



Consumer Focus Scotland's response to 'Scottish Crime and Justice Survey: User Consultation and Information Paper.'

January 2011

About Consumer Focus Scotland

Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors' clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

Scottish Crime and Justice Survey

Consumer Focus Scotland Response to the consultation and information paper

Introduction

Consumer Focus Scotland welcomes the opportunity to respond to the Scottish Government's consultation and information paper on the Scottish Crime and Justice Survey.

Consumer Focus Scotland, and previously the Scottish Consumer Council, one of Consumer Focus Scotland's predecessor bodies, have had a longstanding interest in the civil justice system, from the perspective of the user, and have previously undertaken our own research into consumers' experiences of civil law problems.¹ We are pleased that the Scottish Crime and Justice Survey has been extended in recent years to include a civil law module. Obtaining up-to-date information on consumers' experience of civil law problems, and the action taken to resolve them, is an important means of ensuring that the appropriate help and support is available and accessible to help them with these problems.

Our comments on this consultation paper are therefore limited to the proposed changes to the civil law module.

General comments

We agree that the civil module will be an important means of improving the effectiveness of the Improving Access to Justice strand of the Making Justice work programme. The civil law module will likely be a useful tool to measure the impact of future improvements to the civil justice system. The aim of the Improving Access to Justice project is complex and multifaceted, and we believe that so far as is possible and practicable, the civil module should be used to as a tool to measure whether the full aims of this project are achieved. As a result, we believe it is important that the module be used not only to probe advice seeking behaviour, but also to establish the means by which problems were resolved, for example through advice and negotiation by the consumer or their adviser(s), through use of informal means of resolving disputes such as mediation, or through the court process.

We have commented on the specific revisions to the module below. Our overall comment is that one particular area where the module could be strengthened is in relation to problem solving strategy. Previous versions of the survey have sought to establish whether the consumer did nothing about their problem, handled it alone, or sought advice. This version of the module, however, is very focused on whether advice has been accessed, and issues relating to 'lumping' or self-helping are explored only in relation to advice seeking behaviour, rather than on their own merits. The questions, therefore, appear to us to be founded on the

¹ See for example Scottish Consumer Council (1997) *Civil Disputes in Scotland: A report of consumers' experiences*, Glasgow: Scottish Consumer Council

premise that seeking advice is the desired, and desirable, course of action in most cases. While many consumers will undoubtedly want to seek advice, and would benefit from such assistance, we believe this is an overly simplistic way in which to approach the issues and fails to explore other important issues.

We believe that it would be a wasted opportunity for the Scottish Government if the survey does not adequately explore issues relating to whether people did nothing about their problem, or self-helped, and the reasons for this. One of the key strengths of the civil law module is its potential to be used to gather data which cannot be collected from other sources. For example, organisations such as the Scottish Legal Aid Board and Citizens Advice Scotland will be able to provide figures about how many people have accessed their services and in relation to which issues. What is much harder to find out is how many people did nothing/took action themselves without access to help or support, and the reasons for this; such information potentially provides a rich depth of understanding upon which to build policy interventions.

We would also note that the decision to focus on advice seeking behaviour to the exclusion of other problem solving strategies is at odds with the approach being taken in England and Wales, where recent surveys have in fact sought to expand the range of problem solving strategy options available. The Civil and Social Justice Survey, for example, now breaks problem solving strategy into five categories – did nothing, handled alone, obtained advice, tried and failed to obtain advice, and tried and failed to obtain advice and then handled alone.² We do not think that that the proposed questions in the civil law module adequately capture the nuances in relation to some of these issues.

For example, in relation to those who self-helped, we do not think that the questions will identify those who self-helped without accessing any assistance, such as leaflets/self-help guides. Exploring the reasons why they did this could provide useful intelligence for policy makers; it may be that such consumers felt suitably informed and confident enough to be able to take steps without assistance, but it could also be the result of a lack of awareness of available support, or that the support did not meet their needs. In addition, we do not think the questions as drafted will be able to distinguish those who did nothing about their problem because they felt unable to act, from those who did nothing because they felt no need to act. Our concern about some of the gaps created in the questioning are explored in more detail in relation to the specific questions below.

