Ministry
of Justice

The Varying Paths to Justice

Mapping problem resolution routes for users and non-users of the civil, administrative and family justice systems

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1.   Summary

Background

There is a substantial body of evidence on the incidence of justice problems. Research has found that around a third of adults in England and Wales have experienced a civil, administrative or family justice problem in the previous 18 months (Balmer, 2013). There is less understanding about how and why people try to resolve their problems. A number of recent significant reforms to the civil and family justice systems have changed the landscape within which people can seek to resolve their civil and family justice problems. Notably, these include changes to the legal aid scheme, which removed a number of civil, family and administrative justice problems from the scope of legal aid.

This study was therefore commissioned by the Ministry of Justice (MoJ) to improve understanding of how people seek to resolve their problems and the influences that shape decision-making when faced with a civil, administrative or family justice problem, including those with domestic abuse.

Methodology

MoJ commissioned Ipsos MORI to undertake a large-scale qualitative study, conducting interviews with participants who had experienced a civil, administrative or family justice problem or domestic abuse in the previous 18 months. Civil and administrative justice problems (hereafter 'civil' problems) encompass problems relating to employment, debt or welfare. Family justice problems are related to private issues around child arrangements or the separation of assets following a family breakdown.

In total, 114 interviews (50 face-to-face and 64 by telephone) were completed between October 2014 and March 2015. The fieldwork and analysis were designed to comprehensively assess influences on people's behaviour.

Civil justice problems

Across all civil problems, procedural knowledge was central in influencing participants' resolution pathways. Participants who were not aware of available advice and support services or those who were unable to access relevant information to understand their options struggled to find a resolution to their civil justice problem, and tended to let the matter drop. Friends and family members played a role in signposting to relevant information.

Individual capability and skills were important in handling civil problems. Comprehension skills helped participants to understand the processes involved; communication and literacy skills enabled them to deal with formal procedures; and being able to research their problems allowed participants to obtain relevant procedural information independently. Participants with low levels of these skills faced challenges in handling their problem alone and relied on support from external agencies to help them seek resolution.

In employment problems, for those who decided to pursue a case, obtaining detailed information about tribunal processes and active support by professional advocates at tribunals was valued. The quality of support and advocacy was important. Participants who let the matter drop tended to do so because of potential consequences, for example for their future employment prospects.

In welfare problems, concerns around loss of income combined with the stress and anxiety generated by the situation influenced participants to initially respond to their problem. Physical health issues, as well as difficulties such as low levels of literacy or limited resources, hindered participants in dealing effectively with their problem – for example, in understanding correspondence from government departments. Participants tended to let matters drop once all known options had been exhausted. Participants with welfare problems in particular required support to resolve their problem. Early information and advice, especially face-to-face advice, was well received.

Many participants facing debt problems were unable to accept that they faced a justice problem until an external party intervened. Anxiety and shame prevented participants from responding to their debt problem. Signposts to debt management agencies or charities and accessibility to the Citizens Advice Bureau (CAB) enabled participants to resolve their debt problem, as did information to help participants negotiate repayment plans.

Family justice problems

The significant impact of family justice problems on participants' lives meant that all participants facing a family justice problem at least took initial steps to understand their options. Professional advice enabled participants to make a more informed choice of pathway; those with child arrangement problems accessed free legal advice through Citizens Advice (CA) or private solicitors. Family finance problems, such as the division of assets post-separation, were perceived to be particularly complex to understand and participants therefore paid solicitors to help them resolve their issues. Participants were keen to obtain a 'fair' settlement and sometimes used solicitors to increase their perceived leverage. They did

not tend to take a systematic approach to searching for a solicitor and nor did they have any clear benchmarks to judge the quality of the professional engaged.

In problems involving child arrangements, participants expressed a strong preference for avoiding court. This was shaped largely by concerns about the wellbeing of their children. The perceived power dynamic between parents was important; participants strongly believed that the parent with whom the children lived had greater leverage in negotiations around contact and residence arrangements. This could influence how the other parent decided to pursue their pathway.

Participants were receptive to both informal and professional mediation. Sensitive informal mediation conducted by family members could play an important part in minimising the precariousness of an arrangement made between parents alone. There were some concerns about the timeliness and quality of professional mediation in helping participants reach sustainable arrangements. However, participants who used the courts for family justice problems suggested that in retrospect they would have preferred to make an informal agreement with their ex-partner.

Although going to court tended to be a last resort, once it was apparent that a private agreement could not be made, financial resources became an important factor. Inability to afford legal representation could present a barrier to obtaining legal advice and satisfactory problem resolution. Those who were unable to afford representation litigated in person. This was reported to be a stressful experience. Support and advice were critical here; participants who were most comfortable litigating in person reported that they had been assisted by staff at their local court.

Domestic abuse

The domestic abuse cases in this study were complex and tended to form part of a problem cluster alongside family justice problems relating to both children and finance. This pathway was characterised by friends, family or external agencies acting on a participant's behalf to initially address the abuse, with or without the participant's consent.

Typically, participants delayed responding to abuse because they did not acknowledge it as a justice problem. Participants found they lacked knowledge about where they could seek advice. They therefore turned to familiar external agencies, such as social services or the police, GPs and the CAB. In some cases, perceived inadequate support from the police and social services created distress for participants.

Friends and family could present barriers along a resolution pathway if they also did not acknowledge the abuse as a problem. Further, participants reported how their partner's behaviour meant they withdrew from society and lacked important social networks to seek support from. Participants were typically financially dependent on their partner, which meant they lacked the resources to address their problem independently.

In relation to the family justice problems that subsequently arose, participants' decision-making was shaped by concerns for their children. Fear over the potential consequences of not taking action was an important influence on how participants sought to resolve the problem. Help and advice was frequently sought from solicitors at this stage because participants considered that they needed to act but lacked procedural knowledge.

Participants did not always receive accurate information from legal professionals about their legal aid eligibility to resolve family justice problems. This led to some participants litigating in person.

Conclusions

Difficulties in accessing procedural information were a critical barrier to resolving justice problems. Participants were not always aware of how to access the information they required, and as a result seeking the advice of a solicitor or visiting the CAB was a common response to the need for information. Participants felt that authoritative online resources were hard to identify. Friends and family were an important influence on decision-making as a first point of contact for support, often signposting participants to professional advice services.

Skills such as comprehension and literacy were also important, as was confidence. Anxiety or distressing situations could impact on participants' decision-making. Participants who felt they lacked capability tended to be easily discouraged if they were unable to access the information they needed, which could prevent them from pursuing their problem.

The importance of good quality advocacy and representation was evident across many problem types. Independent advocacy offered vital support to participants in court- or tribunal-based processes, enabling them to pursue a case if they felt unable to do so alone. Some participants adapted to the absence of an advocate by litigating in person, but emphasised the importance of support from the courts in these instances. Although there was an appetite for resolution through mediation, there were some concerns about the timeliness and quality of professional mediation to facilitate sustainable agreements.

Financial resources were important where the pathway adopted included the need for a solicitor. This could influence whether participants decided to pursue a case at all. In family justice problems with domestic abuse, a lack of financial resources meant that participants self-represented or turned to social networks for financial support.

Implications

This study presents some timely implications to support people to resolve their problems within a changing justice landscape. Problem-specific implications are detailed in the main report. Participants faced with any justice problem would benefit from increased awareness and improved access to relevant, clear and timely information about the options available to them to resolve their problems. The channel and format of this information, as well as the range of resolution strategies available, should take into account people's differing levels of capability and resources.

For some problem types, seeking advice from a lawyer or resolution from the court was seen as unavoidable. Further consideration should be given to exploring how these problems may be effectively resolved without recourse to this pathway – and to promoting awareness of these options. Advocacy and representation were important for problems resolved in court, and third-sector organisations which provide this assistance should be maintained and supported. The guidance around legal aid eligibility for people who have experienced domestic abuse in family cases should be clarified – for individuals themselves, and for legal professionals.

2.   Background and project aims

The resolution of justice problems

Empirical research on legal needs and problem resolution has a considerable history in England and Wales. Starting with Genn's pioneering Paths to Justice Survey in 1999, a series of large-scale, nationally representative surveys such as the Civil and Social Justice Panel Survey (for example, see Pleasence *et al.*, 2008) have provided detailed information on the prevalence of problems which may have a legal remedy. Almost two decades of research have contributed to an understanding of people's experience of problems and their strategies for dealing with them.

Much is known about the incidence of justice problems, with research finding that approximately a third of adults in England and Wales have experienced a civil, family or administrative justice problem in the last 18 months (Balmer, 2013). Experience of justice problems varies considerably across population groups (Moorhead, Sefton and Douglas, 2004; Balmer and Pleasence, 2012). Research has also documented how people seek to resolve their problems. Some people look for formal advice and support, while others deal with their problems alone, seek informal help or do nothing to resolve their problems (see, for example, Pleasence and Balmer, 2014). Similar variation characterises the ways in which problems are concluded; some are resolved through agreement and others independently, and in some cases through a court or tribunal. Other people may 'give up' trying to resolve their problem part way through their resolution strategy. While survey findings indicate that the majority of people agree that the courts are an important way for people to enforce their rights, and that they could expect a fair hearing in court, only a minority of problems will be resolved through a court or tribunal (Balmer, 2013).[1]

There is less understanding about why people try to resolve problems, or indeed their motivation for choosing to resolve their problems in particular ways. Moreover, since findings from the last large-scale survey were published in 2012 (Balmer, 2013) there have been a number of significant developments which have altered the landscape in which people make these decisions. The Ministry of Justice (MoJ) have commissioned a large-scale nationally representative survey to capture the prevalence of justice problems and resolution strategies in this new justice landscape.[2]

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[1]   Figures from the 2012 Civil and Social Justice Panel Survey indicate that fewer than 8% of justice problems are resolved through a court or tribunal.
[2]   The Legal Problems and Resolution Survey was conducted in 2014/15. Findings are forthcoming.

The changing justice landscape

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force in April 2013. LASPO removed a significant number of civil, family and administrative justice problems from the scope of legal aid and brought about changes to financial eligibility. In the category of civil law, debt, housing or welfare cases where there is a risk of homelessness remained in scope for legal aid, as did discrimination-related employment cases. Other debt, welfare and employment problems were removed from scope.

The category of private family law was also removed from the scope of legal aid. Recognising that some people need help to resolve problems without going to court, legal aid for mediation in private law cases continues to be available. Legal aid is also still available for private family law cases where recent domestic violence or child abuse can be evidenced. Access to legal aid in these cases is subject to the domestic violence 'gateway'. Evidence from a prescribed list must be provided by the client to substantiate the abuse, and in most cases, the evidence must be less than two years old. The gateway was amended in April 2014 to widen the list of evidence accepted. Legal aid continues to be available for cases in the family court which provide protection from domestic violence, such as protective injunctions, without the need to meet the gateway requirements.

April 2013 also saw the introduction of Part 2 of LASPO – the Jackson Reforms. These were designed to control the costs of civil litigation, with a particular focus on personal injury claims[3] and mechanisms for funding civil cases.[4] These reforms aimed to promote access to justice for those with valid claims while discouraging unmeritorious claims and reducing the cost burden on losing defendants.

Further changes to the justice system took place in April 2014 with changes to court fees and the conditions for applying to employment tribunals, and family justice reforms. The court fee reforms were designed to ensure that civil court fees are broadly at full cost levels, to transfer more of the public cost of cases to the court user. Employment fee reforms were also aimed at transferring public costs to the user, as well as encouraging disputes to be resolved outside of tribunals.

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[3] The introduction of qualified one-way costs shifting (QOCS) – see the Glossary.
[4] Damages-based agreements (DBAs) were introduced as an option for funding civil litigation more generally. No win-no fee conditional fee agreements (CFA) remain available in civil cases, but the losing side is no longer liable for the additional costs of success fees and insurance premiums. See the Glossary.

The Children and Families Act 2014 made the legislative changes necessary to realise key recommendations of the Family Justice Review (2011). In private family law, this included the statutory requirement for prospective court applicants to attend mediation information and assessment meetings (MIAMs) for separating couples to consider alternatives to court when resolving financial matters and arrangements for children, unless certain exemptions apply.

Against this background of change, there is a need to improve understanding of both how people resolve their problems and the factors that shape these problem resolution strategies.

Research aims

This research was commissioned by MoJ to provide evidence on both the pathways taken, and the influences on decision-making, in response to civil, administrative and family justice problems, including those with domestic abuse. The aims of the study were:

- to develop a fuller understanding of the civil, administrative and family justice problem experience, including those with domestic abuse
- to map the range of pathways used to resolve problems (including taking no action)
- to identify what influences people's behaviour and the critical points in the decision-making process about how to resolve problems
- to explore the perceived effectiveness of the different pathways people take to resolve their problems and the outcomes they achieve

3. Methodology

3.1 Research methods

MoJ commissioned Ipsos MORI to undertake a large-scale qualitative study, conducting interviews with participants who had experienced a civil, administrative, family justice or domestic abuse problem. The aim of these interviews was to explore, in depth, the decision-making process and behavioural influences affecting the pathway adopted to resolve their justice problem. A qualitative approach was selected as the most appropriate methodology to elicit data on the complex and interrelated influences around the adoption of resolution pathways. As such, the findings from the study demonstrate the range and detail of these processes, rather than their prevalence in the population. In total, 114 interviews were completed. Of these, 50 interviews were conducted face-to-face and 64 by telephone.

3.2 Definition of problem and pathway types

The study was designed to reflect a range of experience both within justice problem types and the pathways adopted to seek to resolve them. The definitions of the problem and pathway types of interest are presented in Table 3.1 and Figure 3.1, and will be referred to throughout the report.

Table 3.1: Problem type definitions

Problem type	Definition
Civil and administrative justice	**Specified money claims** – include **debt** and **money reclaim** problems. **Welfare** – errors or delays in assessments for benefits. **Housing** – landlord and tenant disputes, homelessness or neighbour disputes. **Unspecified money claims** – personal injury claims such as accidents and clinical negligence. **Employment** – issues involving the workplace, such as discrimination, pay, conditions or dismissal.
Family justice[5]	**Private law children** – disputes around making contact and residence arrangements following family breakdown. **Private law finance** – disputes around the separation of assets following family breakdown.

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[5] The family justice system also deals with public law cases which arise when social services intervention is required to protect a child at risk of harm. These cases were beyond the scope of this study.

Problem type	Definition
Domestic abuse	Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial and emotional.[6]
Problem clusters	Multi-layered cases that involve several justice issues and could involve all three of the above problem types.

