CHAIRMAN'S FOREWORD

In the late 1990s, society has reached a level of sophistication where we are all given a vast array of legal rights with which to protect ourselves from the variety of misfortunes, in many different aspects of our lives, that can and do befall us. But these rights are meaningless unless people who become involved in disputes about their rights have access to a means of resolving them. Our civil justice system in all its shapes and forms exists to provide that mechanism.

This summary presents the results of a survey conducted by the Scottish Consumer Council into the experiences of Scottish consumers with civil disputes over the last three years. It considers what the disputes were about, whether people got help to resolve them, whether they had to go to court, and whether they won or lost. It also asks people for their opinions about the help they received, whether they would have liked another way of resolving their disputes, and finally, what they think of the Scottish legal system.

We believe that the results of this study confirm that Scotland's civil justice system is in need of an overhaul. Over three out of four respondents considered that the Scottish legal system is too complicated, too easy to twist if you know the rules, and needs bringing up to date. Over four out of five respondents said that the legal system was slow, and off-putting to ordinary people. This is a level of consumer dissatisfaction which demands attention, confirming our view that it is now time for a thorough research-based review of the Scottish civil justice system.

Deirdre Hutton

DEIRDRE HUTTON
Chairman
The analysis for this survey was carried out by Carole Millar Research.

This summary was written by Lynne MacMillan, Head of Legal Policy.

Desk Top Publishing by Angela Wallace, Administrative Assistant.

A full list of our publications is available on request from the Scottish Consumer Council, Royal Exchange House, 100 Queen Street, Glasgow, G1 3DN. Telephone: 0141 226 5261. Fax: 0141 552 0731. EMail SCOT_CC@COMPUSERVE.COM

ISBN 0 907067 61 1
September 1997
CIVIL DISPUTES IN SCOTLAND

SUMMARY OF A REPORT FROM THE SCOTTISH CONSUMER COUNCIL

The detailed results are contained in Civil Disputes in Scotland: a Report on consumers' experiences (available from the Scottish Consumer Council, Royal Exchange House, 100 Queen Street, Glasgow, G1 3DN. Price £6.00).

INTRODUCTION AND BACKGROUND

We are now provided with a vast array of legal rights with which to protect ourselves from the variety of misfortunes, in many different aspects of our lives, that can and do befall us. If we buy faulty goods, the law provides that we are entitled to a replacement or our money back.

If a tradesman fails to use reasonable skill in installing our new kitchen or in building our new garage, we are entitled to compensation. If we live in a rented home, our landlord is supposed to keep it in a reasonable state of repair, and to make sure that services are not dangerous, and we are protected from being evicted without reasonable cause. If we are injured in an accident which is someone else's fault, we are entitled to claim money from that other person to compensate us for the injury. If we claim financial support from the government, we are entitled to have our claim dealt with fairly, and in accordance with rules laid down for assessing whether we qualify for such benefits. As employees, some of us have rights not to be dismissed unfairly. And the list goes on.

But all of these rights are meaningless unless people who become involved in disputes about their rights have access to a means of resolving them. Our civil justice system in all its shapes and forms exists to provide that mechanism. The term can be used narrowly to include simply our court system, but in our view it also includes the different tribunals which are available to resolve disputes about benefits and employment matters. It also includes informal dispute resolution mechanisms such as mediation and conciliation, and ombudsman schemes which operate in particular sectors, such as banking and insurance.
In recent years, considerable research has been conducted into the system of courts and tribunals in England and Wales. In 1985, the then Lord Chancellor set up a Civil Justice Review which over the following two years, carried out extensive research into the court system there.

That review was of fundamental importance because for the first time it looked at the courts from the point of view of the consumer. The review body was made up of a majority of people who were not lawyers or court administrators, and this helped to ensure that the true focus of the review was on how accessible and user friendly the civil courts in England and Wales for non-professional users. As a result of that review, considerable changes were introduced into the English court system.

In 1994, the Rt. Hon. the Lord Woolf, Master of the Rolls, was appointed by the then Lord Chancellor to review the current rules and procedures of the civil courts in England and Wales. The aims of the review were: to improve access to justice and reduce the cost of litigation; to reduce the complexity of the rules and modernise terminology; and to remove unnecessary distinctions of practice and procedure. Lord Woolf took a radical approach to his task. He took the view that despite the Civil Justice Review, serious flaws still existed within the English civil justice system. He was deeply concerned about the costs, delay and complexity in the system, and his interim report (Access to Justice, June 1995) and his final report (Access to Justice, July 1996) contained extensive proposals for the reform and modernisation of the English civil justice system, emphasising the importance of the process of achieving justice, not just the end result. He was particularly concerned to ensure that the time and expense involved in reaching the end result should be proportionate to the importance of the dispute and the financial resources of both parties. His recommendations proposed a change of culture, from one where the pace of progress was too often dictated by the parties to the action, to one where cases were proactively managed by the courts, and clearer judicial responsibility for civil justice.