Another important element of the Improving Access to Justice project is to support and empower consumers to avoid disputes and problems. Consumer Focus Scotland is currently undertaking a research project in partnership with the Scottish Government and Scottish Legal Aid Board which aims to better understand consumer behaviour when dealing with law-related issues, particularly relating to their legal capability, including how potential problems/disputes might be avoided. We intend to use this research to make recommendations to the Scottish Government and other relevant organisations to assist them in designing appropriate policy interventions. While it may not be practicable at the current time to include questions relating to how problems/disputes might have been avoided,

² Pleasence, P., Balmer, N.J., Patel, A. and Denvir, C. (2010) *Civil Justice in England and Wales 2009: Report of the 2006-09 English and Welsh Civil and Social Justice Survey*, London: Legal Services Commission

it may be that our research provides sufficient background for such questions to be developed for future versions of the module.

Specific comments on the proposals

Q. K1: problems experienced in the previous 3 years.

We would suggest that some of the categories could do with further breakdown. It may be helpful for 'problems to do with housing or homelessness' to be broken down by housing type - for example, owner-occupied, social or private rented accommodation - as the types of issues dealt with by these groups are likely to be very different.

We note the comments about consideration being given to broadening question Q. K1 to include problems that had been easily resolved. We agree that widening the scope of this question may confuse various issues and interrupt the trend data. While we agree it therefore would not be appropriate to include such problems as part of question Q.K1, we wonder whether there might be scope to ask a brief question/questions at the end of the survey to capture some of this intelligence? Gathering such information may serve a number of different purposes, including giving a broader understanding about the number/types of problems that people experience, ascertaining which elements of the system are working well, and gathering information about people's ability to deal with law-related issues.

Q. K2: For any/each of the problems, how important or unimportant was it to you to solve your problem?

We note that this question is suggested for removal, as the majority of problems were considered important to resolve. This question has in the past illustrated that the most commonly experienced problems are not necessarily those that people consider to be the most important to resolve.³ Our initial thought had been that this question might retain some use in helping to ensure that policy interventions are proportionate to the level of importance afforded to the problem type. However, as the Scottish Government's assessment is that the differences across problems are not considered large enough to have any meaningful policy implications, on balance, we do not object to this question being removed.

Q. K3: Where the respondent lists more than 3 problems...can you tell me which three problems were the most important problem for you to solve?

We support the widening of the survey to include consideration of more than one problem type.

³ For example, the 2010/11 Scottish Crime and Justice Survey found that although problems with neighbours and problems with goods and services were the most commonly experienced problems, those suffering from family or mental health problems had the highest proportion of respondents saying they were very important to resolve. Scottish Government (2011) *2010/11 Scottish Crime and Justice Survey: Main Findings*, Edinburgh: Scottish Government

Q. K4: What is the situation with your problem now?

Q. K5: Did you solve/did you try to solve/are you trying to solve the problem..with help and/or advice from others; without help and/or advice from others

Further to our general comments above, we believe these questions remain useful. In particular, we believe it is beneficial to ascertain early in the survey the problem solving strategy used and the reasons why such a strategy was adopted. We think that the survey should then ask different questions depending on the strategy adopted, to explore the reasons for that approach.

NQ. K4: Did you seek help from any of the following organisations in trying to resolve this problem? Citizen's advice bureau or other advice agency; a solicitors using legal aid; a solicitors not using legal aid; Local Authority; MP, MSP, MEP or local councillor; Trade union or professional association; friends or family; Leaflet, poster, booklet or book; the internet; other

We would suggest the wording of this question be changed from 'organisations' to 'sources,' as some of the options, such as leaflets, posters, booklets or books, and the internet cannot by themselves be categorised as 'organisations.'

We welcome the decision to include options relating to sources of assistance wider than traditional sources of advice, such as leaflets and the internet. We are unsure whether there would be scope within the module to ask where respondents accessed such materials from or what internet sites they used. If this is possible, it would seem to us that this would be a useful question to ask in order to understand what sources of help are accessed by respondents.

It is also important that respondents are able to give multiple answers to this question. Understanding whether consumers sought help from a number of advice sources, or sought 'information' alongside advice, may have policy implications.

In addition to the sources of help identified in the question, we would suggest the inclusion of insurance companies, as a means of establishing whether a respondent has sought to make use of a legal expenses insurance policy. Inclusion of this option may be of particular relevance given the Scottish Government has suggested that the Scottish Legal Aid Board should take the existence of such a policy into account when deciding whether to grant a legal aid application.⁴ It may also be useful to include the police; the Paths to Justice Scotland survey found that the police are commonly contacted by consumers, particularly in relation to certain types of problems.⁵

Q. K8 If not receiving help / advice from others, what was the main reason you have you/ did not use OR are not using help or advice from others to solve your problem?