Figure 3.1: Pathway type definitions

6   Definition on GOV.UK: https://www.gov.uk/domestic-violence-and-abuse
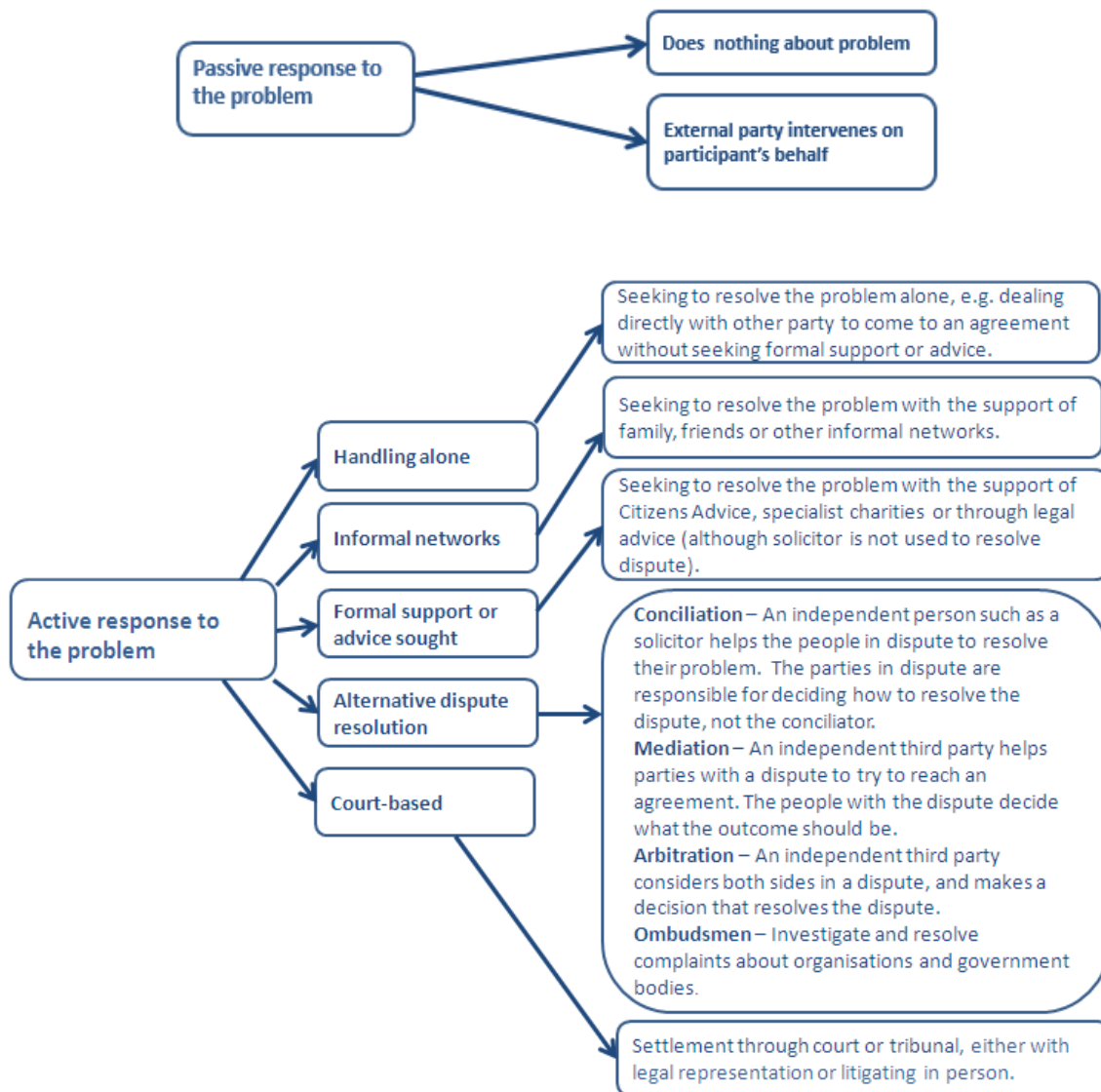
3.3 Sampling

Recruitment and fieldwork were undertaken in two stages. The first 'core' stage was based on the primary sampling criteria to capture a range of experience both across and within problem and pathway types. Due to the complexity of the sample and in order to fully address the research questions, a total of 88 interviews were completed between October and December 2014. The second phase of recruitment was designed to address themes in the evidence for which theoretical saturation had not been reached during the first stage.[7] The final 26 interviews were conducted in January and February 2015. Further sampling criteria included that problems had been experienced within the last 18 months[8] and that they could either be resolved or ongoing.[9]

Table 3.2 outlines the interview quotas completed by problem type. The study set out to encompass a broadly even proportion of civil/administrative justice problems and family justice problems, and to include a diverse range of different problems within these categories. The domestic abuse category includes both problems of domestic abuse only, and those also with family justice problems. This is to understand both the context of this problem in isolation,[10] and secondly, to understand the experience of those with additional family justice problems in light of specific policy developments in family law.[11]

A large body of research demonstrates that justice problems do not occur in isolation but in 'clusters'. Individuals who experience one civil justice problem are more likely to experience a new problem than those without any problems (see Smith *et al.*, 2013; Pleasence *et al.*, 2004). Participants who were categorised as having experienced a 'problem cluster' were assigned a 'primary' problem and have been categorised in accordance with this. The 'primary' problem was assigned on the basis of the sampling requirements and formed the main subject of discussion in interviews. This approach was taken to ensure there would be sufficient data across the problem types.

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[7] Theoretical saturation in qualitative research is the point where no new concepts are being discovered and there is a pattern of the same themes emerging.

[8] This approach was adopted to capture the experiences of participants following significant changes to the civil and family justice landscape and to improve the likelihood of good recall in interviews.

[9] Some problems may not have been 'resolved' in terms of a satisfactory or effective resolution as assessed by the participant, but had concluded in the sense that no further action was anticipated.

[10] People can apply to the family court for a domestic violence protection order. Some cases of domestic abuse may be subject to separate criminal proceedings, which are beyond the scope of this study.

[11] Following LASPO, legal aid continues to be available for private family law cases where domestic abuse can be evidenced.

Table 3.2: Quotas achieved in the research study

Policy area	Problem type	Number of interviews
Civil and administrative justice x 42	Unspecified money claims	3
	Specified money claims	15
	Welfare	9
	Housing	3
	Employment	12
Family justice x 47	Private law children	27
	Private law financial	15
	Private law children & financial	5
Domestic abuse x 25	Domestic abuse	9
	Domestic abuse and private law children	16

3.4   Recruitment approach

The research sample was generated through several means. Researchers from Ipsos MORI used their existing online panel and face-to-face omnibus survey, as well as recruiting through charitable organisations and conducting recruitment in courts and tribunals. The recruitment and fieldwork was conducted in accordance with the Market Research Society (MRS) code of conduct and ethical guidance from Government Social Research guidelines.

Participants recruited through the online panel or face-to-face survey were informed that Ipsos MORI were looking to conduct interviews on behalf of MoJ with people who had experienced a problem in the previous 18 months. Respondents were screened by telephone using a short questionnaire in advance of the interview to ensure that they were suitable for the study and that they understood the nature of participation. Participants who were recruited face-to-face were screened using this questionnaire in courts and tribunals. Participants who had experienced domestic abuse were recruited through gatekeepers at charitable organisations. These participants were not screened further in advance of their interview. All participants had the content of the interviews explained to them at recruitment stage. A small voucher incentive was offered to all to support recruitment and thank participants for their time.

The approach to sample generation meant that some groups were excluded from the study. This included participants across all problem types who had resolved their cases successfully through mediation or arbitration, and those who had experienced domestic abuse who had taken no action to resolve their problem.

Implications of sampling and recruitment

A large proportion of the interviews relating to domestic abuse were recruited through charities or support organisations. Nearly all participants had taken steps to resolve their problem, and therefore the findings reflect limited data on the experiences of participants who had not responded to their experience of domestic abuse. However, many participants had delayed responding and evidence on rationales for this is presented in section 6.1.

The recruitment approach also means that problems were not always yet fully resolved and further options along a pathway, such as alternative dispute resolution, may not have been explored at the time of interview. Many of the participants who had experienced mediation in family and employment cases were recruited in courts or tribunals. The findings may reflect a bias within the sample towards participants for whom mediation had been unsuccessful in facilitating a sustainable agreement. The study may therefore not present an exploration of the full range of participants' experiences of alternative dispute resolution.

3.5   Research materials, fieldwork and analysis

A behavioural research approach was adopted when developing the interview materials and conducting fieldwork and analysis. This approach drew on the 'COM-B model'[12] of behaviour change (Michie, Stralen and West, 2008) and the Theoretical Domains Framework (TDF) (Cane, O'Connor and Michie, 2012). This approach was taken to ensure a comprehensive approach to data collection around behavioural influences. The most relevant of these domains were applied in the development of discussion guides for the research interviews (see Appendix A). Table 3.3 illustrates how the behavioural domains applied to the experiences of participants.

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[12]   The COM-B behavioural domains refer to **capability**, **opportunity** and **motivation**.

Table 3.3: The use of TDF domains in data collection[13]

COM-B domain	TDF domain	Illustrative examples relating to research participants' experiences
Capability	Knowledge	Knowing where to turn for advice and guidance on a justice issue.
	Skills	The ability to complete any required forms or understand relevant processes.
	Memory, attention and decision-making processes	Distress or anxiety, which affects the capacity and energy to weigh up relevant options and select one of them.
Opportunity	Social influences	Advice or pressure from family, friends or wider society.
	Environmental context and resources	Financial circumstances relating to the ability to pay for advice and representation. Advice or support from an individual working in a professional capacity. Time available to deal with the problem.
Motivation	Social/professional identity and role	Avoiding taking action against an ex-partner due to belief that to do so would be out of character.
	Beliefs about capabilities	Confidence in ability to navigate the legal processes alone and litigate in person.
	Beliefs about consequences	Aiming to make an arrangement without going to court due to concerns about the impact on personal relationships (e.g. with ex-partner, child, other family member) of taking a course of action.
	Emotion	Taking action due to feelings of being wronged or hurt.

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[13] The Theoretical Domain Framework (TDF) is a behavioural research framework derived from the COM-B framework developed by Michie, Stralen and West (2008).

In conducting fieldwork, the burden placed on participants was minimised by being flexible about the method (face-to-face or telephone) and timing of their interview. Consent was gained for each interview and participants were assured of confidentiality, anonymity and data security. Participants were given the opportunity to withdraw their consent. All interviews were digitally recorded if consent was granted. For the interviews with participants who experienced domestic abuse, the discussion guide was adapted to minimise the potential for re-traumatisation during the interview. Interviewers attended specialised training in advance of the fieldwork to further minimise the potential for harm to participants.

Analysis was conducted throughout the study from the outset of the fieldwork period. Data, consisting of detailed field notes from interviews, sound files, outputs from team discussions and selected transcripts from interviews, was reviewed to create a thematic framework based around the TDF. Analysis was supported by computer software NVivo10: field notes were coded in the software using the thematic framework and reviewed manually by researchers. Transcripts were purposively selected to explore illustrative cases in greater detail and were reviewed manually.

3.6   Presentation of findings

Qualitative research is designed to be exploratory and provide insight into people's perceptions, feelings and behaviours. The findings are not intended to be statistically representative of the views of all people who may experience a civil or family justice, or domestic abuse problem.

Anonymised verbatim quotes have been used to help illustrate key findings. For each quote, details are provided about the gender, case type and the mode of interview.

Italics are used where behavioural domains related to the TDF framework are referred to, for example *emotion* or *beliefs about consequences*.

Diagrams are used to summarise the range of pathways reported in response to different problem types and key influences at different stages of pathway development. As experiences were varied, these diagrams are not intended to reflect the diverse nature of cases and pathways but instead to present a high-level outline of the varied pathways adopted and a chronology of the key stages in decision-making.

Findings that are consistent with existing literature are referred to throughout the report. References to literature are not exhaustive as it was beyond the scope of this study to conduct a comprehensive review of the evidence base. Key terms are included in the Glossary.

4.   Civil and administrative justice problems

This chapter describes the experiences of participants facing the civil and administrative justice problems outlined in Table 3.1 (hereafter collectively referred to as 'civil' problems). Section 4.1 describes each of the civil problem types, and section 4.2 considers the influences on behaviour that were common across all civil problems. The chapter then focuses on specific civil problem types (section 4.3), describing the pathways adopted and the influences that shaped responses to the problem for each problem type.

4.1   Civil problem types

Table 4.1 describes the nature of the civil problem types experienced by participants.

Table 4.1: Civil problem types in the research study

Civil and administrative problem type	Problem description
Employment	Employment problems arose following disputes with employers or colleagues. Claimants discussed a range of problems including those relating to unfair dismissal and disputes regarding formal warnings, disciplinary procedures, contracts or pay.
Welfare	Welfare problems faced by participants in this study involved responding to a change in benefits that they were already receiving. There were two subcategories: • Problems or disputes regarding a decision that participants were 'fit for work', due to the transfer and reassessment of claimants from Incapacity Benefit (IB) to Employment Support Allowance (ESA). There were also instances where participants disputed the outcome of a Department for Work and Pensions (DWP) healthcare assessment decision[14] unrelated to the transfer.

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[14]   These assessments were conducted by Atos Healthcare and referred to by participants as 'Atos' assessments.

Civil and administrative problem type	Problem description
	• An administrative or procedural error or delay following a change in circumstances: for example, registering an increase in working hours and subsequently receiving incorrect paperwork.
Specified money claim – debt	Participants were defendants who had large or unmanageable debts to creditors. The range of debts included using store card or credit card loans, use of payday loans with high interest rates, or falling into arrears on utility bills or mortgage repayments. Debt was sometimes underpinned by employment or welfare issues. Where people owed a number of different creditors the experience of a 'cycle of debt' was sometimes described: for example, taking out a loan to pay off interest on credit card bills.
Specified money claim – money reclaim	Participants were claimants attempting to reclaim money lent to family members, ex-partners or business partners.
Unspecified money claim – personal injury	Participants were claimants attempting to claim compensation for an injury from the organisation deemed to be responsible.
Housing	Participants were in neighbourhood disputes or facing eviction.

4.2   Influences on behaviour across all civil problems

The behavioural domains of *knowledge* and *skills* were identified as common influences on behaviour across all civil problem types, forming both enablers and barriers to seeking resolution.

Knowledge and *skills* as enablers to choosing a justice pathway

It was important for participants to possess relevant *knowledge* and *skills* in order to take action in resolving their civil problems. Procedural and contextual knowledge in relation to their problem was important, particularly for those facing problems relating to their employment or welfare benefits. For example, those who had a basic understanding of HR (human resources) procedure or employment rights were able to raise a case for disputing formal warnings or unfair dismissals. These qualitative findings on the importance of knowledge accord with the substantial quantitative evidence base from large-scale surveys on how people deal with legal issues (see Buck, Pleasance and Balmer, 2007, 2008). Such research has highlighted that knowledge is important to both self-help in seeking to resolve problems and in successfully obtaining advice. Those with knowledge of their rights and relevant processes are more likely to meet their objectives in addressing their problem (Balmer *et al.*, 2010).

There were three types of skills that participants identified as important for handling problems independently (in some cases these were interrelated):

- **Comprehension skills** enabled participants to understand the processes involved in dealing with their problem.

- **Literacy skills** enabled participants to deal with formal procedures, such as responding to written official communications from employers or filling in appeal forms. This was sometimes underpinned by the skills developed from an individual's past experience or employment.

- **Research skills** enabled participants to gather relevant procedural knowledge independently, which meant they were better prepared when facing different stages of problem resolution. For example, participants researched the appeals process for work capability assessments and the procedures involved in taking a case to tribunal. Enquiring into problems could take the form of seeking face-to-face advice from professional sources or from friends and family, or searching for information online. Those facing employment problems tended to draw on legal websites such as Learn the Law, GOV.UK, or the employment section of the Citizens Advice (CA) website. Some also used legal helplines, such as Right CoreCare which gave advice, but did not answer legal queries or provide representation.

> *"At first because [I had felt] quite unsure about whether I would get flexible working in the first place, I had done some reading around the GOV website and the rules around flexible working and what I was entitled to. So I felt I had a clue about what the rules were and I expected to be well supported by my union."*
>
> *Female, employment, face-to-face interview*

Participants with contextual or procedural knowledge and skills also tended to have confidence in their ability to handle their problem. This confidence enabled participants to follow pathways to resolution as they believed they would not face insurmountable difficulties. This finding is consistent with existing literature which found that tribunal users who challenged administrative decisions tended to be the most confident or those successful in obtaining advice and support (Genn *et al.*, 2006).

Knowledge and *skills* as barriers to choosing a justice pathway

Three factors – related to *skills* – were identified as barriers to resolution across civil problem types: difficulties with research, comprehension and communication. These factors could be present concurrently, compounding each other and making it harder for participants to handle their problem.

Participants who had difficulties with finding relevant procedural information on their own struggled to understand their options, make decisions and take active steps towards resolution. For example, participants with debt who were unable to find information about the negotiation remits of creditors faced particular challenges in responding to their problem. A similar barrier was experienced by some facing welfare problems when they were unable to find information on appeals processes. This was sometimes a broader capability issue, particularly when participants were not computer-literate and were unable to research how to deal with their problems online.

Some participants had difficulties understanding complex information and using it to respond to their problem effectively. For example, those dealing with employment problems could be inhibited by being unable to understand the processes involved in mediation, conciliation or tribunals even after advice from unions or solicitors.

> *"I get really confused, you know? I get in a state and I don't know what I'm doing."*
>
> *Female, employment, face-to-face interview*

For those experiencing welfare problems, understanding the problem they were facing or the type of benefits they received was sometimes particularly difficult. This could be compounded by dyslexia or low levels of literacy, with participants unable to understand official documents or fill out assessment forms. These findings are consistent with previous qualitative research (for example, Buck and Smith, 2013; Smith *et al.*, 2013).

> *"You receive these letters and half the time I don't even understand them."*
>
> *Female, welfare, telephone interview*

Alongside these difficulties with skills, not having the relevant *knowledge* was also a barrier. A significant body of UK evidence highlights people's limited knowledge and awareness in relation to legal issues and processes (for example, see Denvir, Balmer and Buck, 2012; Pleasence, Balmer and Sandefur, 2013). Participants who struggled to respond to their problems tended to lack awareness of services or procedures that could help them. This was evident in slightly different ways across the problem types. Those facing welfare issues tended to handle the problem alone if they were unaware of the services that could help them. Those without knowledge about employment rights and HR procedure when dealing with employment problems were more likely to rely on help from friends or family or formal sources of advice, or were unable to reach a satisfactory outcome. For participants facing debt problems, limited understanding of the options available meant that strategies such as taking out more loans or trying to negotiate with bailiffs were perceived as credible resolution pathways.

4.3   Problem-specific influences and pathways to resolution

This section describes the influences that shaped resolution pathways for specific civil justice problems – in addition to the influences of *knowledge* and *skills* described in section 4.2. It considers participants' reflections on the pathways they adopted and the implications of these.

4.3.1 Employment problems

Four main pathways were adopted by participants who had experienced employment problems:

1. Deciding to do nothing and not responding directly to their problem. Participants made this decision after receiving advice from friends or family or from formal sources of advice, such as unions or CA.[15]

2. Resolving the issue internally with the employer, for example by negotiating with their manager. This tended to be for less complex issues, such as contract disputes.