Scotland, of course, has its own court system, and it could not be argued that the problems being experienced in the civil courts in England and Wales are replicated either in nature or extent in the sheriff courts and the Court of Session in Scotland. Research which has been done in Scotland, for example, the assessment of the old Ordinary Cause procedure in the sheriff court (Pilgrim’s Process? : defended actions in the Sheriff’s Ordinary Court, Scottish Office Central Research Unit 1995), or the research commissioned by the Scottish Courts Administration (Sheriff Courts Customer Survey, MVA Consultancy, 1992) has not revealed the huge delays or the levels of customer dissatisfaction that are prevalent in England and Wales. But it has to be said that there is very little research available.
A review of the work of the Scottish Office’s Central Research Unit since between 1992 and 1995 reveals only three pieces of work, apart from that mentioned above, about the civil justice system, and two of those were about divorce or judicial separation. An earlier study (*Small claims in the sheriff court in Scotland, Scottish Office Central Research Unit, 1991*) looked at the operation of the new small claims procedure, but there has been no other research published into the Scottish small claims procedure since then. As yet, very little information is available in Scotland about how well the Scottish civil justice system is meeting the needs of those who are seeking to resolve disputes, of those who have either used the system, or for whom the system exists as a deterrent.

**What in particular is not known is what are the experiences of people who have had disputes about matters to do with the civil law in Scotland.**

In 1995, the National Consumer Council published the results of survey conducted along with the BBC’s Law in Action programme (*Seeking Civil Justice, National Consumer Council, November 1995*) into the experiences of those in England and Wales who had had a recent civil dispute. The findings were very interesting, but we were very conscious that it was impossible to claim that they could be applied to Scotland with any degree of confidence, because our legal system and our court system are different to those in England and Wales.

**The Scottish Consumer Council decided to carry out our own research, to find out what Scottish consumers’ experiences were of resolving disputes about civil matters here.**

Not only would it be useful to have some statistical information about Scotland that we could use in our discussions with policy-makers about what reforms should be made to Scottish dispute resolution mechanisms, we wanted to make comparisons with experiences of people living in England and Wales. We wanted in particular to find out whether there was any reason not to be concerned about the state of the civil justice system in Scotland - were consumers more satisfied in Scotland with the justice system?
HOW THE RESEARCH WAS CARRIED OUT

As much as possible we wanted to use the same methodology as was used by the National Consumer Council in their survey. This was not exactly possible, but we are confident that the results are comparable with the results of the National Consumer Council’s research.

The English study had been undertaken via an omnibus survey. While it would not have been cost-effective to do this in Scotland, we used System Three Scotland’s Scottish Opinion Poll to contact a random sample of the general public, and asked them whether they had been involved in a serious civil dispute over the last three years. This question was asked in a series of six omnibus surveys over a period of six months between August 1996 and January 1997.

In total the omnibus survey interviewed 6,403 people in their homes, all aged 16 and over. In total 1,183 (18.5%) respondents said that they had been involved in a dispute. If these results are indicative of the general population, it means that around one in five of the Scottish population have had a serious dispute about a matter concerning civil law in the last three years. This shows a higher incidence of disputes in the Scottish population than in England and Wales, where one in eight people in NCC’s survey said they had had a dispute. The reasons for this are, of course, impossible to gauge. As we shall see, the kinds of disputes people had are different between Scotland and England and Wales too.

What is also interesting is that of the 1,183 who reported having a civil dispute, it was clear that many of them had had more than one dispute. These people reported a total of 1,668 disputes.

Eventually 499 of those who had had a civil dispute were interviewed by telephone about their experiences in resolving the dispute. The questionnaire we used for the telephone interviews is reproduced in annex 1 to the full survey report. The 499 people who were interviewed by telephone reported a total of 783 disputes. For the purposes of the full telephone interview, we asked respondents to tell us about only one dispute - the most recent one. This was important because we wanted to focus on one particular experience, and by asking for the most recent one we hoped to avoid screening out disputes which might be seen as less important, and we also hoped that the most recent dispute would be the best remembered one.
WHAT KINDS OF DISPUTES DID PEOPLE HAVE?

The most common types of disputes were about faulty goods or about unsatisfactory services. Put together, faulty goods or unsatisfactory services accounted for almost one third of disputes. One in ten respondents reported a dispute about damage to a car, or a dispute with a government department or agency. In the questionnaire, we had used the Department of Social Security or the National Health Service as examples of government departments or agencies. It therefore appears quite likely that many of these were disputes about entitlement to benefit.

Over one in ten people under 35 years of age had had a dispute about residence (custody) or contact (access) with children, while people over 55 were more likely to have a dispute about unsatisfactory service (23% compared to 14% of people younger than 55). Older people were twice as likely to have had a dispute with a government department or agency (one in five over 55 compared with less than one in ten people under 55). People in lower socio-economic groups were more likely to have disputes with their neighbours and with government departments, and those on low incomes were more likely to be involved in disputes over residence of and contact with children. Those on incomes below £5,000 were more likely to have disputes over housing matters.

