascoe Pleasence for this comment.

- 7.14 The variation in success rates between different advisers suggests that a major part of the problem arises because people seek help from inappropriate sources. It does not suggest that referrals within the legal advice sector do not work. It suggests that the issue is how to get people quickly to advisers who can either help them themselves or know who to refer them to and how to make an effective referral.
- 7.15 As *Causes of Action* says:
- “This emphasises the need for public legal education to extend to sources of advice, and for education and support to be provided to less qualified advisers, to ensure that those who do provide assistance can provide appropriate assistance, even if this amounts to simply signposting elsewhere.*
- It also makes evident the need for clear and simple gateways to good quality advice.”*
[pp.165-6]
- 7.16 The low referral rate of solicitors raises issues as to whether solicitors are holding onto cases inappropriately.⁵⁹
- 7.17 The declining number of referrals between 2001 and 2004 raises a number of questions
- To what extent is it due to the fact that people are more likely to get to an appropriate source of advice at the first attempt (which would indicate that the CLS has been successful in this regard at least)?
 - To what extent is it due to advisers holding onto cases inappropriately, either out of choice or out of necessity? The former could reflect a greater emphasis on meeting targets set by or the expectations of funders. The latter could reflect a contraction in available sources of supply to which cases could be referred.
- 7.18 The reduced success rate of first referrals, and the increased success rate of subsequent referrals between 2001 and 2004 could reflect both a contraction in the number of available suppliers and a more widespread knowledge of those advice sources that are available.
- 7.19 The referrals issue should also be set against *Causes of Action*’s other findings about difficulties in obtaining advice, which have been discussed above. Where advice is easy to obtain, one would expect fewer referral difficulties. This would presumably apply in relation to family and personal injury problems. Conversely, referral difficulties are likely to be more frequent in relation to problems concerning neighbours, rented housing and unfair police treatment.
- 7.20 *Causes of Action* does not however distinguish between different types of problems in its analysis of referral difficulties and referral fatigue.
- 7.21 It seems likely that the extent of referral difficulties (and consequent referral fatigue) will depend on a number of factors, including the availability of legal advice and the identity of the first (and/or possibly the second) adviser consulted. Where clients go first to a CAB or to a solicitor they stand a high chance of either having their case dealt with or, if they go to a CAB, of being successfully referred.
- 7.22 Whether clients’ cases should be dealt with by the first adviser they contact is of course a different question. There is a strong argument that the referrals “problem” is

⁵⁹ See the finding in *A trouble shared* that specialists are reluctant to refer outside their own organisations. A related concern is whether solicitors tend to handle cases outside their specialism as tolerance cases and do so less well. See Moorhead et al *Quality and Access*.

not so much that referrals often fail but that advisers do not refer cases as often as they should, and advise too readily on subjects about which they have insufficient knowledge and expertise.⁶⁰

8 Conclusion

Introduction

- 8.1 The CLS strategy proposes a radical restructuring of legal advice services, and claims that its proposals are justified by *Causes of Action*. This paper has examined the extent to which *Causes of Action* and *A trouble shared* (which was published several months after the CLS strategy) provide such a justification. Our conclusion is that they provide only limited support for the strategy.

How much do we really know about the need for specialist advice?

- 8.2 To some extent this may be due to the methodologies adopted by the two studies. *Causes of Action* attempts to analyse the experience of justiciable problems based on a national sample of the population, and the experiences of 37% (2001) and 33% (2004) of that sample. It does not concentrate on the need for legal advice in those categories of social welfare law that are the subject of the CLS strategy. Apart from the separate study of people living in temporary accommodation in 2001, it does not concentrate on those people who are most likely to need such advice. *A trouble shared* approaches the problem from the other end, by examining the experiences of people who seek advice from advice agencies specialising in debt, housing and welfare benefits, and whose cases are taken on by such agencies. This provides important insights into these experiences, and the ways in which advice agencies respond to them, but it makes it difficult to extrapolate from the findings to the experiences of others.
- 8.3 A further problem, affecting both studies, is that the concept of “justiciable problem” is a limited one. The fact that someone has such a problem does not necessarily mean that they need specialist advice of the kind funded by the LSC. The CLS strategy aims to ensure the provision of integrated services “from initial advice to legal representation in complex cases”, but does not suggest what proportions of problems might require the different levels of service that fall within this spectrum. The emphasis on the “core social welfare law bundle” of community care, debt, employment, housing and welfare benefits implies that clients with problems falling within these categories will often require specialist help. However, the specifications for the CLACs in Gateshead and Leicester suggest that general advice will be provided to somewhere between two and four-and-a-half times as many clients as specialist services.
- 8.4 This suggests to us that there is still considerable confusion as to
- The nature and extent of justiciable problems experienced by people
 - The nature of the advice needed for different types of problems
 - Whether some problems are more “justiciable” than others.