3. Disputes over disciplinary procedures or formal warnings against the participant were often resolved by arbitration, conciliation or mediation by a third party. It was common for participants to have initially tried to resolve the problem themselves, through independent research into other options or going through internal review procedures before seeking help from an external agent to reach a settlement. A range of third party representatives were called upon to act as mediator or conciliator, including solicitors or union representatives.

4. Unfair dismissal disputes sometimes ended in tribunals. Tribunals tended to be the last resort, with participants filing for a tribunal after conciliation via ACAS,[16] mediation or internal appeals processes had failed.

Figure 4.1 outlines the key pathways, behavioural influences and outcomes for employment problems, which are discussed in detail in the remainder of this section.

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[15] The most recent Civil and Social Justice Panel Survey (Balmer, 2013) found that 25% of people with employment problems did nothing about their problem, 27% handled them alone and 8% handled them with informal support.

[16] ACAS is an organisation devoted to preventing and resolving employment disputes.

Figure 4.1: Employment problems – key influences shaping pathways
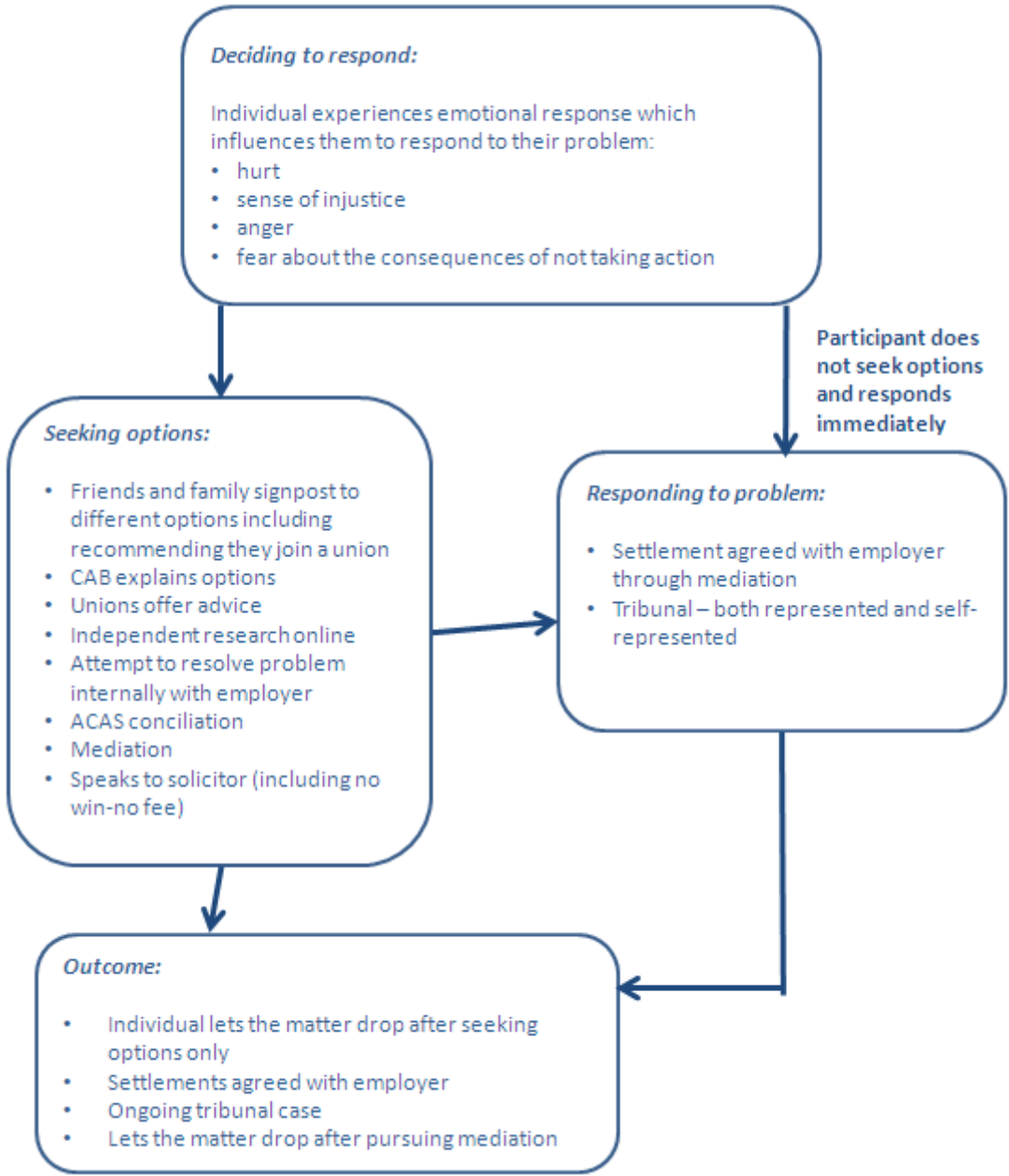
Influences on behaviour in response to employment problems

Emotion was important in influencing participants to respond initially to their employment problem. Participants reported that they felt compelled to tackle their problem proactively due to feelings of hurt or being wronged by their employer, a sense of injustice, or anger. Such feelings were particularly the case in instances which involved a personal element or dispute. Anxiety about the consequences of not taking action against their employer also influenced participants in their choice of pathway, demonstrating the importance of *belief about consequences* at this stage. For example, some were concerned about the financial impact of not having employment, or concerned about damage to their future employment prospects.

Pathways taken to resolve employment problems were strongly influenced by others, meaning that *social influences* were important. Participants discussed their problems with friends and family, and the advice and support received tended to influence the pathways adopted. For example, friends and family members recommended pathways such as visiting a solicitor or the Citizens Advice Bureau (CAB), or advised the participant to pre-emptively join a union once problems began at work.

> *"Yeah I mean my wife was sort of involved quite sort of strongly on that … the sort of initial advice to join and use the union – the lady that works with my wife, her husband was the regional guy's … not his boss, but a level above him, and obviously with my wife talking with her work colleagues about the situation at the time. She spoke to her husband and he felt that it would [be] beneficial for me to join the union. But yeah my wife … was really the one that was pushing me in the main with joining the union."*
>
> *Male, employment, telephone interview*

Participants also relied on and trusted the advice and support of professional sources such as trade unions and CA. In this respect, *environmental context and resources* were influential. The support provided by professionals enabled participants to explore options and progress with resolution. It also led to diverse pathways. For example, a no win-no fee (NWNF) solicitor deciding to take on a case enabled participants to deal with their problem at tribunal; the support and representation afforded by unions helped to guide participants through the settlement process; CAB recommending mediation to one participant led to them taking this course of action to resolve their case.

Stress or anxiety felt by participants when faced with their problem sometimes drove them to seek the first option that presented itself, demonstrating the importance of *memory, attention and decision-making* capacity. For example, stress influenced one participant's choice to find a solicitor rather than seeking out other options, resulting in a swift resolution at tribunal.

> *"I didn't want to relive what had happened – I didn't want to think about it. I wanted someone to take that responsibility. I was stressed, I was stressed. I couldn't focus on anything."*
>
> *Female, employment, face-to-face interview*

Barriers to preferred pathways related to *environmental context and resources*. These were: mediation breakdown; lack of professional support, advice or representation; and inadequate finances.

Some participants experienced a breakdown in the mediation or conciliation process they had started with their employer.[17] This tended to act as a barrier to resolution via settlement and meant that participants filed for a tribunal. Factors influencing these breakdowns varied. Conciliations failed either because the employer would not accept the offer suggested by the participant or because the participant felt the offer made by employers was too low. In one case, mediation through the employer's internal dispute resolution service failed due to lack of cooperation from their manager.

> *"There's emails floating backwards and forwards for a while and in the end the company make an offer, well, they did make an offer, but it was, like, a derisory offer. So it got turned down and once [ACAS] decide they can't go any further forward then that's when the solicitor gets involved and you submit the forms to the tribunal."*
>
> *Male, employment, face-to-face interview*

External agents refusing or being unable to provide support or advice underpinned participants' inability to follow certain pathways. Here unions or NWNF solicitors would refuse to provide representation if they did not believe the participant had a strong enough case or would be able to get a favourable ruling at tribunal. Participants also reported facing difficulties accessing the advice of the CAB due to oversubscription.

Participants who were unable to secure support from NWNF solicitors faced financial constraints in resolving their problem as they were unable to afford legal representation. This typically did not act as a barrier to participants taking their case to a tribunal, as they self-represented. This tended to be because they believed in the strength of their case and that they would succeed in gaining a favourable ruling. *Social influences* could be important where family members helped fund solicitors' fees.

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[17] Some participants with employment problems who had experienced mediation or conciliation were recruited at tribunal. Participant experience may therefore be biased towards ACAS processes which were unsuccessful.

Letting the matter drop

In some instances, participants did not reach a satisfactory outcome. They let the matter drop at the settlement stage or at the outset of the problem due to *belief about consequences* or, in some cases, barriers relating to their *environmental context and resources* (as described earlier).

Concerns around the consequences of continuing to pursue the matter influenced the decision to take it no further at the stage when a settlement was negotiated with employers. This could mean a settlement was agreed that was lower than people initially wanted. For example, participants were concerned about their health due to the stress of pursuing the case or had concerns about the impact that a higher settlement could have on their former employer.

> *" I think it was like a Regional Director and a HR Director that [my union representative] spoke to in the end, when I said, 'Right – I've had enough' … and I possibly could have fought for a higher settlement but I'd just got to the point where I wanted out, I'd had enough and I think it was in my best interests healthwise to do that because I was getting quite, well … angry and annoyed, about the fact that this manager was more or less getting away with threatening behaviour."*
>
> *Male, employment, telephone Interview*

Participants also described deciding not to actively deal with their problem from the outset if they were concerned about consequences. Two factors underpinned this decision: firstly, participants' belief that they would not achieve a favourable outcome – for example, if they assumed their former employer would be unable to honour a contract due to financial difficulties; and secondly, participants may not pursue their problem if they were concerned for their future employment prospects.

Reflections on pathways and implications

The reflections on pathways adopted to resolve employment problems focused on participants' experience of the tribunals process. Given the complexities involved, information and support throughout the tribunal process were felt to be important. For participants who were able to investigate their problem independently, government and legal websites were a popular source of information. However, once the problem had progressed to a tribunal, participants felt that there was not sufficient or detailed enough information online about the procedure and implications of the process. Despite undertaking some research, participants were still surprised by the length, cost and complexity of the process. Some regretted taking

their case to tribunal and felt they may not have done so if the time and difficulties involved had been made clearer at the outset. These findings are consistent with a large-scale study exploring user experience of tribunals, which found that people's expectations of proceedings were relatively vague (Genn *et al.*, 2006). There is therefore arguably scope for more detailed information on relevant commonly used websites providing clear insights into what is involved in taking a case to tribunal, including what is required by the claimant personally, financially and in terms of their time.

> *"In terms of what happens and what the process is and how things go on … there's not been anyone there to advise … there's no point of service or advice from the Tribunal Service."*
>
> *Male, employment problem, telephone interview*

Those who took their case to tribunal felt the process was difficult and lengthy. Participants who self-represented reflected on the challenges experienced in navigating themselves through the process and felt the Tribunal Service had not provided adequate support. Participants also felt at a disadvantage in relation to their employer, whom they described as having better lawyers and being in a stronger position. This suggests that people would benefit from more active support at this stage, particularly for those self-representing.

4.3.2 Welfare problems

There were three common pathways adopted by participants with welfare problems:

- Handling the problem alone, for example by contacting the Department for Work and Pensions (DWP) or completing appeal forms.
- Drawing on the support of family, friends and the advice of organisations such as the Job Centre and CA or GPs.
- Letting the matter drop. Participants experiencing a problem relating to a decision that they were 'fit for work' tended to ultimately let the matter drop. They considered that their problems were concluded with an unsatisfactory outcome as they were no longer receiving Employment Support Allowance (ESA).

Figure 4.2 sets out the range of pathways in response to welfare problems, and the key influences at different stages of the pathway.

Figure 4.2: Welfare problems – key influences shaping pathways

Deciding to respond:

- Responding to problem seen as a necessity rather an active choice – key income at stake

- Fear or anxiety about consequences of assessment decision or reduction in income

Seeking options:

- Seeks advice and information from CAB

- Visits Jobcentre for information on benefit options or employment opportunities

Responding to problem:

- Handles alone by contacting DWP or HMRC; fills in assessment or appeals forms

- Calls on support of family, friends, GPs or carers for assistance in completing forms or attending assessments

Outcome:

- Lets the matter drop – no longer receiving ESA, administration error not corrected

- Administration error corrected

- Problem still ongoing

Influences on behaviour in response to welfare problems

Receiving a letter about welfare benefits tended to be the first point at which participants were faced with their welfare problem. Particularly for those faced with potential costs or a reduction in income, responding to the problem immediately was seen as a necessity rather than a choice, demonstrating the influence of *beliefs about consequences*. Feeling fearful or anxious of what the letter or assessment decision meant in terms of their future income and employment was also a motivation to respond to their problem, demonstrating the

importance of *memory, attention and decision-making* capacity, interacting with *emotion*. For example, participants felt unsure of how they would be able to live without income provided by ESA or thought they would be unable to afford a bill for working tax credits after an administration error.

> *"I can't cope with work now. I can't even decide what to wear in the mornings. It did frighten me – I wasn't even going out on my own. I knew I had to do something …"*
>
> *Female, welfare, face-to-face interview*

Important barriers related to *environmental context and resources*. Participants facing welfare problems were often restricted by ill health or physical mobility issues. They reported that they were unable to leave the house or use public transport alone, which limited their ability to handle their problem independently. Lacking physical resources was another barrier, for example not owning a printer to print assessment forms.

Participants' *environmental context and resources* also presented barriers to seeking support to resolve the problem. Participants identified their own difficulties with relevant skills to handle the problem alone (as noted in section 4.2) and felt they needed external support. There were three main barriers to accessing this support. Firstly, there was generally low awareness of formal sources of advice. Participants would consider the CAB or solicitors, but did not know of other organisations which might be able to help. A reliance only on the government agency directly responsible for their benefits was a recurring theme among the interviews. Secondly, ill health restricted accessibility to advice – for example, being unable to reach the nearest CAB due to mobility problems. Thirdly, participants were inhibited from accessing advice from solicitors due to cost: they did not have savings to draw on to pay for representation.

Letting the matter drop

There were two reasons why participants tended to let the matter drop after initial attempts to resolve their problem. Firstly, some felt all possible pathways had been exhausted and that there was no other option available but to stop pursuing the issue – for example, after trying to appeal an assessment decision but missing the deadline. Secondly, some participants decided not to appeal as they felt they would be able to absorb the loss of ESA income at least temporarily or did not feel the time needed to pursue a complaint would be worthwhile.

> *"They said I couldn't have anything. So I didn't see the point in taking things further. I didn't even know you could appeal. Maybe if I'd known that I would've, but no one told me anything."*
>
> *Male, welfare, face-to-face interview*

Reflections on pathways and implications

Accessing information and support was vital to helping those experiencing welfare problems. This group experienced significant barriers related to comprehension of communications, anxiety, stress and physical health issues, which presented major challenges. This is consistent with the findings of other large-scale qualitative research on Community Legal Advice Centres (Buck and Smith, 2013; Smith *et al.*, 2013). The implication of this suggests that a more suitable approach to communications and advice provision may be required for people facing welfare problems.

Tailored official communications

Participants struggled to navigate the procedures involved in responding to welfare problems alone, which was partly due to issues around cognitive and physical capability. There are arguably two key elements of the process which could make it easier for participants to resolve their problems earlier or more satisfactorily. Firstly, written official correspondence and forms were sometimes difficult for participants to understand. The development of official communications should bear this in mind – for example, by using simpler language or presenting the information in a clearer format.

Secondly, participants often struggled to fill in ESA assessment forms, including those who were generally literate and comfortable with form-filling. Legal or medical terminology used was sometimes confusing for participants and the procedure for appeals could be unclear. For example, the two-week required response time to file an appeal was not noticed by one participant, which meant they missed the deadline. This suggests that providing clearer instructions or a glossary to help participants fill in these forms by themselves, as well as clear information on rules and procedures, would be beneficial.

> *"You had to fill this form in that was like a catalogue and some were medical questions that I didn't understand."*
>
> *Male, welfare, face-to-face interview*

Information and signposts at the first point of contact

Participants tended to be frustrated with the processes involved with government departments. These frustrations related to delays, time taken to correct errors or the customer service they received, particularly when contacting HMRC or DWP by telephone. As this tended to be the first step for participants, it was arguably influential in whether they reached a satisfactory resolution. More information could be available at this stage, including signposts to organisations or websites where people could receive information to navigate through the process.

Provision of face-to-face advice

Participants expressed a desire for an accessible source of advice or a person to meet with who could explain the process to them. This was particularly the case for those who lacked procedural knowledge or were unsure of their capabilities to handle the issue alone. This preference for face-to-face contact was expressed in different ways and indicated low awareness of how relevant services or advice could be accessed. Some participants mentioned the need for a solicitor, others suggested social services should have a specific bureau to support people with disabilities to resolve their welfare problems. Providing such a service or advertising existing services to participants, for example via government departments and agencies, would be beneficial. The research did not explore the reasons behind preferences for face-to-face advice, but this finding is in keeping with a number of studies with low-income households (for example see Hall *et al.*, 2010).