The findings of the Scottish Consumer Council survey contrast in some significant respects with the National Consumer Council’s report (see Table 1 below).
Table 1 Disputes experienced by respondents in Scotland compared with National Consumer Council survey.

<table>
<thead>
<tr>
<th>Type of Dispute</th>
<th>Scotland %</th>
<th>England and Wales %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accident / injury / medical negligence</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Custody of / access to children</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Damage to children</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>Divorce</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Unpaid dept</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Faulty Goods</td>
<td>17</td>
<td>8</td>
</tr>
<tr>
<td>Government or local government</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Landlord / tenant</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Neighbour</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Problem at work</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Unsatisfactory services</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>Will / estate</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Repossession of home</td>
<td>*</td>
<td>2</td>
</tr>
</tbody>
</table>

Base: all involved in dispute 499 1,019
* less than 0.5%

In England and Wales, disputes about faulty goods or unsatisfactory services were much less prevalent than in Scotland.

There were significantly fewer disputes about damage to a vehicle in Scotland.

Respondents were asked why they considered their dispute to be serious. Although it is difficult to give neat categorisations, generally people considered their dispute to be serious if it involved a loss of money, or if the dispute was about a matter of principle, or someone’s reputation, or if it involved children or other personal relationships.
WHO COMPLAINED?

Most of the time, it was the respondent who had complained. Only one in eight of our respondents were defending a claim made against them. Again, this differed from England and Wales, where almost twice as many were defending a claim made against them. However, this is probably explained by the fact that we had a higher incidence of disputes about goods and services, where as one would expect, everyone complained rather than had a complaint made against them.

People over the age of 55 were more likely to have made a complaint and younger people under the age of 35 were more likely to have a complaint made against them.

There were small differences in household income, with those with incomes between £15,000 and £24,999 more likely to be the subject of a complaint, as were those earning more than £40,000.

As would be expected, people involved in a dispute about a debt were much more likely to be on the receiving end of the complaint. Forty six percent of them had the complaint made against them. Other cases where people were more likely to have the complaint made against them were those involved in with disputes about family matters, or with neighbour disputes and housing problems.
GETTING HELP

Just over four out of five people went to get help with their dispute (see Table 2). Mostly they went to a solicitor or to a Citizens Advice Bureau for advice.

People who were better off were more likely to pay for a solicitor to help them, and those on very low incomes got help through the legal aid scheme. Citizens Advice Bureaux were used by people from all socio-economic groups. Only three people in twenty got any kind of help through the legal aid scheme.

Table 2  Where people went for help

<table>
<thead>
<tr>
<th>Service</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens advice bureau</td>
<td>84</td>
<td>17</td>
</tr>
<tr>
<td>Solicitor you paid for</td>
<td>80</td>
<td>16</td>
</tr>
<tr>
<td>Solicitor under legal aid, with no financial contribution</td>
<td>53</td>
<td>11</td>
</tr>
<tr>
<td>Solicitor under legal aid, with financial contribution</td>
<td>16</td>
<td>3</td>
</tr>
<tr>
<td>Insurance company</td>
<td>48</td>
<td>10</td>
</tr>
<tr>
<td>Police</td>
<td>42</td>
<td>8</td>
</tr>
<tr>
<td>Consumer advice centre (ie trading standards)</td>
<td>29</td>
<td>6</td>
</tr>
<tr>
<td>Shop/manufacturer</td>
<td>54</td>
<td>11</td>
</tr>
<tr>
<td>Law centre</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>MP</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Council / local councillor</td>
<td>18</td>
<td>4</td>
</tr>
<tr>
<td>Welfare rights office</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Court</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Government department / agency</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Union solicitor</td>
<td>15</td>
<td>3</td>
</tr>
<tr>
<td>Union</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Other advice centre</td>
<td>14</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>31</td>
<td>8</td>
</tr>
<tr>
<td>Did not seek any advice</td>
<td>94</td>
<td>19</td>
</tr>
</tbody>
</table>

Base: all involved in a serious dispute        499 100*

*numbers do not add to 100% because some sought advice from more than one source.
Almost one in five of all respondents did not go anywhere for help. People on higher incomes (over £40,000) were less likely to have sought help (29%), and people on very low incomes (below £5,000) were also less likely to have sought help (22%). The reasons may be very different for both groups.

One third of people who had a dispute about goods and services did not go anywhere for legal help. This was also the case for one third of people whose dispute was about a debt. Both of these findings are significant because it confirms a view that not enough people involved in these types of disputes are seeking help about them. This is particularly in the case of disputes about a debt, where in this survey 46% of respondents had the claim made against them. This may confirm the view of money advisers that many people with debt problems simply do not seek help with resolving them.