NQ. K5 If help was not sought from a Citizen's advice bureau or a solicitor..... Can you tell me why you did not seek help from [relevant organisation]?

⁴ Scottish Government (2011) *A Sustainable Future for Legal Aid*, Edinburgh: Scottish Government

⁵ Genn, H. and Paterson A. (2001) *Paths to Justice Scotland: what people do and think about going to law*, Oxford – Portland Oregon: Hart Publishing

We are unsure why question Q. K8 has been replaced with question NQ K5, which focuses only on the decision not to seek help from a CAB or solicitor. We have concerns about the wording of this question. As stated in our general comments, this could create the impression that such sources of assistance are the most appropriate or desirable courses of action when dealing with all types of problem. There are of course a wide variety of sources of assistance which may be available to a consumer, and some may be more appropriate than a solicitor or CAB depending on the problem and the consumer's circumstances; they may have sought advice from a specialist money adviser for example, or made use of their trade union membership or legal expenses insurance. The suggested pre-coded responses fail to take into account that other sources of assistance may have been accessed, but make the assumption that if a solicitor or CAB has not been accessed then this must be the result of some sort of structural barrier preventing access, or as a result of the consumer self-helping.

Our strong preference is that the focus of this question not be restricted to solicitors and CABx and instead should include the full range of assistance options identified in the previous question.

Q. K7 If received help/advice from others, from which of these people or organisations did you receive or are you receiving help or advice with this problem?

NQ. K6 Did you receive help from any of the following organisations in trying to resolve any of these problems? Citizen's advice bureau or other advice agency; a solicitors using legal aid; a solicitors not using legal aid; Local Authority; MP, MSP, MEP or local councillor; Trade union or professional association; friends or family; Leaflet, poster, booklet or book; the internet; other.

NQ. K7 Where respondent sought but did not received help from a citizen's advice bureau and or a solicitor ...Can you say why you did not receive any help?

We support the decision to replace question Q. K7 with questions NQ. K4 and NQ. K6, and agree that question NQ. K7 also be included. We think it is important to separate the question of whether people sought assistance from a variety of sources from whether such sources were actually accessed, and also to explore what prevented them accessing such sources. This will provide important information about what changes, if any, require to be made to help people better access sources of assistance.

We do not think that NQ. K7 should focus only on why the consumer failed to obtain the desired help from a solicitor or a CAB. While we recognise that the Scottish Government may have a particular interest in these two sources of help, given their prevalence in the advice field and also the level of public funding devoted towards them, we are concerned that focusing only on these two sources of assistance will fail to gather information important in shaping policy development. For example, given the Scottish Government's desire that the new 'DirectScot' portal act as a single site where people can access comprehensive information on their rights as a means of creating "legally empowered citizens,"⁶ finding out whether people have sought information, through use of leaflets/books

⁶ Scottish Government (2011) *Scotland's Digital Future: A Strategy for Scotland*, Edinburgh: Scottish Government

or via the internet, but failed to access this kind of assistance, would likely be of particular interest. Similarly, increasing understanding about whether certain methods of funding of assistance, such as trade union membership or legal expenses insurance, provide consumers with the help that they need, may also be useful data.

In relation to question NQ. K6, we would echo our comments on question NQ. K4: we believe the wording 'sources' should be used rather than 'organisations,' and that the list should be expanded to include insurance companies and the police.

NQ. K8 For those who received help fromWhat type of help did you receive?

We agree this question is useful, but would again note that restricting this only to the help received from local authorities, CABx and solicitors will potentially limit the depth of information that is gathered.

Q. K6 How satisfied with the results of the problem were you?

NQ. K9 Has any of the help you received from [relevant organisation] helped to improve your situation in any way?; Yes, a lot; Yes, a bit, Too soon to say; No; Don't know.

NQ.K10 If helped a lot or a bit - in what way has any of the help you received from [relevant organisation] helped to improve your situation?