4.3.3 Debt problems

As outlined in section 4.1, some participants described experiencing a 'cycle of debt'. At the time of interview, however, all participants said their problem had been resolved. A common pathway to manageable debt involved intervention by an external agency. An agency either negotiated a reduction in overall debt on behalf of the participant or consolidated payments into a repayment plan. Participants would either seek this help directly after independent research or after being signposted by creditors or family members. In some cases, the external agency itself would intervene and take the participant through a pathway to resolution without much active decision-making from the participant themselves. External agencies included debt management charities or agencies, the CAB or the small claims court. In some instances, this external agent was a friend or family member who helped participants pay off their debt. Prior to adopting a final pathway, some participants would try to handle the problem alone by negotiating with individual creditors or hired bailiffs. In line with existing qualitative research, this was typically unsuccessful (Day, Collard and Hay,

2008). Figure 4.3 sets out the range of pathways in response to debt problems, and the key influences at different stages of the pathway.

Figure 4.3: Debt problems – key influences shaping pathways

Before problem is identified:

No proactive response to debt problems – avoid acknowledging the issue

Deciding to respond:

Individual experiences a build-up of stress or an external trigger influences participant to respond:

- change in personal circumstances
- bailiffs
- arrest warrants
- Iitervention from debt management agencies or friends/family

Passive (Participant taken down pathway)

Seeking options:

- Friends and family signpost to debt management agencies or bank
- Banks signpost to debt management agencies
- Individual researches debt management plans or agencies online

Active (participant chooses pathway)

Responding to problem:

- Individual works with debt management agency to draw up a repayment plan or declare insolvency
- Individual contacts CAB who organise a repayment plan
- Magistrates court draws up a repayment plan
- Individual takes out a consolidation loan
- Friends/family pay off the debt

Outcome:

- Participant has manageable debt – repays an affordable amount each month
- Participant has debt written off or paid off

Influences on behaviour in response to debt problems

External factors, including both *social influences* and *environmental context and resources*, were important in influencing responses to debt. An intervention from formal support services or friends and family influenced some participants to resolve their problem, and could occur without proactive input or choice from the participant themselves. For example, debt management agencies contacted participants directly and took them through an insolvency route immediately. There were also instances where the intervention was the result of an escalation of pursuit by creditors, such as a visit from a bailiff or a warrant for arrest, which triggered anxiety and caused participants to seek help. Existing research supports this finding that an increase in seriousness of the situation is an important trigger to seek to resolve debt problems (Day *et al.*, 2008). Some participants were driven to seek resolution after a change in personal circumstances, such as losing their job or having a baby. This *belief about consequences* tended to prompt a response by creating anxiety about the implications of remaining passive about their debt.

> *"I was dead scared. It said 'No bail' on the letter. I was thinking: 'Will I come home?'"*
>
> *Female, specified money claim, face-to-face interview*

Alongside the low levels of skill and awareness across civil problems (outlined in section 4.2), participants facing debt problems experienced anxiety and stress which influenced the extent to which they felt able to respond. This demonstrates the importance of *memory, attention and decision-making* capacity interacting with *emotion*. Participants' worry about their debt was often exacerbated when they were contacted by creditors by letter, phone calls or bailiff visits. Some felt overwhelmed or 'stuck' and so ignored the issue, finding it difficult to tackle the problem without external help. In some cases, participants tended to be aware of an available pathway to resolve their debt, such as family helping financially, but had been avoiding using it until anxiety prompted a response.

> *"I've got a lot of debt, I get a lot of letters … but I'm ignoring it because I don't know how to deal with it, and it gets to the point where a bailiff will come round … I just want someone to tell me how to sort it out. There should be someone who advises you."*
>
> *Female, specified money claim, face-to-face interview*

Feelings of shame restricted participants in exploring potential resolution pathways, further demonstrating the importance of *emotion*. This led to people avoiding support from friends or family or contact from creditors. The stigma and shame associated with debt, and the

potential for this to discourage people from seeking support as identified here is congruent with previous qualitative research (Turley and White, 2007). Finally, pride and a sense of doing what was "right" meant that some participants rejected insolvency in principle as they felt a personal responsibility to pay off the money they owed.

> "A few people recommended that we just go through IVA [Individual Voluntary Arrangement] or just declare bankruptcy, but we didn't want to do that … We spent the money that was made available to us and I think it's only right that we pay it back."
>
> *Male, specified money claim, telephone interview*

Reflections on the pathways and implications

Participants with unmanageable debt could feel unable to resolve their problem without external help or intervention, and reported how they needed someone to explain the options to them. In keeping with previous longitudinal qualitative research, this highlights the importance of advice services in helping people to resolve their debt (Orton, 2008, 2010). The support needs of participants have been categorised into three areas, outlined below.

Information to enable participants to negotiate repayment plans

Participants who attempted to negotiate repayment plans with individual creditors themselves tended to be unsuccessful. This was either because they offered a monthly amount that was rejected by creditors as being too low, or were offered a monthly amount that they could not afford. Participants said they did not understand the rules around repayment plans and what creditors would be obliged to accept. Those who were visited by bailiffs described how they found the experience intimidating and felt obliged to offer unrealistic repayment plans they could not afford. Providing participants with information regarding repayment plans and rights of bailiffs at an early stage of their debt problem may therefore be beneficial.

> "If bailiffs come to the house, what rights do I have? They use a lot of scare tactics. They never accept your answers, they want to squeeze you and squeeze you – you have to offer them money you haven't got. It's a vicious cycle."
>
> *Male, specified money claim, face-to-face interview*

Signposts to debt management agencies or charities

Participants whose problem was effectively taken on by an organisation on their behalf, for example debt management agencies such as FreshStart, Stepchange or the CAB, tended to be very satisfied with the process. Once a debt management plan was organised,

participants viewed their problem as resolved and described an almost immediate switch in emotion from anxiety to relief.

However, people were initially unaware of debt management organisations or the services they offer. As the process was perceived to be so effective, it is possible that awareness of these services could have sped up resolution. As participants often had difficulty researching into options or facing up to their debt directly, signposts from creditors or banks could be effective at communicating this option.

Better accessibility to Citizens Advice Bureaus

Although participants were unsure of where they could seek help, the CAB was a well-known service. However, accessibility could be an issue. Participants reported being unable to get an appointment in time for their next interest payment, leaving them without other obvious options and potentially delaying the resolution process. Improved access to the CAB, or perhaps shorter appointments used to signpost to other relevant services, could impact on the speed of resolution.

> *"If I'd had the right advice at the right time, we wouldn't have ended up in the situation we're in. But with Citizens Advice, it's so hard to get an appointment. I need to do it in work time, but they shut the doors at 3pm."*
>
> *Male, specified money claim, face-to-face interview*

4.3.4 Money reclaim problems

Money reclaim problems were characterised firstly by a wide range in financial value of the cases which participants were considering pursuing, and secondly by the diversity of debtors. These ranged from family members, ex-partners, business partners and private companies. The nature of the relationship with the debtor and value of the debt influenced participants' choice of pathway. Pathways ranged from not taking any action (where family members were concerned) to handling the problem alone (in dealing with a private company) and engaging solicitors (in dealing with ex-partners and business partners for high-value claims).

Influences on behaviour in response to money reclaim problems

Emotion and *beliefs about consequences* were important influences on participants in deciding to act in response to their money reclaim problem. Participants responded out of a sense of injustice, but also, in high-value cases, because they needed the money and believed that by taking action they would be able to recover it.

"My priorities were where am I going to live? How am I going to live? Can we afford to live? And how are we going to resolve this?"

Male, specified money claim, telephone interview

Gathering procedural knowledge was the next step. Participants used a range of methods, for example speaking to solicitors directly and looking online at government websites. Those who went to solicitors directly made the assumption that there were no alternatives in resolving their problem.

Participants used the information gathered to weigh up the financial and time costs of various options: using the courts – either directly or through Money Claims Online (MCO)[18] – pursuing the issue through solicitors or handling the problem alone.[19] Courts were also a source of support, where staff advised participants on their options for how to pursue their claim. *Environmental context and resources* were important. Due to high legal fees, participants preferred not to use solicitors unless they felt they had no other option. Court fees were a concern for those on low incomes as exemption letters were difficult to obtain, and attending court generated travel and car parking costs.

Where participants assessed that a case was not financially viable to pursue in court – either due to lack of affordability or deemed not worthwhile due to the value of a claim – there was evidence that if participants were confident in their skills, money claims could be handled alone. As an example, one participant wrote a letter of complaint threatening court action to a car company about a purchase and received compensation. Here, *beliefs about capability* were important.

Where the debtor was a family member, *beliefs about consequences* influenced the pathway adopted. Participants who were unwilling to create distress for family members decided not to pursue the issue after exploring options. For example, parents who had lent money to their son to buy a home but were unable to retrieve their loan following the son's separation from his wife decided to let the matter drop.

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[18] Money Claims Online is an internet-based government service which can be used to take court action against someone in money reclaim cases.

[19] For more details on these processes, see Pereira *et al.* (2014).

Reflections on the pathways and implications

The diversity of experience within this problem type means that patterns of behaviour shaping pathways were less discernible than for some of the other civil problems. Unlike other civil problems, participants with money reclaim problems were confident in handling a case alone and could do so without support. In addition, the financial implications of bringing a case to court were carefully weighed up by participants, who were presented with a potentially affordable option to resolve their case through a legal process using MCO alongside an alternative of using solicitors. This enabled participants to resolve their problem relatively effectively – both in terms of time and cost – through the courts if required. This could be more widely promoted as an alternative to using solicitors.

4.3.5 Personal injury problems

Personal injury pathways were shaped primarily by whether an advocate (either a no win-no fee (NWNF) solicitor or an insurance company) was willing to take on the case. Where participants were able to secure an advocate, cases proceeded. Otherwise, participants tended to let the matter drop.

Influences on behaviour in response to personal injury problems

Emotion was a key influence in initiating a response to personal injury problems. Participants felt anger and a sense of being wronged following their injury.

> *"[The driver] said 'sorry I didn't see you' but then we got notification to say he is saying I went across him, which is absolute rubbish. I thought we could have walked away from this but then after that I thought no."*
>
> *Male, unspecified money claim, face-to-face interview*

Following a decision to actively seek to resolve their problem, *environmental context and resources* were influential. Participants felt it was important to secure representation, and the endorsement of an advocate reinforced participants' belief in the validity of their cases. There were two types of advocates who were relevant in these situations: insurance companies acting on participants' behalf, and NWNF solicitors.

In order to engage a NWNF solicitor, participants searched online and discussed their problem with a number of private companies. They were unaware of how much a solicitor would charge and were concerned about the cost, especially if the case was not won – hence the appeal of a NWNF advocate. Participants felt that if they were unlikely to win,

NWNF solicitors would not take their cases on. If they were unable to engage such an advocate, participants let the matter drop.

Reflections on the pathways and implications

NWNF lawyers were highly influential in shaping pathways to justice around personal injury. Participants were satisfied with the services received from NWNF solicitors and insurance firms. They were pleased to have such an emotive problem dealt with on their behalf, and, given the role of *emotions* in influencing them to pursue the case, they were also satisfied to have the matter dealt with in court. Participants were less content if solicitors had not taken on their cases, feeling they had not been given an opportunity to satisfactorily pursue their problem.

4.3.6   Housing problems

The housing problems consisted of neighbourhood disputes and cases where there was risk of eviction. Participants reported inadequate financial resources to pursue their problems, demonstrating the influence of *environmental context and resources.*

Influences on behaviour in response to housing problems

As with other civil problems, Citizens Advice (CA) was a crucial source of support. Participants turned to them for information and advocacy – in an eviction case, CA identified the participant's eligibility for legal aid and supported them in applying for this. In another case, their advocacy ensured that the participant was rehoused by their local authority. In a neighbourhood dispute, CA explained the participant's rights and signposted them to suitable legal advice.

Access to sufficient funds to pursue a case through court was important. In a neighbourhood dispute, resolving the issue out of court was not possible as the relationship with their neighbour and landlord had become hostile. Advice was sought from a solicitor, but they were unable to pursue the case further due to insufficient funds. In an eviction case, access to legal aid meant that the participant was able to satisfactorily resolve their case.

Reflections on the pathways and implications

The strongest behavioural influences on housing problems were *environmental context and resources* related both to support and advice from the third sector and to financial resources. In this way, these problems had much in common with other civil problems – participants turned to CA for both procedural information and advocacy, and felt they had few options if they were unable to pay for a solicitor.

5. Family justice problems

Family justice problems arise following a separation or divorce and fall broadly into two categories. Problems related to children include disputes around arrangements such as deciding which parent a child should live with, and how often they should see the other parent. Finance disputes relate to the separation of assets or future income.[20] Some participants had experienced both types of problems concurrently when dealing with relationship breakdown.[21]

In this study, there were no instances of participants with family justice problems who took no action to resolve them. Finding a resolution was acutely important to participants – the issues at stake related to access to or the wellbeing of their children, or the division of household assets which governed where they would live and how they would manage financially after a separation. Such concerns were central to participants' lives and therefore doing nothing in response to the problem was not considered a viable option. This is supported by existing research, which finds that advice is more often obtained for problems concerning family breakdown compared with other civil justice problems (Pleasence, Balmer and Sandefur, 2013).

Given the seriousness of the issues, all participants took steps to improve their knowledge of the options available to deal with their family justice problem. This information enabled them to make a decision on whether, and how, to respond. Typically, the pathway adopted did not lead to a clear resolution and tended to be one of several strategies used. In this way, family problems were different to civil problems, where a range of options was explored and a single resolution pathway selected from them.

The structure of this section reflects the ongoing negotiation of the family justice problem and how the pathway evolves over time. For both children and finance problem types, the section presents findings on how participants sought options and the behavioural influences that shaped the pathways they followed. It concludes with a consideration of participants' reflections on their pathway and its implications.

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[20] As noted in section 3.2, the family justice system also deals with public law cases which arise when social services intervention is required to protect a child at risk of harm. These cases were beyond the scope of this study.

[21] Participants were recruited to the study on the basis of having specified that they had experienced a relationship breakdown which had led to a justice problem relating to contact, finance or both.

5.1   Family justice problems related to child arrangements

Problems related to child arrangements fell into two broad categories of pathway: those that used a range of methods to resolve their problem out of court and those that resolved problems in court. These problems tended not to be fully 'resolved' in the sense of the resolution having finality. Rather, the issue may have been resolved only temporarily and re-emerged if circumstances changed. This was in contrast to civil cases, where problems were typically concluded with finality.

When faced with a problem related to child arrangements, participants took initial steps to gather knowledge to explore their options. The pathways adopted as a result tended to be prioritised firstly in relation to *beliefs about consequences*, underpinned by concerns about the well-being of their children, ex-partners and themselves, and secondly, *environmental resources.* Influences of *environmental resources* related to the cost and affordability of legal representation to resolve the issue in court. These decisions, however, did not always lead to satisfactory resolutions, and arrangements were contingent on the willingness of ex-partners to maintain the terms of the agreement. This could lead to some participants feeling compelled to 'escalate' their pathway, potentially leading to a more emotionally damaging or expensive route.

Figure 5.1 illustrates the pattern of resolution for problems related to child arrangements. The progression of pathways occurred over periods from a few months to several years, and of course permutations of these pathways varied.

Figure 5.1: Family justice problems related to child arrangements – key influences shaping pathways

Deciding to respond:

Concern around children is key influence in responding to problem

Seeking options:

- Lack of procedural knowledge on options and next steps
- Individuals approach advice services such as CAB or high-street solicitors for face-to-face advice
- Individual searches online for advice
- Friends and family offer advice on options

Responding to problem:

- Concern around distress to self, child or ex-partner is a disincentive to pursuing a legal route – participants keen to avoid court
- Concern around cost of legal route
- May decide to take further action or do nothing
- May make informal agreement with ex-partner

Court settlement:

- Negotiation and mediation breaks down
- Lack of financial resources may mean litigating in person
- Litigants in person seek support from courts, advice services, friends and family
- Existing skills and confidence important for litigants in person
- Leads to formal resolution which may break down

Mediation:

- Individual has friends and family who support informal mediation
- A professional mediator is involved and helps agree an arrangement
- May lead to in/formal resolution

Solicitor:

- Informal agreement breaks down so participant instructs solicitor
- Dispute is resolved through exchange of letters
- May lead to formal resolution

Seeking options

Procedural *knowledge* about what steps to take in response to a child arrangements problem was an important influence on behaviour. Participants did not understand what the law allowed them to do in these situations and had little experience of dealing with them. Their initial response was therefore to explore both formal and informal sources of advice in order to understand what steps they were legally allowed to take.