People went for help with different problems to different places. They were more likely to go to a CAB for help with a housing problem or an employment dispute. They were more likely to go to a solicitor for help with a divorce, or about contact with or residence of children.

About one third of those involved in a consumer dispute (over faulty goods or unsatisfactory services) went to the shop or manufacturer, almost one in five went to a CAB, and around three in twenty sought help from the local trading standards department or consumer advice centre. Many people had gone to more than one place for advice about their dispute.

More people went to a solicitor in England and Wales (20% saw a solicitor they paid for, 21% saw a solicitor under the legal aid scheme) than in Scotland (16% saw a solicitor they paid for, 14% saw a solicitor under the legal aid scheme), although the difference here is probably accounted for by the larger proportion of consumer disputes in Scotland, where people were less likely to seek help from a solicitor. Nevertheless, it is significant that such a small proportion of people are given help under the legal aid scheme in Scotland for the kinds of problems that they have. This finding also confirms past research and anecdotal information that solicitors are less likely to deal with consumer disputes.

Most people who went somewhere for help received information (58%). Four out of ten were told whether they had a good or bad case, and a similar proportion had their adviser send letters on their behalf. Around one third of advisers negotiated on their client’s behalf, and almost three in ten helped them prepare their case.
Over one in ten people who went for help were represented in a court or a tribunal. One in four people with a family dispute, one in five with a dispute about an accident, personal injury, medical negligence, or an employment dispute, and over three in twenty with a debt problem. One in four of those who consulted a solicitor were represented in a court or a tribunal. One in five people with incomes over £40,000 consulted a solicitor compared with less than one in ten of those on incomes lower than £5,000.

It is interesting that so few people on low incomes used a solicitor, because there would have been a strong possibility that they would have qualified for some form of legal aid to help them with their dispute, at least on the basis of their financial eligibility. It can be speculated that the kinds of problems people on low incomes have (apart from family problems): debt; housing disputes; disputes with government agencies such as the Benefits Agency; are not those about which a solicitor’s help is normally sought.

**WHY DID SOME PEOPLE NOT GO ANYWHERE FOR HELP?**

Around one in five people did not seek help with their dispute. We asked them why not. Four out of ten of them said that they thought they could handle the legal side themselves.

This was higher in Scotland than in England (where 28% thought they could handle it themselves) and again could be accounted for by the higher proportion of consumer disputes in Scotland. Almost one in five said that they didn’t seek help because they didn’t think that their dispute was serious enough or worth the hassle.

Significantly, one in ten said that they did not know where to go for help. Around one in ten people said that they did not want to make any more trouble. One in ten cases were resolved without having to seek help.
WHICH CASES DID PEOPLE GO AHEAD WITH?

We asked those who sought help whether they then went ahead with their case. Six out of ten decided to do so. Those who did were more likely to be on a very low income (67% of those with incomes of less than £5,000), or a higher income (68% of those earning between £25,000 and £40,000 and 80% of those earning more than £40,000). Those with incomes between £5,000 and £25,000 were less likely to proceed.

People with family disputes were most likely to proceed (79%), as were those involved in disputes about an accident, personal injury or medical negligence (73%), with government (73%) or damage to a vehicle (72%). People with disputes with their neighbours were least likely to proceed (29%).

Those who decided not to go ahead with the case were asked why not. Almost one in five said it was because the dispute was not important enough or that it was too much hassle, almost the same number said that the dispute had been resolved out of court, and 16% said that they didn’t know if they had a good case, or thought they were not likely to win.

Older people (over 55) were more likely than others to say that their dispute was not worth the hassle, and women were more likely than men to take this view.

RESOLVING DISPUTES

Almost two thirds of our respondents had already resolved their dispute by the time we interviewed them. While this was encouraging, it still left a sizeable minority whose dispute was not resolved at the time of the interview. This was very similar to the findings in England and Wales where 62% had resolved their dispute at the time of the interview.

Just around half of those on low incomes (below £5,000) had resolved their disputes, compared with more than four out of five of those on incomes above £40,000. People over the age of 55 were slightly less likely to have resolved their disputes at the time of the interview.

Around three quarters of disputes about faulty goods, and about vehicle damage had been resolved by the time of the interview. This compares with just over half the disputes about family matters, housing problems, and problems with government agencies.
It is interesting to note that disputes about unsatisfactory services were much less likely to be resolved than those about faulty goods (64% compared to 77%).

Comparing the results in England and Wales is interesting. There, disputes over divorce were more likely to be resolved than in Scotland (70% in England and Wales, compared with 56% in Scotland), as were employment disputes (71% in England and Wales, compared with 61% in Scotland). Housing disputes were more likely to have been resolved in Scotland (56% compared with 45% in England and Wales).

People who went back to a shop or manufacturer about a dispute were most likely to have it resolved (81%). This could indicate that these matters are easier for consumers to handle themselves, or it may indicate that shops and manufacturers are now better at handling customer complaints.