We agree that in its current form, the wording of question N. K6 is clumsy and assumes the problem is solvable. We agree that replacing this question with NQ. K9 and NQ. K10 will perhaps yield more relevant information in terms of policy development than asking only about satisfaction, and in particular will help to demonstrate particular benefits of advice and/or other types of assistance. We would suggest, however, that in addition to question NQ. K10, it is just as important, if not even more important, to include a question asking, where the assistance has not been of help, why it was not helpful. Asking such a question could indicate areas where improvements are required.

N.Q. K11 Finally, looking at this list, can you tell me what was the outcome of this problem? Problem solved/tried to solve the problem but had to give up/still trying to solve the problem/not planning to do anything to solve the problem

Further to our earlier comments, we think the question about what strategy was adopted should be asked at the start of the survey, with subsequent follow up questions relevant to that strategy.

NQ.K12 For those who did not receive help from Has your situation improved in any way?; Yes, a lot; Yes, a bit, Too soon to say; No; Don't know.

NQ. K13 If yes - in what way?

We would suggest it would also be appropriate to ask an additional question of those whose situation has not improved. The Civil and Social Justice Survey in England and Wales, for example, asks the respondent whether they wished they

had handled their problem differently.⁷ This might be an appropriate question to ask someone who had not received help, but whose situation had not improved.

NQ. K14 Finally, looking at this list, can you tell me what was the outcome of this problem? Problem solved/tried to solve the problem but had to give up/still trying to solve the problem/not planning to do anything to solve the problem

Further to our earlier comments, we think the question about what strategy was adopted should be asked at the start of the survey, with follow up questions relevant to that strategy being asked later.

Q. K9 If not planning to take action to solve problem can you tell me why you don't plan to do anything to help solve the problem?

We strongly disagree with the decision to remove this question from the survey. Understanding why people do not take action to resolve their problem(s) is crucial, particularly in light of evidence that many unresolved problems increase in severity, or 'cascade' and lead to further problems.⁸ We do not agree that asking questions about what support was sought makes this question redundant. In particular, we believe it is important to understand the distinctions between those who took no action because they felt no need to act, and those who took no action because they felt unable to act, as the policy implications flowing from these two scenarios will be different.

How confident are you that the Civil Justice System as a whole: Deals with cases promptly and efficiently/ Makes sure everyone has access to the legal system if they need it/ Makes sure the system isn't different depending on where you live in Scotland/ Provides a good standard of service/ Reaches decisions that are fair?

We agree it would be useful to seek the general views of respondents on the operation of the civil justice system. However, we do not think an appropriate approach would be to amend question Q. G2 and remove the word 'criminal' to ask about the 'justice system.' Research such as Paths to Justice Scotland has illustrated that many people associate the courts and justice system with criminal matters,⁹ and we therefore think to ask a general question will yield answers predominantly related to the criminal justice system.

Nevertheless, we agree that as the rest of the civil law module makes no reference to civil law or a civil law system that this question might be out of place and potentially confusing for respondents. We think a preferred option would be to pose a number of statements, that need not make reference to the 'civil justice system' and ask people about the extent to which they agree with them. This was

⁷ Pleasence, P., Balmer, N.J., Patel, A. and Denvir, C. (2010) *Civil Justice in England and Wales 2009: Report of the 2006-09 English and Welsh Civil and Social Justice Survey*, London: Legal Services Commission

⁸ Genn, H. and Paterson A. (2001) *Paths to Justice Scotland: what people do and think about going to law*, Oxford – Portland Oregon: Hart Publishing

⁹ Genn, H. and Paterson A. (2001) *Paths to Justice Scotland: what people do and think about going to law*, Oxford – Portland Oregon: Hart Publishing

the approach used in the Paths to Justice Scotland survey.¹⁰ Should the question in its current form be used, we think it is essential that the 'civil justice system' is defined for respondents.

We would note that the specific questions that are posed at present may be interpreted as relating principally to the courts. This seems neither to be in keeping with the questions that come before it, nor to capture the range of advice, assistance and support available to help people avoid or resolve their disputes. We would suggest that the questions/statements posed be widened to include questions relating to a person's legal capability (their knowledge, skills and confidence and attitudes), assistance accessed (including advice and other assistance such as information/self-help resources etc) and processes used (including both formal and informal means of resolving disputes).

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¹⁰ Genn, H. and Paterson A. (2001) *Paths to Justice Scotland: what people do and think about going to law*, Oxford – Portland Oregon: Hart Publishing