Professional advice was important and, when accessible and free, served as an enabler to help participants make a more informed choice of pathway. Participants referred to the availability of a free hour of legal advice offered to them by private solicitors or through CA.[22] Whether accessed face-to-face or over the telephone, participants said this enabled them to gather relevant information about their options. Participants used this opportunity primarily to obtain procedural knowledge: to find out what their legal rights were as parents and, in some cases, if they would have access to legal aid (if they had heard of it). They also used any free legal advice to explore how successful their case might be if they took it to court – in other words, to find out if it was worthwhile to do so.

Participants discovered the availability of some free professional advice in three ways: visiting CABs, speaking to a high-street solicitor or searching online. Enquiring about legal aid (either face-to-face or online) and then discovering the availability of free advice was a recurrent theme in interviews.

However, those who searched online reported that finding out about the options available to resolve child arrangements problems or the provision of free legal advice was difficult. The range of websites on offer, including many individual solicitors' websites, meant it was challenging for participants to determine which was the most authoritative.

> *"… if you've got something wrong with you, healthwise, you should never Google it … it was the same principle with legal processes … When we started looking at family laws and this stuff, you can read one website and it can contradict in other way, sort of thing. So, yes, it was complicated at first, that's why I decided just to go and talk to a solicitor straight away."*
>
> *Female, family (child arrangements), telephone interview*

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[22] Where participants referred to a 'free hour of legal advice', this related to an offer by private legal firms or CA and not a publicly funded entitlement.

Free legal advice was felt to vary in quality. Unsurprisingly, the relevance of the advice to their situation underpinned participants' satisfaction with the service. When the service was felt to be less useful, participants said this was because their options had not been fully explained to them.

> "I was entitled to an hour … but in the time she told me about legal aid rather than giving me advice … and at that time I didn't know what questions to ask."
>> *Female, family (child arrangements and domestic abuse), telephone interview*

Friends and family played an important role in directing participants to advice. They signposted them to trusted solicitors they had used previously – in several cases described as the 'family solicitor' – or to CA as an initial source of information.

Influences on behaviour in response to family problems related to child arrangements

Those with child arrangements problems were typically faced with the options of pursuing a case to court or resolving it privately. Participants expressed a strong preference for avoiding court if at all possible. Taking a case to court was considered the last resort when alternatives – including formal mediation – had been exhausted.

An important reason for this was that participants associated court proceedings with distress to themselves, their ex-partner, and most of all to their children. *Beliefs about consequences* were therefore a powerful influence on pathway decisions, primarily with regard to avoiding upset to the participant and their family. There was a strong perception that going to court would be a 'nasty' experience for all concerned.

> "I never wanted to drag the situation into court … a court case isn't nice for any child, it doesn't matter how old they are."
>> *Female, family (child arrangements), telephone interview*

Participants who took no action about their problem after exploring options also tended to do so because they were concerned about the consequences of pursuing it. Some participants, mainly fathers, were intimidated because they believed their ex-partners had greater leverage in negotiations around contact as they lived with the child. Other participants, generally mothers, feared emotional or physical abuse from their ex-partner if they pursued the case. The threat of court was sometimes used to demonstrate to the other parent that a

court settlement was a possibility, even if this was not the preferred pathway. Participants described consulting a solicitor through the provision of free legal advice to increase their leverage in contact negotiations.

Participants talked about making arrangements which they expected would be dependent on their ex-partner adhering to. For example, they described how visiting arrangements made informally between parents could collapse and contact orders could be breached. Participants were aware of this potentially changeable nature of their arrangements which contributed to pathways being characterised by the exploration of further resolution options over time.

> *"The situation is fragile and could break down at any point."*
>
> *Male, family (child arrangements), telephone interview*

A further important influence on pathway choices was the high cost associated with court action, which some people could not afford,[23] alongside the perceived time and difficulty in managing the process. This illustrated the importance of *environmental context and resources* in decision-making. The affordability of legal representation had a key role in deciding whether to go to court. Fathers in particular tended to feel that resolving the problem through the courts was not worth the expense of solicitors' fees. In some cases this was exacerbated by their perceived lack of leverage in negotiations over their children. They preferred instead to negotiate with their ex-partner or felt they had to let the matter drop. There were also instances of mothers deciding against pursuing court action to challenge a broken contact order due to insufficient funds. Where finances were restricted, participants reported that maintaining the status quo was their only option as they could not afford representation.

Perceptions around the cost of solicitors were sometimes based on having made enquiries, typically by speaking to local solicitors, but could also be based only on anecdotal evidence. Further, fathers seeking contact or residence tended to believe that courts favoured mothers in disputed cases – a belief which was sometimes reinforced once professional advice had been sought.

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[23] LASPO reforms restricted eligibility for legal aid for representation in private family law cases from April 2013.

Where participants had investigated legal aid but they were not eligible, insufficient funds to pay for legal advice or representation could create a 'cooling off period'. This then influenced the consideration of other pathways, with the overarching aim of avoiding court action.

> "If legal aid had [been available] … the way it used to a long time ago … I probably would have got an injunction on him, and things like that … it probably could have got a lot more nastier … Yes, I would have completely banned contact."
>
> *Female, family (child arrangements), telephone interview*

Participants who believed they had exhausted all options and had no alternative but to bring a case to court were faced with the options of paying for representation or representing themselves. This included participants who were under pressure to proceed to court, for example if issued with a summons by the other party. For those who had previously accessed legal aid to settle private law child arrangements in court, this was felt to be a difficult choice between a major financial burden or a daunting personal undertaking.

The role of mediation

Where participants could not afford legal representation this presented an incentive to make mediation successful to avoid the courts.[24] Mediation for family problems related to child arrangements took two main forms. Firstly, 'informal' mediation describes where members of the extended family brought together both parents to help negotiate an agreement. Secondly, in professional mediation, mediators were involved to negotiate a formal settlement between parents. There were cases in this study where both types of mediation were attempted.

Informal mediation

Family and other *social influences* could play an important part in minimising the precariousness of an arrangement between parents which had not been ordered through the courts. Extended family adopted this role through informal mediation with both parents, but also by providing a neutral place for an ex-partner to meet the child with whom contact was sought. Participants felt that this process had the benefit of informality and familiarity; by involving suitable family members in mediation, they were avoiding steps which could be antagonistic to the other parent. They felt that arrangements made this way were more likely to be sustainable. For example, the parents of one participant negotiated with her ex-partner and agreed that the child could be visited at their home. The participant felt that this

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[24] Legal aid continues to be available for mediation in private family law cases.

approach was better for her child than her ex-partner making visits at a contact centre due to the familiarity of the grandparents' home.

The success of informal family mediation was highly dependent on the skill of family members in handling negotiations sensitively and appropriately. When family members were able to negotiate with neutrality, agreements were sustained.

> *"Luckily, we've kind of managed, with the help of my mum and dad, to do kind of mediation, through my mum and dad. For a year and a half, he came up and visited my daughter at their house … We had people from both sides of the family kind of taking over and taking it out of our control, so we didn't have the contact [with each other]."*
>
> *Female, family (child arrangements), telephone interview*

The willingness to involve family in informal mediation was indicative of a broader receptiveness to mediation amongst participants. Those for whom informal mediation by family members had failed felt that professional mediation would have been helpful and less impersonal than dealing with the problem through a solicitor.

Professional mediation

Participants who had made agreements using a professional mediator found that these eventually broke down, typically within a year. It is of note, however, that these cases were recruited in court and these findings may therefore reflect a bias for cases where mediation had not been successful at negotiating a sustainable agreement between parents.[25] In these cases, professional mediation served to defer the process to court rather than halt it entirely. Other participants who had attempted professional mediation were unable to reach an agreement about their family dispute. A key reason identified for this was that mediation had been presented as an option too late in the resolution process, after solicitors had become involved and hostility had developed between parents. As a result, participants and/or their ex-partners were unwilling to take part in mediation or entertain it as a potential means of resolving the problem; rather it became a step in the process towards a court resolution. Existing qualitative research on client motivation and experience of mediation has also found that the point at which people arrive at a mediation information and assessment meeting

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[25] Most of the cases where professional mediation was used in this study were recruited at court. The participants who had made an agreement through formal mediation reported that it had broken down within a year. Efforts were made to recruit participants who had made a sustainable agreement through mediation, but this was not successful.

(MIAM) could influence the potential effectiveness of the mediation. If offered too late, clients may be less willing to cooperate (Bloch, McLeod and Toombs, 2014).

There were other reservations expressed by participants about the quality of mediation. These concerns included that the process was too protracted, making it unsuited to the resolution of disputes related to children, and perceptions that mediators were not neutral but biased towards mothers. Recent research which explored experiences of mediation found that the perceived quality of the mediator was key to people's satisfaction with the mediation process, although there was a strong and regularly stated perception of gender bias (Barlow *et al.*, 2014). The failure of mediation – or low awareness of its role in the process – meant that recourse to a solicitor was ultimately necessary.

> *"I think we made the right decision by going to a solicitor. We didn't see another way as we had tried other avenues and they didn't work."*
>
> *Male, family (child arrangements), telephone interview*

Experiences of court

As outlined earlier in this section, participants that considered court was their only option and who were no longer eligible for legal aid were faced with the choice of engaging a solicitor or litigating in person. The *environmental context and resources* available to them at this point were important.

Those who had sufficient financial resources to appoint a solicitor reported positive experiences. For example, one participant was a grandmother seeking custody of the child of her deceased daughter and used personal savings to pay for her solicitor.

Participants without financial resources to pay for a solicitor litigated in person. Some mothers were motivated to pursue a matter to court and represent themselves based on a concern for the wellbeing of their child because their ex-partner had been abusive in the past. These participants tended to be apprehensive about litigating in person, but believed strongly that they would achieve the outcome they wanted. Fathers litigating in person were equally determined but more uncertain. Echoing the concerns of fathers who were handling their problem alone, they tended to feel that mothers were favoured by the courts.

Litigating in person was reported to be a highly stressful experience. Participants reported anxiety about facing the other parent's solicitors, presenting their case and understanding the relevant process. These challenges reflect findings from a recent study on the experiences of

litigants in person prior to legal aid reforms, which identified that the majority of litigants in person had difficulties navigating the procedural and legal issues involved in their case (Trinder *et al.*, 2014).

> *"When I go to court I'm a nervous wreck, you'd think I'd done something wrong."*
>
> *Female, family (child arrangements), face-to-face interview*

It was also an experience which could be empowering. Participants reported that they grew in confidence due to their belief that they should achieve their aims in pursuing the case, and in learning about the court system. Support was critical here – participants who were most comfortable litigating in person reported that they had been assisted by staff at their local court, for example by attending free legal advice sessions, and also, in some cases, by family and friends who attended court with them. In this respect, the *environmental context and resources* available to a litigant in person could help enable their pathway to justice, as could *social influences* via family support.

Reflections on pathways and implications

Reflecting other recent research, the experiences of participants faced with family justice problems in this study were varied and suggest that available resolution strategies should take into account wide-ranging needs (Hunter *et al.*, 2015). The key challenges faced by participants in adopting their preferred justice pathway related to limited procedural *knowledge*, *beliefs about consequences* relating to potential distress and costs of pursuing legal routes and the *environmental context and resources* available in respect of sufficient finances to fund legal representation or support for litigants in person. *Social influences*, through the support offered by family in informal mediation or through the court process, was also evident.

Information and signposts at the first point of contact

In order to respond to their child arrangements problem, participants wanted to understand their options and tended to lack the procedural knowledge to do so alone. Participants required signposting to the provision of free legal advice because they were generally unaware of its availability. There was an appetite for authoritative online resources which would help them understand the options available to them and provide clear information about the relevant processes involved in child arrangements issues. There is also a need to raise awareness of the provision of free legal advice, including where this could be accessed and what could be expected from it.

Once accessed, advice delivered either face-to-face or over the telephone was largely perceived as helpful to either address procedural questions, to increase perceived leverage with the other parent or for understanding the options available in more detail. Participants' experiences of this professional advice varied, with some feeling disappointed and others feeling unsure of how to make the most of it. This suggests that guidance on the types of questions to ask in an advice session would be welcomed by those facing family justice problems and would allow them to make better use of this provision.

Balancing perceived leverage between parents in out-of-court arrangements

The preference for making arrangements out of court was influenced by the desire to avoid the perceived cost, difficulty, time and distress to all parties. A court solution tended only to be pursued once other pathways had been attempted but had collapsed.

> *"For anyone else in my boat, I'd probably say, 'Try and sort it out yourself in your own way' because if you have to pay for the courts and things it's a lot more expensive. I wouldn't really be going through it unless I had to."*
>
> *Male, family (child arrangements), face-to-face interview*

Sensitive and timely informal mediation facilitated by family members between parents supported out-of-court resolutions. The strong preference for making contact arrangements for children out of court suggests that parents may be receptive to the promotion of options that supported this – such as assistance in conducting informal family mediations.

Arrangements were typically understood to be liable to change over time, and therefore satisfaction with outcomes depended on how stable they were perceived to be. In the case of informal agreements, stability was largely dependent on the nature of the relationship with the ex-partner, which could be volatile. Where court agreements were concerned, these could, for example, be threatened by the behaviour of the ex-partner or the participant's inability to fund representation.

Perceived bargaining power was therefore important in forming a satisfactory informal arrangement – and was widely believed to rest with the parent with whom the child lived. Participants who were seeking contact with or residence of a child tended to report less leverage in making an arrangement, with cases either progressing to court for resolution, or being resolved in a manner which was 'good enough' but not entirely satisfactory to them. This may suggest that informal arrangements may be more stable and satisfactory to non-

resident parents if they feel that their needs and views are considered when making arrangements.

Improving the quality of professional mediation and changing perceptions of its role

Participants were receptive to professional mediation, but reported that in practice it happened too late in the resolution process to influence outcomes. Others felt the process was too protracted. This may suggest that professional mediation should be promoted as an option at an early stage of experiencing family justice problems to improve its role in supporting out-of-court arrangements. This may also present an opportunity to challenge the perceptions held by non-resident parents that they had less leverage in negotiating contact arrangements. Consideration should be given to addressing some of the concerns that mediation is a protracted process.

Supporting litigants in person through advice and information on the legal process

Making suitable contact arrangements for children motivated some participants to litigate in person, even when concerned about their capability to do so. Support and advice from the courts was crucial in building skills and confidence to navigate the court process.

5.2   Family justice problems related to finance

Pathways related to family justice finance problems were characterised by the perception that a resolution was dependent on sourcing professional legal advice. Problems were typically resolved through conciliation, with discussion being conducted through solicitors' letters between ex-partners. It was only when this process broke down that cases progressed to court. This pattern of progression in the resolution of finance cases is illustrated in Figure 5.2.

Figure 5.2: Family justice problems related to finance – key influences shaping pathways

Deciding to respond:

Concern around achieving a fair settlement and need for financial resources or housing following relationship breakdown

Seeking options:

- Lack of procedural knowledge on options and next steps
- Individual approaches advice services such as CAB or high-street solicitors for face-to-face advice
- Individual searches online for advice
- Friends and family offer advice on options

Active (participant chooses pathway)

Responding to problem:

- Lack of procedural knowledge
- Belief that a legal route is a necessary next step due to complexity of issue
- Concern around cost of legal route

Mediation:

- Individual has friends and family who help negotiate an agreement
- A professional mediator is involved and may help negotiate an agreement
- Mediation an expected part of the process

Court settlement:

- Negotiation and mediation has broken down – court is last resort
- Participant expects to be represented by solicitor
- Leads to formal resolution

Solicitor:

- Mediation breaks down so participant instructs solicitor
- Dispute is resolved through exchange of letters
- Leads to informal resolution

Seeking options

When faced with the requirement to separate household assets, participants felt they lacked the procedural *knowledge* to understand their options and their rights. Acquiring this knowledge and the quality of the advice they obtained therefore influenced their pathway choice. A solicitor was perceived as the most dependable and accessible source of this

information. Participants felt there was a scarcity of alternative sources and expressed an appetite for this, for example through printed materials or online resources. *Environmental context and resources* were very important where finance problems were concerned.

> *"Had there been more information around it would have helped. Leaflets or just a website that you can access specifically for divorce and what to expect. That would be really useful."*
>
> *Female, family (child arrangements), telephone interview*

There were three reasons that underpinned the preference for a solicitor. This was firstly due to the perceived complexity of the processes around the separation of financial assets. Participants were daunted by the prospect of undertaking a settlement without guidance and felt they required professional guidance and representation.

> *"I'm relatively well educated but it's still horribly complex. I think you have to do it through a solicitor because there's no way … you can't navigate the law yourself."*
>
> *Male, family (children and finance), telephone interview*

The second reason was related to *emotion* – the desire to obtain a 'fair' settlement once relations with their ex-partner had become antagonistic. Thirdly, similarly to problems related to child arrangements, solicitors were sometimes engaged to increase perceived bargaining power even if a court pathway was not preferred.