People who went to a CAB for advice also had a good success rate, with 73% of those who went there finding a solution. In contrast, people who had been to see a solicitor were much less likely to have sorted out their dispute. This could more fairly be attributed to the possibility that the cases which end up with a solicitor being more complex and difficult to resolve than any lack of skill on the part of solicitors. This is evidenced by the fact that 71% of the people who had not gone anywhere for advice had actually resolved their dispute. These cases may have been so straightforward that the respondent did not need help to sort them out.

Fifty five per cent of the disputes took less than six months to resolve, but eight per cent took over two years to resolve. One fifth took between six and eleven months, and 13% took between one and two years. Again these are very like the results reported in the National Consumer Council's survey about England and Wales. (In England and Wales, 55% were sorted out within five months, 21% took between six and eleven months, 13% took between one and two years, and nine per cent took more than two years). Given the amount of publicity about the unacceptable nature of the delays in the civil courts in England and Wales, it is perhaps surprising that the Scottish results are so closely comparable.

The cases which took the longest to resolve were those over divorce, residence and contact with children, and housing disputes. Those who sought advice to solicitors were also more likely to take longer to resolve their disputes.
Almost eight out of ten people who had resolved their dispute by the time of the interview did so without involving a court or a tribunal.

Just under one in four however, had been involved in court or tribunal action, with over one in ten of the disputes having a decision reached by a court or a tribunal. The courts appear to have been used more extensively in England and Wales than in Scotland (35% compared with 22%). It is hard to say whether this could be due to the higher proportion of consumer disputes in Scotland.

Over half of those involved in legal action in Scotland did so through the sheriff courts. Although the numbers are small, the fact that the sheriff court is reported as being used most often, compared with tribunals or the Court of Session, indicates the importance of the sheriff court and also the small claims procedure (which was used in one third of the cases involving a court or tribunal) in relative terms to those involved in civil disputes. What is surprising, however, given the number of cases raised in tribunals every year in Scotland is how few of them are mentioned in this survey.

WHO WON? - THE OUTCOME OF THE DISPUTES

Seven out of ten of the respondents who had disputes had been resolved said they won their case, with thirteen per cent saying they lost, and eighteen per cent saying they neither won nor lost. Slightly more of our respondents were successful than those in the NCC survey (69% compared to 60%).

Those involved in disputes about faulty goods, unsatisfactory services or vehicle damage were more likely than others to have won their case (85% of those involved with disputes about faulty goods, 79% with disputes about services, and 80% with disputes about vehicle damage). Those involved in disputes about housing problems (22%), accident, personal injury or medical negligence claims (25%), or a dispute with an agency of government (30%) were more likely to lose their cases. They were also more likely to lose if the claim had been made against them (23%) than by them (12%).
WHAT ABOUT UNRESOLVED DISPUTES?

At the time of the interview, one in five respondents had not sorted out their dispute (179 respondents). We asked them if they had, or intended to seek, legal help. Around half had already received some legal help and a further seven per cent intended to seek advice. Over one in four were not seeking legal advice or help and a further 16% did not know or had not decided whether to seek advice.

It is interesting to note that those not seeking legal help in this sub-sample is a significantly larger proportion than of all those who had been involved in a dispute. Compared to only 19% of the total sample who did not seek help, 28% of those whose dispute had not been resolved had not sought and did not intend to seek help about their dispute. Although the numbers are relatively small so should be treated cautiously, it certainly seems fair to suggest tentatively that someone seeking help is more likely to be helped to a more speedy resolution of their dispute, than someone who did not seek any advice.

Men were slightly more likely than women to have help already, and women were more likely not to be seeking legal help. People more than 55 years old were more likely not to be seeking help, and younger people (between 18 and 34 years) were most likely to seek help. Almost nine out of ten people with family disputes sought legal help, as did three in four people with a claim for accident, personal injury or medical negligence, and 55% of people with an employment dispute.

Only three in ten of people with consumer disputes had sought help. People with disputes about damage to a vehicle (29%); with their neighbours (33%); with an agency of government (36%); with a housing dispute (43%); and a debt problem (44%) were also less likely to seek help.

Although the sample sizes are relatively small and should be treated with caution, there certainly seems to be enough here to suggest that those who sought or who were seeking legal help had “traditional” legal problems.

By this is meant that they were seeking help about the areas of law mostly practiced by firms of solicitors. It begs the question of why those in the other areas, social welfare law such as debt, consumer law, social security and housing law were less likely to seek help. Is it because they do not know where to go, or that there is a problem about access to these areas of advice and help? This needs further research.
LEGAL REPRESENTATION AND LEGAL AID

Four out of ten of people whose dispute had already been resolved or who were seeking legal help had used or said they were going to get help from a solicitor. Solicitors were more likely to be used in England and Wales than in Scotland (53% compared with 44%). Advocates or solicitor-advocates were used rarely (8% and 6% respectively). Younger people (between 18 and 34) were more likely to employ a solicitor than older people.