⁶⁰ See Moorhead and Sherr *An Anatomy of Advice*, Moorhead et al *Quality and Access*, Moorhead et al *A trouble shared*

How should “clusters” be dealt with?

- 8.5 The findings about the extent to which people experience multiple problems raise the question: to what extent should the CLS prioritise clients with multiple problems? Clients with single problems may benefit just as much from specialist advice.
- 8.6 *A trouble shared* highlights the importance of the first interview with the client, and the “combination of appropriate adviser skills and organisational structures and incentives” that are necessary to identify and diagnose all of a client’s justiciable problems.⁶¹
- 8.7 *A trouble shared* suggests that⁶²
- Some problems are capable of being resolved separately.
 - Many linked problems could be dealt with adequately by separate advisers as long as they communicated effectively with each other, as often happened when problems were dealt with in-house by two advisers using two files.
 - High need and high risk assessed individuals, such as very vulnerable clients suffering complex clusters of need, are likely to benefit from a form of case management.
 - There is no single model for this, but there is often a specially trained case manager, who is responsible for co-ordination and care planning. This would be a new role as far as the CLS is concerned.
 - Such case management would also involve consideration of how to deal with non-legal problems, how to identify the point at which clients require concerted multi-agency action, and who should co-ordinate and fund it.

Is there a case for CLACs and CLANs?

- 8.8 It is far from obvious that CLACs will solve more problems than they create. It is more difficult to comment on CLANs, since so little detail has yet been provided on how they might work.
- 8.9 As far as the first proposition considered above is concerned, CLACs cannot be justified as a blanket or “one size fits all” solution, given the variation in need between different geographical areas that is suggested by *Causes of Action*.
- 8.10 As far as seeking and obtaining advice is concerned, it can be argued that the existence of a well-publicised CLAC will benefit some people who do not try to get advice at all and some people who try to get advice and fail.
- 8.11 CLACs are not, however, the only way to achieve the “clear and simple gateways to good quality advice” recommended by *Causes of Action*. [p.166] These could also be achieved, at considerably reduced risk and disruption of existing services:
- By a well publicised CLAN, and/or
 - By an expanded and well publicised CLS Direct and/or
 - By greater promotion of CLS services to “problem noticers” and others, as recommended by *Causes of Action*. [pp.119-20]
- 8.12 CLACs and CLANs should be able to deal with “clusters” of problems that fall within their areas of specialism, provided that they are able to overcome the problems identified by *A trouble shared*. They are likely however to have problems in

⁶¹ Ibid p.93

⁶² Ibid pp.31, 33, 96, 98, 99

identifying and dealing with problems that do not fall within their areas of specialism. This is likely to be a particular problem for CLACs.

- 8.13 CLACs and CLANs should lead to improved referrals and signposting. Moorhead and colleagues however seem far from convinced, commenting that

*“CLACs should have the capacity to overcome some of the cultural problems associated with not signposting clients to an outside organisation . . . and CLANs may support more effective signposting within localities.”*⁶³

- 8.14 CLACs and CLANs will however still be making referrals and giving people appointments, which may or may not be kept.⁶⁴ Advice agencies regularly report a significant proportion of clients who do not keep their appointments. There are various possible reasons for this. At the moment, however, we do not know what an acceptable “drop-out” rate would be.

- 8.15 On the debit side, *A trouble shared* highlights the extent to which local authorities (which are expected to be joint funders of CLACs) were implicated in the problems brought to the advice organisations studied:

- 37% of the clients whose interviews were observed had problems that involved their local authority.⁶⁵
- “Dealing with housing, benefit and council tax issues gave rise to very high levels of legal need (about a third of the cases observed) and is likely to lead to the advisers in CLACs and CLANs opposing the local authority in a large proportion of cases.”⁶⁶
- “Robust mechanisms need to be in place to ensure that such centres are not tempted to under-represent clients with problems to be pursued against local authorities.”⁶⁷

- 8.16 CLACs will not be able to help everybody who approaches them. They will have their own capacity problems and will have to ration their services. The establishment of CLACs will carry its own risks. CLACs could easily fall victims to their own publicity and acquire a reputation of being unable to satisfy the demands placed upon them. If all social welfare law funding has been concentrated in a CLAC, clients will have nowhere else to turn. CLACs could fail to meet their objectives, which could be disastrous for the inhabitants of the areas in which they operate. As Lord Carter has emphasised, there must be a careful evaluation of the impact of the initial CLACs.⁶⁸

⁶³ Ibid p.95

⁶⁴ Moorhead et al comment that “the problems of referral fatigue might apply to in-house as well as external dealing.” Ibid p.33

⁶⁵ Ibid pp.ii, 26-27

⁶⁶ Ibid p.27

⁶⁷ Ibid p.92

⁶⁸ *Legal Aid – A market-based approach to reform*, recommendation 3.6