> *"I was trying to use the threat of going to court as leverage."*
>
> *Female, family (child arrangements), face-to-face interview*

Influences on behaviour in response to family problems related to finance

Securing appropriate legal counsel was therefore considered a priority. However, when asked about the process of engaging legal advice, participants did not tend to take a systematic approach to searching for a solicitor, nor did they have any clear benchmarks to judge the quality of the professional engaged. Personal recommendations were valuable and were derived from a range of sources, including the CAB and friends and family. Where personal recommendations were unavailable, participants selected a solicitor by speaking to local high-street legal professionals. In some cases this approach led to disappointment with the resolution pathway at a later stage, suggesting that participants would welcome support in appraising the quality and suitability of solicitors before appointing them.

In keeping with previous qualitative research, informal advice was vital, pointing to the importance of *social influences* (see also Buck and Smith, 2015). The ability to gather relevant knowledge was typically enabled by social networks, such as friends and family members who had experiences of dealing with a similar problem, having a friend who was a legal professional, or recommending a solicitor. Information was also sought online – for example in the case of one participant who used the 'Wikivorce' website to share experiences with and seek advice from others in his situation.

> *"Based on their experiences … that's given me enough background information to [deal with the situation] … rather than just walk into a solicitor's office and be bamboozled by technical jargon."*
>
> *Male, family (child arrangements), face-to-face interview*

Where participants believed that the quality of a solicitor might affect the outcome of their case, there was an appetite to engage 'expert' lawyers. Participants followed up recommendations that a solicitor was a specialist in the type of law that was relevant to their case, and, if resources were available, were willing to pay more for this representation.

There was widespread awareness of the CAB as an accessible source of legal information and advice. Face-to-face appointments were sought for initial information on how to handle the financial issues following a separation. Experiences of the service offered by CABs varied, ranging from perceptions that they were helpful to those that the advice offered was lacking in sufficient detail.

Participants were aware that insufficient financial resources could be a constraint in obtaining the legal advice they considered they required, demonstrating the influence of *environmental context and resources*. Participants compared costs of a number of solicitors before selecting one. They worked with solicitors to try to minimise the amount they used them by discussing their budget and agreeing in advance when and how they would be consulted. Participants required solicitors to guide them through the necessary steps and language of the relevant legal procedures, but they were also necessary to respond to the legal steps taken by their ex-partner. This reinforced participants' belief that there was little alternative to using solicitors to resolve finance problems.

The cost of legal advice also presented a barrier to satisfactory resolution for participants without financial resources. The daunting cost of paying for solicitors to deal with a protracted dispute was widely raised. Insufficient financial resources also had the potential to reduce bargaining power. For example, one participant who was unable to pay her own legal fees agreed that her ex-partner would pay them in return for reducing her demands in negotiations over their financial settlement.

Experiences of mediation

As with problems related to child arrangements, there was broad receptiveness to mediation among those interviewed, but limited evidence of its lasting success as a strategy in avoiding the courts.[26] Whether mediation was facilitated informally by family members or through professionals, the process tended to break down quickly. This was generally due to the reported non-cooperation of the other party. Participants also felt that the absence of legal enforcement of the agreements made in mediation was a factor that accounted for its failure, a finding supported by existing research (Barlow *et al.*, 2014).

> *"We went through mediation a couple of times, which was a total waste of time … You know, you write things down, but nothing happens as a result of it, it's kind of pointless. I mean, it serves as a marker, that you could have taken to a judge, I suppose, but it didn't seem to have any power."*
>
> *Male, family (finance), telephone interview*

Participants therefore tended to resolve their cases through negotiation between solicitors or by going to court. However, despite the lack of success of mediation, participants expressed some retrospective preference for settlement through mediation rather than their eventual pathway. The experience of using solicitors was felt to have been antagonistic to the ex-partner, and, most importantly, both stressful and expensive.

> *"I wish it had worked at an earlier stage … it's a simple process and would have saved a lot of money and stress."*
>
> *Male, family (finance), face-to-face interview*

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[26] As with mediation for child arrangements problems, this sample was recruited through the courts and therefore did not include participants who had made a sustainable agreement through mediation.

Reflections on pathways and implications

Family finance problems were perceived to be complex to understand, and difficult – if not impossible – to negotiate without the assistance of a solicitor. As such, in addressing these problems, *environmental context and resources* were vital.

Support and advice in choosing a solicitor

Participants used solicitors to help them understand the legal terminology and to provide guidance for the legal process. The common process of negotiating through an exchange of letters was also felt to engender the need for a solicitor. Negotiations aside, it is possible that some of the functions provided by a solicitor could be addressed by an information service – participants were keen to understand how to deal with a divorce or separation, but reported that clear advice was hard to come by, hence the need to turn to the face-to-face service provided by solicitors.

Given the importance of legal professionals, the quality and value for money of solicitors strongly influenced satisfaction with outcomes. Participants did not generally perceive it to be difficult to find a solicitor – but they did not consistently review against these criteria when searching for one, tending instead to choose a professional based on recommendation. There was considerable variation in satisfaction with experiences of solicitors. This suggests that participants would be receptive to tools to help them evaluate the quality, efficiency and value for money of solicitors, and ensure they were informed about their relevant skills.

Support with legal costs or alternative support for those with inadequate financial resources

The importance of legal advice has implications for those with inadequate resources. Participants reported paying for lawyers using savings. This means that those without access to such funds were by implication less likely to be able to access the means to resolve a family finance problem, or would be affected by this in their reduced bargaining power in negotiations.

Potential for promotion of mediation as an alternative to using solicitors

There was appetite for an effective professional mediation service among participants who had negative experiences of solicitors. Participants suggested that in retrospect they would have preferred to have made an informal agreement with their ex-partner and avoided going through the courts and incurring the expense of solicitors. This suggests that there is greater

potential for mediation to provide a source of resolution for family finance justice problems, potentially through earlier intervention or raising the quality of mediation. Exploring the potential for enforcing arrangements agreed in mediation may be appropriate. Further research to understand how the mediation process could generate sustainable and satisfactory agreements for separating couples would be beneficial.

6.   Domestic abuse

The government defines domestic abuse as "any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial [and] emotional."[27]

Changes to legal aid with regards to family justice problems came into effect from April 2013. Reforms meant legal aid was no longer available for private family law cases, unless the individual involved could provide evidence that domestic or child abuse had taken place – for most cases – in the last two years. This chapter explores how individuals in these situations endeavour to resolve their domestic abuse situation and the often associated family justice problems.

The domestic abuse cases in this study were complex, particularly as the abuse often led to other justice issues as part of a 'problem cluster'. Participants' problems tended to begin with domestic abuse and then, once the pathway to resolve the abuse had begun, family justice problems related to both children and finance arose. This section focuses firstly on the domestic abuse situation in isolation, and then secondly outlines the findings in relation to subsequent family justice problems related to child arrangements.[28]

6.1   Dealing with domestic abuse

It is important to understand the context of domestic abuse as a justice problem in order to interpret the family justice issues that often follow. The research team was assisted by a number of domestic abuse support organisations to recruit participants for this study. Therefore, limited data has been collected on the experiences of participants who did not respond to their experience of domestic abuse. This is significant because survey findings highlight that a sizeable proportion of people experiencing domestic abuse take no action to resolve their problem – significantly higher than for other justice problems (Pleasence *et al.*, 2003). However, an advantage of this recruitment approach is that it enabled the interviews to explore why participants delayed responding. A delayed response was a recurrent theme in the interviews, and the reasons for this were complex. Abuse was experienced over many

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[27]   Definition on GOV.UK: https://www.gov.uk/domestic-violence-and-abuse
[28]   Although family justice problems related to finance were also evident, they were explored to a lesser extent in interviews.

years before participants understood or acknowledged that there was a problem. This was particularly relevant in cases of emotional and financial abuse. Difficulties understanding what constituted abuse were often compounded by the participant's partner, who convinced them that there was no issue to be resolved or that there was something wrong with the participant, which deterred them from seeking assistance.

> *"It was normal; I didn't know it was abuse. There was nothing tangible I could put my finger on, just a horrible atmosphere … Trying my hardest not to make him angry."*
>
> *Domestic abuse, face-to-face interview*

The pathways taken to resolve domestic abuse tended to be passive. Participants typically discussed their situation with friends, family or external agencies, who then acted on their behalf, whether it was of their choice or not.

When participants did make an active response they tended to handle the situation alone by leaving their home or by asking their partner to leave. Other participants sought professional advice by contacting the police. However, while some were active in this initial step, they then did not want to pursue the issue further, and therefore retracted any statements given. Participants did this for several reasons: out of loyalty for the ex-partner, fear around what the criminal process would entail and concern over the impact of this on their children. In some cases, the police took an active role and removed the participant or their partner from the home without the participant's consent.
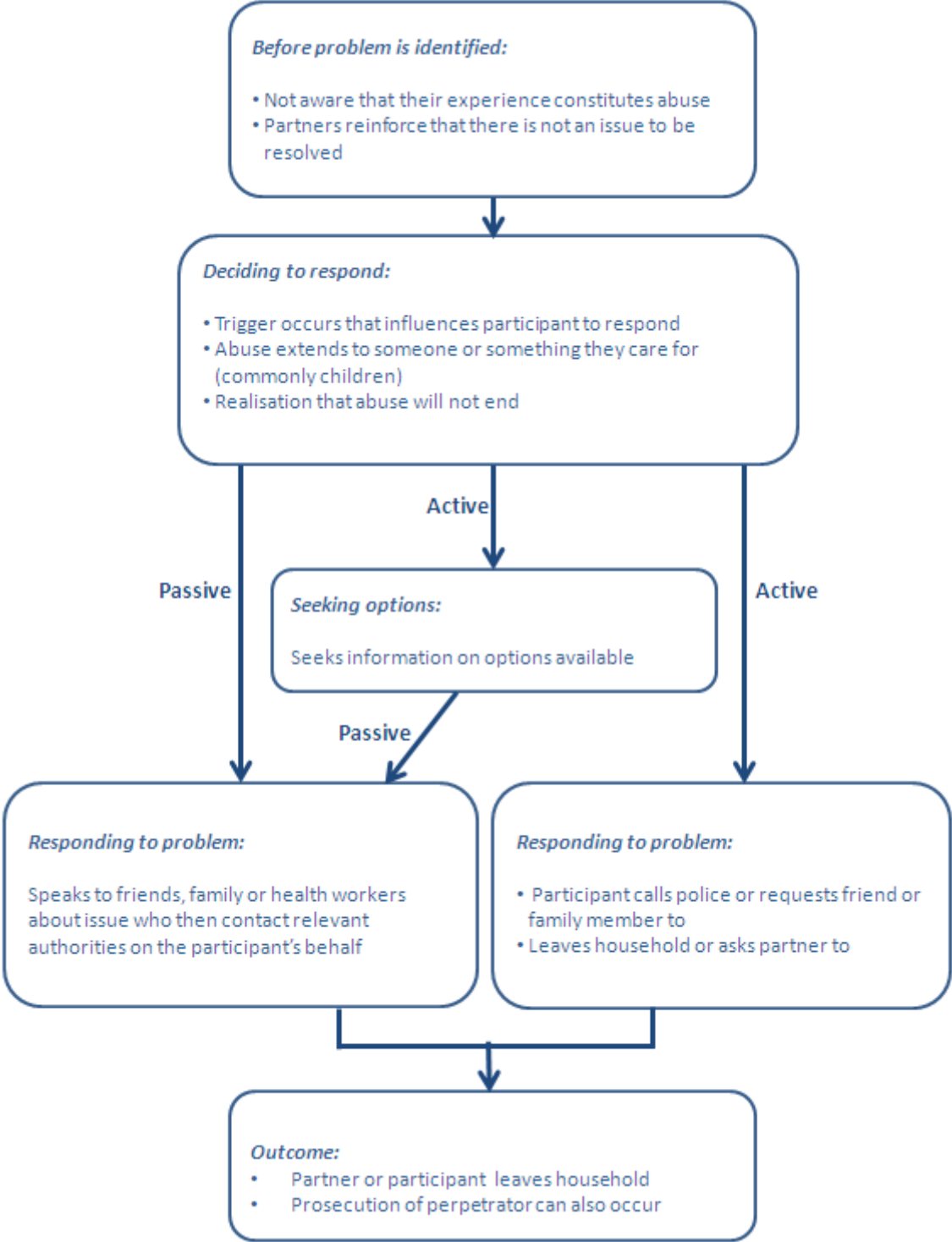
> *"I thought 'I've spent 32 years with this man' … I loved my husband, I loved him … So I went to the station and I retracted the statement."*
>
> *Domestic abuse, face-to-face interview*

There were also instances of participants seeking information and advice on how to deal with their problem – but being deterred from taking further active steps because they felt discouraged by the advice offered (discussed further later in this section). Figure 6.1 outlines the range of pathways and key influences in response to domestic abuse.

Figure 6.1: Domestic abuse – key influences shaping pathways

Before problem is identified:

- Not aware that their experience constitutes abuse
- Partners reinforce that there is not an issue to be resolved

Deciding to respond:

- Trigger occurs that influences participant to respond
- Abuse extends to someone or something they care for (commonly children)
- Realisation that abuse will not end

Active

Passive

Active

Seeking options:

Seeks information on options available

Passive

Responding to problem:

Speaks to friends, family or health workers about issue who then contact relevant authorities on the participant's behalf

Responding to problem:

- Participant calls police or requests friend or family member to
- Leaves household or asks partner to

Outcome:
- Partner or participant leaves household
- Prosecution of perpetrator can also occur

Influences on behaviour in response to domestic abuse problems

In deciding to respond to their problem, participants were influenced by the impact of the abuse on their family, and concerns around what not taking action might mean – for example, when children were threatened with abuse. Participants feared for the safety of their children, triggering a realisation or belief that the abuse was not going to end unless

action was taken. Where there were no children in the household, the threat of violence could be aimed at household pets, but generated a similar emotional response. Participants described how abuse could be "accepted" when it targeted them alone, but not when potentially targeted at someone that they cared for. An escalation of abuse and the subsequent realisation of the impact this could have on children as a trigger to respond is consistent with existing literature (Humphreys and Thiara, 2002).

> *"That's what changed it; bad enough me but the fact I had my son in my arms, I realised then that was never going to stop … I realised then that if it had carried on like that I would have ended up giving my son the same life that I had."*
>
> *Domestic abuse, telephone interview*

Beliefs about consequences and *emotion* were therefore central in encouraging participants to respond to domestic abuse. These factors did not shape the ultimate pathway adopted, but they heavily influenced an initial response seeking to address the situation.

Once the domestic abuse had been identified as a problem to resolve, low awareness about who or where people could turn to for guidance or assistance was a recurrent theme in the interviews. Participants therefore approached external advice and support agencies that they had previous contact with. These agencies encompassed social services, the police, GPs, CAB, school counsellors, health visitors and mental health support workers. The reason participants turned to these external agencies was twofold. The agencies were trusted and familiar to them, but also participants did not know where else they could go for advice and support. Once the participants had spoken to an external agency, these organisations tended to take charge of the situation and contact the appropriate services or authorities. At this stage, *environmental context and resources* were therefore highly important in shaping domestic abuse pathways.

The pathway taken by participants after initial contact with external agencies was dependent on their perception of those authorities and how effectively they felt they could deal with their problem. There was evidence of participants experiencing an inadequate level of support from social services and the police, because they felt they had been treated insensitively or not believed when reporting domestic abuse. Participants in this situation felt they were perceived to be the guilty party, which initially meant the issue was not taken further. They also mentioned that the police and social services did not always signpost or refer them to further sources of information or support to deal with the physical and emotional impacts of the abuse.

Participants with a positive experience of external agencies were more likely to have accessed support more quickly – for example through being referred to domestic abuse organisations by the police, social services, GP or school counsellor. Contact with domestic abuse organisations was not always through a referral. Some participants had found them online or through advertising.

> *"Whilst we'd been in hospital I'd seen this notice on the wall from [support agency] about domestic abuse and it actually listed emotional, psychological, physical, sexual, and financial."*
>
> *Domestic abuse, face-to-face interview*

Participants also sought advice and support from friends and family, demonstrating the importance of *social influences*. Speaking to friends and family frequently led to the police being called, but, importantly, this was not always at the request of the individual who had sought advice. Participants who did not want the police involved were very fearful of the consequences of the actions of their friends and families.

> *"My mate saw me crying on the doorstep and she said 'what's the matter?' I said he's done it again … She said 'I'm not having this any more' and she said 'That's it, I'm phoning the police' … I said don't and she said 'I've got to because you'll end up dead. You or the kids will end up dead, if I don't.'"*
>
> *Domestic abuse, face-to-face interview*

One important factor which formed a barrier to dealing with domestic abuse problems related to *environmental context and resources*. Participants were typically financially dependent on their partners and had no or few financial resources of their own. All household finances tended to be in their partner's name and under their control. This situation reinforced the belief that they could not leave, as if they did they would be unable to financially support themselves or their children. This led participants to delay a response to the abuse. It could take months or even years for participants to seek help from friends, family or external agencies.