Solicitors were more likely to be used for family disputes (86%); accident, personal injury or medical negligence claims (61%); for housing problems (50%) or for employment disputes (50%). Solicitors were only consulted in one fifth of the consumer disputes.

People who had a complaint made against them were more likely than those who had made the complaint to go to a solicitor (55% compared to 42%).

We asked respondents who had resolved their dispute or who were using or seeking legal help if they used a lay representative, such as a citizens advice bureau adviser, for court appearances. Only 7% of those seeking help made use of one.

Of those who had sought or intended to seek legal help, only 15% had received or expected to receive legal aid. They were more likely to be female than male (22% compared with 8%) and to be in socio-economic group DE (30%).

Legal aid was more likely to be sought in family law cases (53%), housing disputes (25%) and accident, personal injury or medical negligence claims (23%). The high proportion of family disputes accords with the Scottish Legal Aid Board's figures, which show for the year 1996/97 that 24% of the total legal aid budget, and 50% of civil legal aid was spent on matrimonial cases.

Those on low incomes were much more likely than others to have received or be seeking legal aid. Of those on very low incomes of less than £5,000, 37% had received or expected to receive legal aid, as did 20% of those on incomes between £5,000 and £25,000.
WHAT ABOUT THE OPPONENTS' RESOURCES?

We asked our respondents what they knew about the resources of the other side in the dispute.

Three quarters of opponents in family disputes had a solicitor representing them.

Just over half of the opponents of respondents involved in disputes about an accident, a personal injury or medical negligence said that their opponent had a solicitor, 46% of opponents in debt cases, and 44% in housing cases.

There did not seem to be a significant imbalance between use of solicitors on both sides as regards use of solicitors. Only one third said that their opponent used a solicitor, while over four in ten respondents said they used one.

One in ten said that their opponent had received or was seeking legal aid. Once again, opponents were most likely to be legally aided if involved in a family dispute.

THE COSTS INVOLVED

We wanted to find out what kind of expense was involved for people with civil disputes. One person in seven had to pay legal costs, but only one person in ten had to pay for costs other than their own.

This contrasts with the position in England and Wales, where 22% of respondents had to pay some legal costs.

Interestingly, almost one quarter of people living in rural areas had to pay some legal expenses in connection with their case. This compares dramatically with a figure of 9% for people in cities, and 14% of people living elsewhere. It is the only point in the whole survey when we found any significant difference among different geographical locations.

The reasons why this is the case are difficult to fathom, and again with such low numbers conclusions should be treated very cautiously. However, the increased costs for rural respondents may possibly be a result of people having to travel a distance to the source of legal help, or to a court or tribunal location.
While research carried out by Professor Alan Paterson and Malcolm Turner-Kerr for the Scottish Legal Aid Board (Research Report on the Distribution of the Supply of Legal Aid in Scotland, Paterson and Turner-Kerr, 1994) showed a reasonable level of access to legal aid suppliers throughout Scotland, it did show a possible exception for highly rural or low “access factor” districts. The report also found that for particular specialised areas such as the social welfare areas of housing, debt, employment, state benefits and ethnic minority rights, there was a strong prima facie case of unmet legal need. This could mean that people in rural areas are having to travel further to get appropriate legal help, or that because of the lack of availability of appropriate help in their area, their dispute is not being resolved at an earlier stage. This is an area where clearly more detailed research would be very useful.

No one with an income of less than £5,000 had to pay any legal expenses as a result of their dispute, again contrasting with the position in England and Wales where 14% of this income group had to pay some legal costs.

Those who had a complaint made against them were more likely to have pay legal costs than those who had made the complaint. Unsurprisingly, those who lost were more likely to have to pay costs than those who won.

**WERE BOTH SIDES EVENLY MATCHED?**

One of the commonly appreciated unfairnesses in legal disputes is that the legal system pitches the individual against the corporate opponent, who has vastly superior financial resources; considerable experience of the legal system; and access to skilled lawyers with considerable legal knowledge, and powerful negotiation and advocacy skills. Of course, asking our respondents does not necessarily give the true picture of the parties’ relative positions, but at least it shows what the respondents’ own perceptions were of the distribution of resources between the parties.

Respondents were asked who had the advantage or whether both sides were evenly matched in four areas: money to help fund the case; help to prepare the case; help to negotiate a settlement; and knowledge and experience of the law. We found that over four in ten felt that the other side had the advantage across all four areas, and that over half thought the other side had more money to fund the case, and almost half thought the other side had the advantage in terms of knowledge and experience of the law.
As far as money was concerned, older people (55 plus) were more likely to feel at a disadvantage in funding the case. The other side was more often considered to have the financial advantage in cases about faulty goods (63%), housing disputes (75%), employment disputes (61%), and disputes with government agencies or departments (69%).

Those on very low incomes (less than £5,000) were more likely to say they had the advantage, presumably because of access to legal aid.