> *"If it's just you on your own it doesn't matter. When you've got two children that also need to go with you, you need to know that you can support them financially."*
>
> *Domestic abuse, face-to-face interview*

Social influences, or lack thereof, could also form a barrier to responding. A number of perpetrator behaviours described by participants that had a bearing on the response are well established in the literature on domestic abuse (Barnish, 2004). Some people talked about how their partner's controlling behaviour had not only caused them to withdraw from their existing friends, but also prevented them from making new ones or expanding their social networks. Participants eventually responded by turning to external agencies as they had no social networks to turn to. Indeed, some believed that their partners had deliberately moved them to new areas where they had no connections.

Conversely, other participants did have friends and family in their local area, but this did not necessarily lead them to resolve their situation, because either their own or their partner's friends or family advised them that the domestic abuse was not a problem which required resolution. Participants also described how they were led by friends and family to believe that the abuse was their fault – that they must have done something to cause this to happen. This is equally congruent with the existing literature on 'victim blaming' (Barnish, 2004). This situation generally ultimately led to participants seeking assistance from external agencies.

> *"They knew what was happening and they kept telling me it was me. It was like the whole family was joining in with it. The whole family liked to have the control."*
>
> *Domestic abuse, face-to-face interview*

A further barrier was created in some cases by cultural and *social identity*. Some participants felt prevented from responding to their problem because they felt that the social norm that 'marriage is for life' had been cemented in them and therefore separation or seeking help was not an option. Equally their religion[29] and their religious community reinforced that divorce was not possible, which led them to turn to external agencies as they felt they could not turn to family and friends for help. This finding builds on the evidence around 'community denial' which deters some people from confiding in others and seeking help (World Health Organisation, 2002).

> *"Marriage is once, that's it, marriage is for better or for worse and you don't realise how much worse until you've been … I had to keep trying, I had to keep trying and of course it didn't make any difference, in fact it just made it worse."*
>
> *Domestic abuse, face-to-face interview*

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[29] The participants that these findings refer to were Catholic and Muslim.

Reflections on pathways and implications

Participants found it hard to reflect on a process that they felt was not over. This was in part because domestic abuse tended to be part of a problem cluster with subsequent family justice problems related to child contact arrangements or the separation of assets. In many cases, at the time of research, the family justice-related issues were still ongoing. Additionally, some participants found reflection difficult because their experiences were still recent and they were as yet unable to fully process what had happened to them.

Ensuring supporting services are sensitive in handling domestic abuse

Participants' satisfaction with their pathway was heavily dependent on the outcome they experienced. If they considered that their resolution strategy ended the abuse without additional distress, participants tended to feel that they would not do anything differently if they experienced it again. To illustrate, when reflecting on their experience some participants highly praised the police for their support and sensitive handling of the problem.

However, if they felt negatively about the outcome, they commonly blamed the services they had turned to and suggested that these services should make changes to the way they deal with domestic abuse. Experiences of the police and court system were important to participants in their final reflections. Some anger towards these services arose because participants felt that they had not received enough assistance during the process and that not enough had been done to reassure them that they were believed. Further training for professionals such as social workers and the police may be beneficial in order to ensure that people who have experienced domestic abuse are not distressed by their experiences.

Information and signposting to advice on tackling domestic abuse

Participants noted that it was difficult for them to identify sources of support or to find out how to resolve their domestic abuse situation. Women without dependent children found this especially challenging because they perceived support organisations as less able to help them.

> *"There seems to be a missing link – there's lots of help for women with children but not for those without."*
>
> *Domestic abuse, telephone interview*

Domestic abuse took a long time to be acknowledged, and even when recognised, participants lacked knowledge about where to go for information and assistance. This implies that there is a need for further awareness-raising among relevant populations on what constitutes abuse and where individuals can go for information, support and advice.
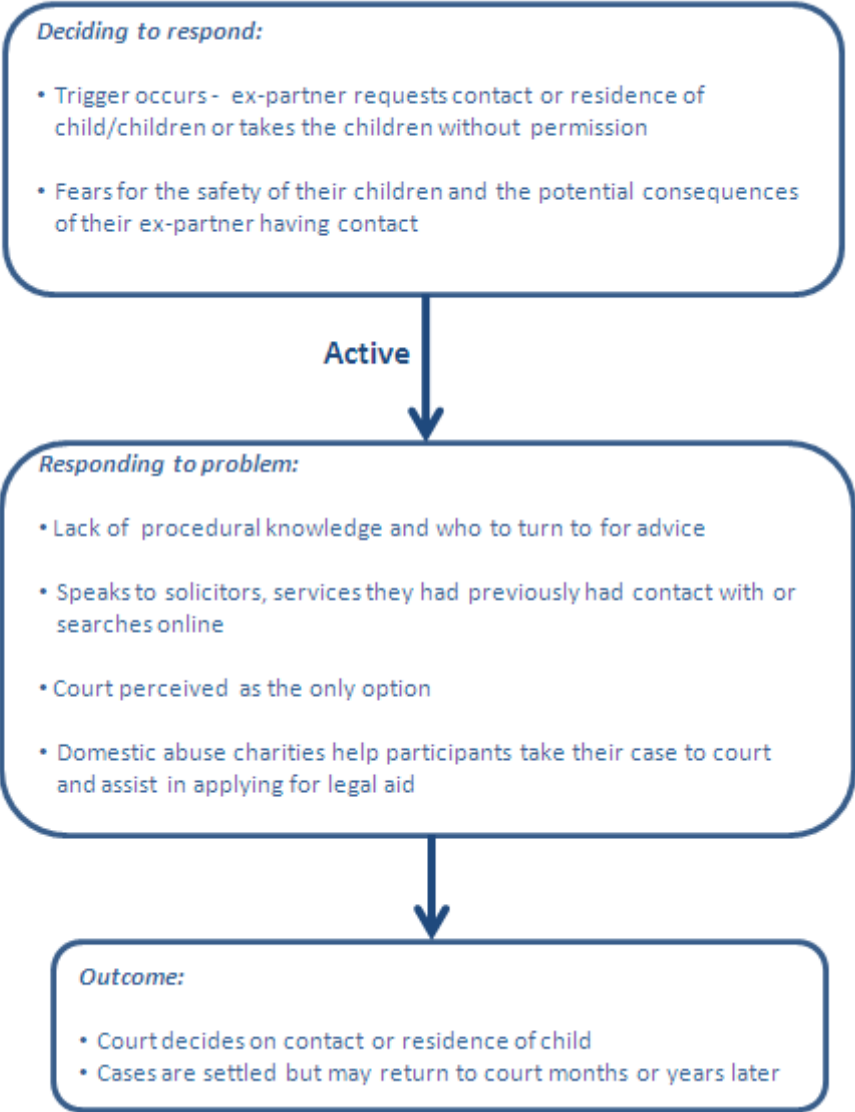
6.2   Domestic abuse and family justice problems

This section describes the problem 'clusters' of domestic abuse and subsequent family justice problems related to child arrangements. Participants tended to make an active response to their family justice problem once they had begun to resolve their situation of domestic abuse. They described how they sought a pathway through the courts. Court proceedings tended to begin when the participant's ex-partner requested contact or full residence of their children. Participants were notified formally through a solicitor's letter or through an application for a Child Arrangements Order.[30] In a few instances court proceedings were started by the participant when an ex-partner took the children without their permission. These two situations represented key triggers of the response to the family justice problem. The range of pathways and key influences are presented in Figure 6.2.

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[30]   A 'child arrangements order' is a court order that details where your child lives, when your child spends time with each parent and when and what other types of contact, like phone calls, take place.

Figure 6.2: Domestic abuse and family problems – key influences shaping pathways

Deciding to respond:

- Trigger occurs - ex-partner requests contact or residence of child/children or takes the children without permission

- Fears for the safety of their children and the potential consequences of their ex-partner having contact

Active

Responding to problem:

- Lack of procedural knowledge and who to turn to for advice

- Speaks to solicitors, services they had previously had contact with or searches online

- Court perceived as the only option

- Domestic abuse charities help participants take their case to court and assist in applying for legal aid

Outcome:

- Court decides on contact or residence of child
- Cases are settled but may return to court months or years later

Influences on behaviour in responding to domestic abuse and family problems

Participants described how domestic abuse had had a negative influence on their children's behaviour, a finding supported in the academic literature (UNICEF, 2006). To that end, concern about their children's well-being meant participants did not want to negotiate contact with their ex-partner. The participant's emotional reaction to this situation was very important: they feared for the safety of their children and knew they had to act immediately, as they did not want their children to experience any further distress.

> *"I got a letter through the door saying he wanted contact with the children and I just saw red … There is no way he is seeing the children, so I will just fight. He is only going to hurt them again."*
>
> *Domestic abuse, face-to-face interview*

Thus *emotion* and *beliefs about consequences* interacted, inducing participants to choose court proceedings rather than an agreement out of court, in the hope of avoiding having to make contact arrangements with their ex-partner. Participants believed that going to court would lead to them being awarded full residence of their children because this would be, in their view, the only fair outcome.

However, *beliefs about consequences* could also lead to participants negotiating shared access to the children with their ex-partner because they feared that their children may be taken away from them if they pushed for full residence through the courts. These participants found it hard to articulate exactly why they thought this would happen, but they implied that it may have been due to feeling anxious at the time of dealing with the problem.

Once participants had established that they needed to act, they tended to turn to either solicitors, local services they had dealt with before such as social services, or the internet for information on the relevant legal process. Participants knew they needed to seek help for this issue but did not know where to turn to for support.

Advice was sought from solicitors because participants acknowledged that they had no procedural knowledge and felt they needed professional guidance. *Beliefs about capabilities* were an important influence on behaviour for participants in this situation. Solicitors were sought because participants did not feel confident in their own abilities to tackle the court process alone, although some assumed they needed a solicitor and were not aware they could litigate in person. The identification of a solicitor did not tend to involve a thorough screening process because participants were desperate for help; they tended to choose the first solicitor that was available to assist them.

> *"I didn't care if they [solicitors] were rubbish or they hadn't been recommended. I just wanted someone to help me."*
>
> *Domestic abuse, face-to-face interview*

In some cases, the detail of eligibility for legal aid in family cases was not explained in full by solicitors, and participants were not encouraged to explore their potential eligibility. For

example, in initial conversations with solicitors, participants reported that they were informed immediately that legal aid for family cases was no longer available. This discouraged participants from explaining their full situation, meaning they did not become aware that they were indeed eligible for legal aid.[31] Being informed that they were not eligible for legal aid led to participants self-representing in court or paying for a solicitor themselves. Participants who decided to self-fund did this because they had the opportunity to do so (mostly due to contributions from family members) and they believed the use of a solicitor would increase the chance of a desirable outcome. Litigating in person for those who had experienced domestic abuse was reported to be a difficult experience, and these participants were aggrieved and upset by the situation. Here people tended to seek advice from the solicitor outside of court and then litigate in person on the day of their court hearing. In some instances they faced a solicitor representing their ex-partner, which they felt to be very unfair. Conversely, there was evidence that litigating in person could have positive aspects, with participants reflecting that doing so had allowed them to speak for themselves.

> *"I did it with him [solicitor] in the background, but on the actual day in court it was me on one side. I tell you that was a learning curve. I was practically doing a degree in law and trying to work. I was up against three of them."*
>
> *Domestic abuse, telephone interview*

Some participants turned to the domestic abuse organisations they already had previous contact with after solicitors stated that they were unable to help them. These organisations supported them through the process of accessing legal aid. Indeed, in some cases, the organisations assisted participants to such an extent that many did not know on what grounds they had been granted legal aid but assumed that it was in relation to their income. They were therefore unaware that evidence of domestic abuse had been used to access legal aid.

Being unable to access legal aid did not prevent participants in this situation from pursuing their family justice issue through the courts – consistently with family cases which did not involve domestic abuse (see section 5.1). In one case, the participant believed that their ex-partner had intentionally waited until the legal aid reforms came into effect to file custody papers so they would be unable to claim legal aid (as the last instance of domestic abuse was over two years ago). Keen to secure representation, she turned instead to family and

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[31] Legal aid is available in private law family cases for people who can provide evidence of having been a victim of domestic abuse within the previous two years.

friends to borrow money to cover the cost of the solicitor's fees. Participants were unable to settle their issue out of court given that mediation was considered inappropriate in cases with domestic abuse.

Reflections on pathways and implications

Participants who were satisfied with the outcome of their case felt that the support they had accessed was crucial to the outcome and their overall satisfaction. In particular, the domestic abuse charities and refuges that they had contact with were viewed as important. Conversely, if the participant felt that the outcome of the case was not as they had hoped, they commonly reflected on the whole process in a negative light. In particular, participants felt frustrated that they had spent money in engaging a solicitor and not obtained the outcome that they desired. They also tended to reflect that there was nothing that they could have done differently to change the final outcome.

> *"All of those proceedings that cost all of that money have been an absolute waste of time. And even though … I did everything I was told to do, we are left with a situation where I am totally apart from my child … And where is this judicial process protecting women like me? I am not the only one."*
>
> *Domestic abuse, face-to-face interview*

Clear and accurate advice on legal aid eligibility from legal and advice professionals

A key implication of the domestic abuse and family justice problem cluster in this study is that further work may need to be done to ensure that legal professionals are providing accurate advice and guidance on legal aid eligibility. The rules around legal aid and family cases need to be made clearer to legal professionals and people who have experienced domestic abuse as there was evidence that they are currently being misinformed, leading to assumptions that they are ineligible for legal aid. This is in addition to considering raising awareness around the support and advice services available as discussed in section 6.1.

7.   Overall conclusions

7.1   Barriers and enablers to resolving justice problems

A number of behavioural influences were common across several problem types in this study, presenting important recurring themes and implications.

Difficulties accessing procedural knowledge

Difficulties accessing knowledge to understand the options available and relevant processes to follow was a critical barrier to resolving justice problems, although it was evident and addressed in different ways for different problem types. Across the study, participants in diverse situations reported that they needed information on the options available to them (including related costs), required guidance on the meaning of legal terminology and wanted information on the legal process, including for courts and tribunals. They required this information in order to understand what their next steps could be to resolve their justice issue and what to expect at each stage. Finding this information tended to be the precursor to seeking advice on which option to choose.

The most suitable channels to access the information required were not always clear to participants. Seeking the advice of a solicitor or visiting the CAB was a common response to the need for information. Participants felt that authoritative online resources were hard to identify; such resources were typically not clear or comprehensive and could be contradictory.

Individual capability relating to skills and decision-making capacity under stress

Low levels of individual capability with skills such as comprehension and communication were a key barrier to resolving justice problems. There was considerable evidence that participants with limited ability to understand complex written information and those who were vulnerable or distressed were not able to understand their options fully and make informed choices. Confidence was also important. Participants who felt they lacked capability could be easily discouraged if unable to access the information they needed, and tended to let the matter drop even if they would have preferred to pursue it.

Support through advocacy and representation

The importance of support through advocacy and representation was evident in employment, money claims, personal injury, domestic abuse and family finance cases, and also in family child arrangement cases which were settled in court. All these problem types were

characterised by an emotional 'trigger' – participants tended to report emotional reasons for deciding to act on the problem and experienced distress in dealing with the problem. These cases were also often resolved in court or tribunal, or through negotiation with a solicitor. Independent advocacy offered vital support to participants in these processes, enabling them to pursue a case if they felt unable to do so alone.

The nature of advocacy differed across problem types. The third sector played a key role through CABs and trade unions for employment cases. A lack of support from this sector could be a barrier to the resolution of justice problems – for example, participants who were unable to secure appointments at CABs were unable to access relevant procedural information. The perception of insufficient support from the public sector also presented problems: participants who had experienced domestic abuse reported that inadequate support from the police and social services created distress. There was evidence of participants' ability to adapt to the absence of an advocate through litigating in person – for example in employment cases where representation through unions or a NWNF solicitor could not be secured, and in family justice cases where participants were not eligible for legal aid. In these cases, however, participants still required support, highlighting the importance of guidance from the courts when litigating in person.

Sustainability of agreements following (informal or professional) mediation

Participants were receptive to resolution of their problems through mediation, although experiences and the sustainability of agreements varied. In employment cases, all relevant settlements agreed through mediation had held at the point of interview, whereas for family cases none had done so. To at least some extent this was related to the nature of the sampling for this study. However, participants' reports of the mediation process demonstrated that there was a qualitative difference between the two types of agreement. In mediated employment settlements, participants were offered and agreed to take a certain number of months' pay, which ended the matter – the terms of the offer were simple. In family mediations, the process was often not successful because it started too late, when relations between ex-partners had become antagonistic, and because the dynamics of the settlement were complex, involving contact with children and the separation of assets. The limited sustainability of mediated family arrangements was a barrier to participants adopting their preferred pathway in family justice cases, which was to avoid court.

Financial resources

Access to financial resources was an important enabler in problem types where using a solicitor was a likely or preferred pathway. These included family cases related to finance, personal injury and money claims cases, as well as some domestic abuse cases where participants did not access legal aid. Finances could dictate whether a case was considered worthwhile pursuing at all. They could also dictate the level of perceived leverage once solicitors became involved in family finance cases. Despite this, in family justice cases, including those with domestic abuse, limited financial resources did not deter participants from seeking to resolve the case in court. Participants litigated in person, although some felt they struggled to do so effectively.