People involved in family disputes were more likely to see both sides as evenly matched as regards knowledge and experience of the law. The other side was seen to have the advantage in disputes with government (67%), consumer disputes (58%), debt (58%), housing problems (50%), and employment disputes (50%).

Those who were involved in a divorce or a dispute over residence of or contact with children were much more likely to see both sides as evenly matched in terms of help to prepare the case, which is hardly surprising given that 87% of them consulted a solicitor.

Again, older people were more likely to consider that the other side had the advantage, and younger people (under 35) were more likely to say that both sides were evenly matched.
We wanted to find out whether our respondents would have preferred their dispute to have been handled in a different way. Over four in ten said that they would have preferred a different method of dispute resolution (see Table 3).

<table>
<thead>
<tr>
<th>Type of Dispute</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>220</td>
<td>44</td>
</tr>
<tr>
<td>Accident / injury / medical negligence</td>
<td>17</td>
<td>52</td>
</tr>
<tr>
<td>Damage to vehicle</td>
<td>20</td>
<td>37</td>
</tr>
<tr>
<td>Unpaid dept</td>
<td>14</td>
<td>54</td>
</tr>
<tr>
<td>Employment</td>
<td>21</td>
<td>75</td>
</tr>
<tr>
<td>Family (divorce, children)</td>
<td>24</td>
<td>36</td>
</tr>
<tr>
<td>Goods / services</td>
<td>60</td>
<td>37</td>
</tr>
<tr>
<td>Government</td>
<td>27</td>
<td>55</td>
</tr>
<tr>
<td>Landlord / tenant</td>
<td>10</td>
<td>63</td>
</tr>
<tr>
<td>Quarrel with neighbour</td>
<td>19</td>
<td>44</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>35</td>
</tr>
</tbody>
</table>

Base: all those involved in a dispute 499 100

While it is was probably not surprising that 69% of people who lost their case would have wanted another way of dealing with it, it is surprising that almost three in ten of the people who won their case also would have preferred an alternative.

There was a greater level of preference for alternative methods of resolving disputes in Scotland than in England and Wales (44% compared with 34%).

We then told respondents a bit about the different methods for resolving disputes that exist, such as arbitration, mediation and a full court trial and asked them which method they would prefer to have used in a case like theirs.
Table 4 Which method of dispute resolution was preferred.

<table>
<thead>
<tr>
<th>Method</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sitting round a table with an independant expert who helps you reach an agreement between yourselves</td>
<td>53</td>
</tr>
<tr>
<td>Sitting round a table with an independant expert who makes a decision</td>
<td>22</td>
</tr>
<tr>
<td>A full trial in court</td>
<td>8</td>
</tr>
<tr>
<td>Out of court settlement between parties</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
</tr>
</tbody>
</table>

Base: all with a serious dispute (499)

It is interesting that over one in five of those whose case had proceeded to a full trial in court were more likely to be happy to retain that method of resolution.

This indicates a possibility that it is the process leading up to a final court trial that is most frustrating for people, and that those who have actually seen the whole process through are more content with it. However, against this fully two thirds would have liked arbitration or mediation despite the high likelihood that they had won their case using the formal court system.

Where respondents preferred something other than a full trial in court, we asked them whether or not they thought both side should be represented by lawyers, or whether neither side should have lawyers. Most people (61%) had a preference for neither side having lawyers, but one third thought both sides should have lawyers. Those involved in family disputes, disputes with government and disputes about accidents, personal injury or medical negligence were more likely to say that lawyers should be involved on both sides.

According to research carried out by the Scottish Office (Legal Studies Research Findings No.4: Alternative Dispute Resolution) carried out in 1996, there is still a very low incidence of alternative dispute resolution, which most commonly means mediation, taking place in Scotland. Apart from the work done by ACAS in the employment field, it is only in the last ten years or so that alternative dispute resolution procedures have achieved much formal recognition, and this most prominently in the sphere of family disputes. However, against an overall figure of 10,257 family cases initiated in the sheriff courts in Scotland in 1995, only 3,669 case referrals were handled by Family Mediation Scotland in that year, and very small numbers by lawyer mediators so far.
Given the high support for alternatives which this survey reveals, there is certainly a strong case for arguing for more support for the establishment and encouragement of more experimental projects in this field.

**WHAT DID PEOPLE WANT TO ACHIEVE?**

It is typically assumed that people want some kind of financial recompense when they are involved in a dispute. We wanted to find out if that was the case, so we asked those who were not involved in a dispute over a divorce or the arrangements for the residence of or contact with children, to tell us all the things they wanted to get out of the dispute.

Over half the people questioned said that they wanted to prevent what happened to them happening to someone else in the future. Financial compensation or a refund was mentioned slightly less often.

We then asked people to tell us which out of all the reasons they had given was the most important aim in the dispute. Financial compensation was the most important aim for one in three of the respondents. One in five said that the most important aim for them was preventing it happening to someone else. These findings were similar to those in England and Wales where 32% saw financial compensation as the main aim with 12% aiming to prevent it happening to someone else in the future.