Support from friends and family

Social networks supported participants across all problem types. Participants reported turning to friends and family for a range of reasons along their pathway. They provided guidance on where to look for help, signposted to professional advice services and were a source of advice themselves. Friends and family enhanced the resources available to participants to resolve their problems – through providing money to pay for legal representation, offering support in informal mediation and intervening in domestic abuse problems. This has implications for access to justice for those without established social networks, who may find it difficult to take the first steps to resolve their justice problems or find themselves with fewer options to access the resources required.

7.2   Key implications

Improving awareness and accessibility of information

People faced with justice problems would benefit from increased awareness and improved access to clear and timely information around the options available to resolving their problem. This information could be delivered through a range of channels, although there was a strong expectation that such information should be available online. Given that seeking information through solicitors and CA was widespread, the quality of advice provided by these sources should be consistently high. The importance of the CAB and other third sector services suggests that these organisations need to be supported to facilitate improved access for people facing justice issues.

Tailored and targeted support

People with low skills or capability, or vulnerable groups, would benefit from tailored and targeted assistance in accessing information and support. The format and channel of official

information should be considered with these specific groups in mind – for example, through simpler and clearer communications for people with welfare problems. Appropriate options for resolving problems to take into account different capabilities and access to resources should be available.

Mediation

The questions raised by the study in relation to the timeliness and quality of mediation in family justice cases suggests that further research is required to explore what makes mediation successful. This learning could be embedded into the promotion of mediation and through the training of mediators to offer people a preferred pathway in the resolution of family justice problems.

Advocacy and representation

In some problem types, including employment and family finance, the complexity of problems meant the use of a lawyer was perceived as unavoidable. This presents challenges for people without adequate financial resources. Consideration should be given to exploring how these problems may be effectively resolved without the use of a lawyer – and to promote awareness of these options.

For problems that are resolved in courts, particularly family cases with domestic abuse, advocacy and representation was extremely important. Third sector organisations which provide this assistance should be maintained and supported. The guidance and advice around legal aid eligibility for people who have experienced domestic abuse in family cases should be clarified – for individuals themselves, and for legal professionals. Support for litigants in person should aim to continue to address some of the challenges they face.

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Glossary

Arbitration	Arbitration is a non-judicial form of alternative dispute resolution (ADR) in which an independent third party considers both sides in a dispute, and makes a decision that resolves the dispute. The arbitrator is impartial. In most cases participants agree, in advance, to abide by the arbitrator's decision and it will be treated as final and legally binding.
Child arrangements order	A 'child arrangements order' is made through the courts and decides where a child lives, when the child spends time with each parent, and when and what other types of contact, like phone calls, take place.
Conciliation	Conciliation is a form of ADR whereby an independent person (the conciliator) tries to help the people in dispute to resolve their problem. The conciliator should be impartial and should not take sides. The conciliator meets with the parties both separately and together. The parties in dispute are responsible for deciding how to resolve the dispute, not the conciliator. In some conciliation, the conciliator gives an opinion about what would be a reasonable resolution.
Conditional fee agreements (CFAs) – sometimes known as no win-no fee arrangements	Conditional fee agreements (CFAs) are formal, legally binding agreements between a party and their solicitor, and they must be agreed in writing. If a party wins their case, their solicitor's fees will mostly be paid by the losing side. If a party loses the case, they do not have to pay their solicitor's fee – the solicitor agrees to take the risk of not being successful. CFAs are most commonly used in personal injury cases.

Damages-based agreements (DBAs)	Damages-based agreements (DBAs) are similar to CFAs and are a means of funding civil cases. Under a DBA, lawyers are not paid if they lose a case but may take a percentage of the damages recovered for their client as their fee if the case is successful. Before 1 April 2013, DBAs could not be used in civil litigation.
Mediation	Mediation is a form of ADR in which an independent third party (the mediator) helps parties with a dispute to try to reach an agreement. The mediator assists the parties to negotiate a settlement, with the parties deciding whether or not they can resolve things and what the outcome should be. The settlement reached is not legally binding, but can be made legally binding via a court order.
Money Claims Online (MCOL)	Money Claims Online (MCOL) is a facility provided by Her Majesty's Courts and Tribunal Service (HMCTS) through which certain civil claims can be issued and progressed online. The main criteria for using MCOL are that: the only remedy claimed is a specified sum of money; the amount claimed is less than £100,000; the claim is made against no more than two defendants. A fee must be paid, but a claimant cannot apply for fee remission if they make the claim via MCOL. Defendants may respond online to claims issued through MCOL.
Ombudsman	Ombudsmen are independent, government-appointed officials charged with investigating and resolving complaints against organisations and government bodies. They also encourage good practice in the way complaints are handled.

Qualified one-way costs shifting (QOCS)	Qualified one-way costs shifting (QOCS) means that the legal costs incurred by successful claimants will be 'shifted' to the defendant, who will be ordered to pay them. This form of cost shifting only applies one-way, in that defendants who successfully defend themselves against claims brought against them will not be able to claim back their legal costs from losing claimants.

Appendix A
Discussion guide

1. Background

The Ministry of Justice (MoJ) would like to better understand the decision-making processes which customers go through when encountering administrative, civil and family justice issues.

2. Aims of the research

The key research aims for the study are:

- To get an understanding of civil, administrative or family justice problem experience.

- To map the range of pathways used to resolve civil, administrative or family justice problems.

- To identify the drivers for people's behaviour and the critical points in the decision-making process about how to resolve a civil, administrative or family justice problem.

- To explore the perceived effectiveness of the different pathways people take to resolve their civil, administrative or family justice problem and the outcomes they achieve.

3. Structure of the discussion

Notes	Guide sections	Guide timings
1. & 2. **Introductions and background**	Sets the scene, reassures participants about the interview, confidentiality. Discuss the general work and life circumstances of the participant which provides useful background and also establish rapport.	10 mins
3. The 'problem'	The aim of this section is to elicit as much detail as possible about i) the problem they face/have faced, ii) how the problem emerged in the first place, and iii) the current state of the problem (including outcomes achieved to date). The purpose here is to establish a beginning and end to their experience which can be used as markers in the mapping process.	10 mins

Notes	Guide sections	Guide timings
4. Mapping pathways	Having established the start and current state of the problem in the previous section this stage of the guide will seek to map the participant's path to date. This would include mapping i) the decision to do something or not, ii) the act of choosing between the response options available, and iii) the pathway that culminated in the participant's current state.	15 mins
5. Exploring pathway decision drivers	This section establishes the key factors that influenced the participant's pathway The sub-headings introducing the question areas in this section derive from the Theoretical Domains Framework (TDF). This has several advantages. Using the TDF to structure this section provides a "comprehensive coverage of possible influences on behaviour". Furthermore, using this approach may also prompt respondents to identify influences that they would otherwise not report.	20 mins
6. Reflecting on pathways	This section will elicit participant reflections on their experience and specifically whether they would do anything differently if they were to go through the same process again.	10 mins
7. Conclusions	Sums up and draws interview to a close.	5 mins
Total time (the total time of the interview will vary depending upon the path taken)		1hour 10 mins

4. Note to interviewers

It is likely that participants will be sharing experiences of difficult and upsetting times in their lives and it is vital that we do not distress participants in the research process. Please take extra care to listen to and observe cues from participants on what they are comfortable discussing, and consider mirroring the language and approach of the participant to topics under discussion.

Welcome and introduction	Notes/comments	Time
o Thank participant for taking part. o Introduce self, Ipsos MORI. o Confidentiality: reassure that all responses are anonymous and that information about individuals will not be passed on to anyone else. o Explain outline of the research – MoJ have asked Ipsos MORI to talk to people about their experience of different kinds of problems and how they have chosen to deal with them. o Please also explain that the interview is about processes and decision-making, so whilst it helps to have some background on the issue, there is no expectation that they should go into the finer details of the issue, and they do not have to discuss anything they are not comfortable with. o Role of Ipsos MORI – independent research organisation (i.e. independent of Government), gather all opinions: all opinions valid. Remind that there are no right or wrong answers. Commissioned by MoJ to conduct the research. o Get permission to digitally record – transcribe for quotes, no detailed attribution.	Welcome: orientates participant, gets them prepared to take part in the interview. Outlines the 'rules' of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).	5 mins

1. Personal background	Notes/comments	Time
Aim: to get the participant talking and to help them understand the conversational style of the interview and to provide useful information to set interview in context		5 mins
Explore what they do day-to-day		
• Can you tell me a bit about yourself?		
• What is your day-to-day life like?		
• Are you working at the moment?		
Explore their family circumstances		
• Are you currently in a relationship?		
• Is your partner working at the moment?		
• Do you have any children?		
• How old are your children?		
Explore current living arrangements		
• Who do you live with?		
• How long have you lived here?		
• Do you own or rent this home?		

2. The 'problem'	Notes/comments	Time
Aim: *To elicit as much detail as possible about i) the problem they face, ii) the current state of the problem, and iii) how the problem emerged in the first place. The purpose here is to establish a beginning and end to their experience which can be used as markers in the mapping process.* **Stimulus**: *Begin using the timeline (APPENDIX A) – adding timings and a beginning and end.* **Associated research questions:** To get an understanding of civil, administrative or family justice problem experience • How do people comprehend and describe their civil, administrative or family justice problem? • How does the impact of problem experience (e.g. experiencing other problems, health consequences, other aspects of life) influence response? When we [Ipsos MORI] last spoke with you, you mentioned that you are currently [Researcher to outline the nature of the problem participant is experiencing or has experienced]. How accurate would you say that is? What else can you tell me about this? [Please provide as much detail as possible.] Again, in as much detail as possible, could you tell me how and when [Insert problem] arose in the first place? What was the initial impact on you? • Health • Relationships • Finances • Quality of life What is happening at the moment regarding the [Insert problem]?	Aim here is to allow the participant to explain as far as possible what has happened in their own words. MODERATOR: please explore the issue in detail. Please probe and follow up on any details provided by the participant.	10 mins

3. Mapping pathways	Notes/comments	Time

Aim: *Having established the start and current state of the problem this stage would seek to map the participant's path to date. This would include mapping i) the decision to do something or not, ii) the act of choosing between the response options available, and iii) the chosen pathway that culminated in the participant's current state.*
 	
Stimulus: *The interviewer would work with the participant to populate the timeline (APPENDIX A).*
 	
> **Associated research questions:** To map the range of pathways used to resolve civil, administrative or family justice problem
>
>   - What expectation do people have and what outcomes were they trying to achieve before deciding how to respond to their problem?
>   - What resolution strategies (including use of formal or informal services, support or advice, or doing nothing) do people adopt?
>   - What dispute/problem resolution processes (informal, formal out-of-court, or court-based routes) are used in response to experiencing a civil, administrative or family justice problem?
>   - What other resolution strategies and processes were people aware of and considered as a possible resolution option?
 	
   – *Decided to respond:*
How long after your problem emerged did you decide to respond to it?
 	
What made you decide to respond to your problem?
 	
   – *Choosing a response:*
How did you decide to respond to your problem?
 	
What options did you think you had available to you?
 	
How did you decide to pursue one option over another?
 	
   – *Followed a course of action/response:*
Could you describe in as much detail as possible what happened after you chose to respond to your [Insert problem]?
	MODERATOR: Please be aware that responses could be complex and involve more than one of the response types established.
	
	For example, consideration of mediation is compulsory for all family issues – though exemptions can be claimed, e.g. for DV – but litigation may happen after consideration of mediation.
	
	Ensure that participant replies on all relevant response types are elicited including chronology.
	
	MODERATOR: This is distinct from the earlier 'Impact' question which sought to understand the impact on the participant of choosing to
		15 mins

3. Mapping pathways	Notes/comments	Time
How did you get from this point to where you are today? What would you say were the key events over this period? – ***Support, advice, services:*** What support/advice were you aware of to help you resolve your problem? How did you become aware of this advice/support? What support/advice did you use? How helpful was this advice and/or support? Was there any support/advice/services you chose not to use? What was your reason for this? – ***Impacts:*** How did dealing with your [Insert problem] affect you? • Health • Relationships • Finances • Quality of life Has this issue caused any other problems or complications for you? What were these additional problems / complications? Have these impacts affected the way you have responded to the problem?	decide to respond as opposed to the actual process of responding.	

4. Exploring pathway decision drivers	Notes/comments	Time
Aim: Develop a structured understanding of the drivers of behaviour and decision-making at key points in the pathway through the application of a behavioural framework.		20 mins
Associated research questions: Identify the drivers for people's behaviour and the critical points in the decision-making process about how to resolve a civil, administrative or family justice problem. • What factors were taken into consideration when deciding upon which pathway to adopt? • How do personal characteristics, capability, problem understanding, social (friends, family, and acquaintances) factors, and emotional state influence response? • What influence does awareness, availability and accessibility to support and advice services have on their decision? **Procedural knowledge** How well did you understand the various options available to you? How aware were you of what these various responses entailed? How did your understanding of what [Insert relevant response] entailed affect your decision to respond to your problem in the first place? How did your understanding of [Insert relevant response] impact on your decision to pursue that response? **Skills** How well equipped did you feel you were in responding to your problem?		

4. Exploring pathway decision drivers	Notes/comments	Time

To what extent did you feel you had the necessary skills/capabilities to deal with your problem?
 	
How did this impact on your decision to respond to your problem?
 	
How did this influence your choice of response to your problem?
 	
Physical opportunity
 	
How important was/were your personal situation/circumstances in deciding to respond?
 	
• How important was money/costs in making your decision to respond?
    o IF IMPORTANT: In what way was it important?
    o Did you think about specific costs? What were these costs?
    o Probe on the following if relevant: solicitor's fees, court fees, paying other party's costs.
 	
• How important was time/convenience in making your decision to respond?
 	
• How important was having suitable support in making the decision to respond? [Emotional support, e.g. from family/friends, practical support – could be informal from family/friends and/or more technical/formal advice & information etc.]
 	
To what extent were certain responses more convenient/achievable than others?
 	
How far did these personal/situational factors affect your decision to pursue a particular course of action?
 	
Social influences
 	
How far did other people influence your decision to respond to your problem?
 	
• Friends
• Family
• Third parties, e.g. advice agencies
	MODERATOR: use showcard A here if necessary, but by this time the timeline in APPENDIX A should state the response/responses the participant chose. Please ask these questions in relation to multiple responses if relevant.	

4. Exploring pathway decision drivers	Notes/comments	Time
How far did other people influence your choice of response to your problem? • Friends • Family • Third parties, e.g. advice agencies **Beliefs about capabilities** How confident were you in your ability to deal with your issue? How confident were you in pursuing the various response options that you had available to you? To what extent did your confidence to deal with your problem influence your choice of response? **Beliefs about consequences** What did you see as the consequences of deciding to act/respond to your problem? What did you expect to happen as a result of deciding to do something about your problem? What did you see as the potential positive outcomes/benefits? What did you see as the potential negative outcomes/costs? How did your understanding of consequences impact your decision to pursue a particular course of action/response? How far did you believe that certain responses to your problem would result in better outcomes than others? **Emotion** How did you feel when you were deciding whether or not to respond to your problem? What positive feelings did you have? What negative feelings did you have?		

4. Exploring pathway decision drivers	Notes/comments	Time
Once you had decided to respond, how did you feel about the various options available to you? Did you feel more positive about some options than others? Did you feel more negative about some options than others? **Overall** What would you say the key driver(s) of your decision to respond to your problem were? What would you say the key driver(s) of your choice of response were?		

5. Reflecting on pathways	Notes/comments	Time
Aim: *Elicit participant reflections on their experience and specifically whether they would do anything differently if they were to go through the same process again.*		10 mins

Associated research questions:

To explore the perceived effectiveness of the different pathways people take to resolve their civil, administrative or family justice problem and the outcomes they achieve.

- How effectively did different pathways meet expectations and achieve desired outcomes?
- What were the strengths and limitations in using the resolution pathway adopted?
- How do resolution strategies and pathways impact on other aspects of people's lives (e.g. well-being, relationships, finances, etc.)?
- What would they do differently, if they encountered the problem in future?

How effective do you feel the pathway you have taken has been in resolving your problem? What makes you say that?

What have been the positives/strengths of this pathway?

What has gone well?

What have been the negatives/weaknesses of this pathway?

What has gone badly?

Overall, how satisfied are you with the way in which your problem has been dealt with to date?

Thinking about your entire experience what would you have done differently if you had the chance again?

- Would you have chosen not to respond/do nothing?
- Would you have chosen a different course of action?
- Would you have sought different advice and/or support?

5. Reflecting on pathways	Notes/comments	Time
If someone like you was experiencing a similar issue – i.e. at the very beginning when the problem had just started – what advice would you give them? Is there anything that you wish you had known when this whole process started?		

6. Conclusions	Notes/comments	Time
Is there anything else about your experience which we haven't already discussed, that you would like to mention? **Thank participants; explain the next steps (e.g. what MoJ will do with the findings).** **THANK AND CLOSE. Reassure about confidentiality.**	Summing up and draws interview to a close.	5 mins