Those who were complained against had different priorities. They most commonly said that they wanted to clear their name (21%), followed by preventing it happening to someone else in future.

Those involved in disputes about damage to a vehicle most often wanted financial compensation (65%), as did those involved in consumer disputes (42%). Those involved in an accident, personal injury or medical negligence claim were most likely to say that their main aim was to prevent what happened to them happening to someone else.
Of all the people who had gone somewhere for help, just under one in five felt dissatisfied with the help they had received. Dissatisfaction was particularly high for those involved in disputes about accidents, personal injury, medical negligence, employment, or disputes with government.

While most people (66%) said they were happy with the help they received, in fact this level of satisfaction is considerably lower than in previous surveys which have been conducted by the Scottish Consumer Council and others into satisfaction with legal services. Our 1987 survey of solicitors' clients found a satisfaction level of around 85%, (Report of a Survey on the Use of Solicitors, Scottish Consumer Council, 1987) and our report on the experience of house purchasers found that 87% were satisfied with the service they received from their solicitor (Buying a House in Scotland, 1988, Scottish Consumer Council). Ann Millar and Sue Morris (Legal Studies Research Findings No.1: Legal Services in Scotland: Consumer Survey 1992) found that 91% of those using legal services in Scotland were satisfied with the service received. In the light of these findings, the results in this survey do appear to be alarmingly low, yet it is not clear why this is the case.
Women appeared to be slightly more satisfied than men, with men more likely to say that they were very dissatisfied. Those in the lower socio-economic groups were also more likely to say that they were very dissatisfied (DE = 14% compared with AB = 4%).

These figures give rise to questions which indicate a need for further research. We do not know why those who indicated dissatisfaction were dissatisfied. Maybe they were unhappy with the help they received, but perhaps they may be confusing dissatisfaction with the system with dissatisfaction with the advice received. The responses to the questions in the next section certainly reveal a degree of discontent with the system which could certainly spill over into unhappiness with anyone trying to guide them through it.

We also asked respondents if there was any other legal help or advice that they would have liked. Almost two thirds said there was nothing else that would have helped them, but almost one in five said that they did not know. The fact that so many indicated that they did not know whether they needed help does give some cause for concern, possibly indicating a lack of awareness of the options open to them.

When asked if they would have liked more information, many people indicated several areas where they would have liked to know more. This suggests that more information generally would have been of great assistance to those involved in disputes.

The most commonly mentioned item was that they would have like more information and advice about how to present their case (33%). However, when asked what was the most important piece of information they would have liked, highest on the list was more information about alternatives to going to court (12%), followed by how to find a good lawyer.
WHAT WERE PEOPLE'S GENERAL OPINIONS OF THE SCOTTISH LEGAL SYSTEM?

Finally, we wanted to find out what our respondents thought of the Scottish legal system. We read out a series of statements about the legal system to them, and asked to what extent they agreed or disagreed with them. What we found was that generally, people agreed with the negative statements and disagreed with the positive statements. Over three out of four respondents considered that the legal system is too complicated, too easy to twist if you know the rules, and needs bringing up to date. Over four out of five respondents said that the legal system was slow, and off-putting to ordinary people.

On the other hand, less than one in three said that they thought the legal system was well run, with almost half of all respondents disagreeing with this statement. Only 12% thought the legal system was easy to understand with three in four respondents disagreeing. Around one third said the system was “fair to people like me”, and around half of all respondents disagreed. While one third considered that the legal system usually got the judgement right, over one third did not agree with this statement.

People involved in a housing dispute, or a claim about an accident, personal injury or medical negligence were more likely to disagree that the present system was fair to people like them. Half of the people involved in a housing dispute strongly disagreed with this statement and one in four of those involved in a claim for an accident, personal injury or medical negligence also disagreed strongly.

Perhaps more positive, however, was the fact that seven out of ten said that they would use the legal system again in the future. But perhaps this is because of a perception of a lack of alternatives.

Some quotes from respondents about the Scottish legal system:

"It seems to be there for people with money, if you don't have money you don't seem to have access to it."

"I actually think its quite good. It could be brought up-to-date more....the words are all very complicated....They should simplify it a bit, then I think people wouldn't be so frightened. People need more advice."
"On the whole it is fair, but sometimes its too slow and for the ordinary person its sometimes biased and unless you get a good lawyer you don’t really stand a chance. The ordinary person that doesn’t know what to do or where to go might be losing out and its costing them money that it shouldn’t”.

“I think that it is a reasonably good system if it was explained a little better to the common and garden layman.”

“I battled with them for months, but as soon as I saw the CAB and they sent a letter to them it was resolved in weeks. I was fairly pleased with the speed of things - the letter worried them - they knew they were in the wrong once a legal letter was sent - they sorted it out.”

“I consider myself clever but still felt threatened by the system.”