



Ministry of  
**JUSTICE**

**Sustainability of mediation  
and legal representation in  
private family law cases**  
Analysis of legal aid  
administrative datasets

**Sarah Quartermain**

Ministry of Justice Research Series 8/11  
November 2011

# **Sustainability of mediation and legal representation in private family law cases**

Analysis of legal aid administrative datasets

**Sarah Quartermain**

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First Published 2011

ISBN: 9781840994919

## Acknowledgements

The author would like to thank the Legal Services Commission for providing the data for this analysis, with thanks particularly to Terence Davies within LSC for his guidance and expertise throughout the project.

The research would not have been possible without the data linking carried out by the Data Improvement Project team within the Ministry of Justice (MoJ). Thanks to Nickie Abrams and Joseph Ho for their time and expertise on data linking issues.

Thanks to Davnet Cassidy in the Access to Justice Research Team, Analytical Services, for her guidance and oversight throughout the project. Thanks also to Teresa Williams and Tracey Budd in Analytical Services at MoJ for their assistance and direction.

Final thanks go to the independent peer reviewers who provided constructive comments on the report, with particular thanks to Mavis Maclean for her time and support.

## Disclaimer

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# Summary

## Context

This analysis was undertaken by the Ministry of Justice (MoJ) to inform family justice policy developments, particularly in the context of the Family Justice Review.

The aim of the analysis was to compare the sustainability of outcomes achieved through mediation to those facilitated through legal representation in private family law disputes. The analysis focuses on publicly funded clients who receive legal aid for attempting to resolve child contact issues and the division of assets following divorce or separation. Legal aid administrative data from October 2004 to July 2010 was used to examine outcomes from, and repeat use of, family legal aid services. The type and number of family legal aid services used following mediation or legal representation were used as a proxy for examining the sustainability of mediated agreements and decisions reached through legal representation.<sup>1</sup> The outcomes considered included whether mediation resulted in full or partial agreement and whether legal representation resulted in a settlement or court determined decision.

The analysis does not explore why clients return to use family legal aid services or the reasons for any breakdown of agreements as the datasets used did not contain this information.

## Approach

Approximately 2.3 million closed case records showing use of family legal aid services by publicly funded clients between October 2004 and July 2010 were obtained from the Legal Services Commission (LSC).

The data were held in three separate groups of administrative datasets according to the funding arrangements for the type of family legal aid service used. Individuals in each dataset may have accessed legal aid services from the general categories of: **initial legal advice**; **mediation** (including assessments and mediation sessions but not willingness tests); and **legal representation** (preparation and advice prior to and/or during court proceedings).

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<sup>1</sup> The family legal aid services used following mediation or legal representation were explored to draw basic conclusions about the sustainability of these services and agreements. If no or fewer additional services were used following mediation or legal representation, agreements from these services were assumed to be more sustainable as less additional help was needed. These assumptions about sustainability are broad; it was not possible to explore if an agreement had broken down or not or examine the reasons for any breakdown of agreements.

As there is no unique identifier for legal aid clients within these datasets, the datasets were linked through a data matching exercise using personal identifiers such as name and postcode to establish client case histories. The linking approach used may have resulted in greater levels of matches being identified between (and within) the legal representation and some legal advice data, as this data included more personal identifiers.

Legal representation records which included issues such as domestic violence or adoption were excluded from analysis for the purposes of comparing legal representation and mediation, as mediation would not usually be offered in these circumstances.<sup>2</sup>

The result of the data linking exercise produced two datasets. One included clients who did not link to any other client record ('single' records) and therefore were assumed to have used only one legal aid service, and another included clients who matched to one or more other client records in the same or a different legal aid dataset. These were assumed to be 'repeat users' who had accessed one or more additional family legal aid services.

In this analysis, a new use of a family legal aid service is described as a new family legal aid 'case'. This is not to be confused with the use of 'case' in terms of the issues in dispute or a court case, and is only used to describe a new family legal aid funding record for a client.

After data cleaning and linking approximately 1.4 million publicly funded clients remained in these final datasets.<sup>3</sup> As clients could use more than one legal aid service this equates to approximately 1.75 million records showing use of family legal aid services. The type and number of legal aid services used by clients during the data period and the sequence in which they were used were compared for those who had ever used mediation or legal representation. These are not exclusive categories of users as some clients may have used both mediation and legal representation. For example, if a client had accessed mediation and legal representation they would be treated as a 'repeat user' and their use of both mediation and legal representation would be analysed on a case basis.

Errors relating to data quality of the administrative data and the fixed time period examined will have resulted in an undercount in the number of identified 'repeat users'. If the financial

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<sup>2</sup> Legal representation records which listed domestic violence related proceedings such as injunctions and non-molestation orders as the main or sub issue on the certificate were excluded. This will include cases where there may have been evidence or allegations of domestic violence.

<sup>3</sup> Legal representation cases incorporating domestic violence proceedings or non-family proceedings were excluded from analysis. Records in the unmatched dataset which could not be verified as 'single' records were removed as well as records with poor data entry which were deemed unable to match to another record. See Appendix 1 for further data cleaning details.

circumstances of clients changed and they became eligible or ineligible for legal aid during this data period, the full picture of their case histories would also not be captured.

When drawing comparisons about the outcomes from family mediation and legal representation, differences between the processes and data recording of these resolution methods need to be taken into account. For example publicly funded clients are directed to mediation as part of the legal aid process but are not compelled to use mediation, whereas court proceedings can continue without one party in order to implement a resolution.

It is also important to note that legal aid recipients who choose mediation may differ from those who choose legal representation in terms of the complexity of the case, the issues in dispute, their attitudes towards dispute resolution and their relations with the other party. The findings cannot therefore be used to assess the effectiveness of mediation versus legal representation.

In this analysis a 'family legal aid service' refers to initial legal advice, mediation or legal representation. Additional service use is recorded as a new case in the data if clients return to the same or a different legal aid service with significantly different issues, or the same issue as before but a number of months have elapsed, circumstances have changed or the issue now relates to another party.<sup>4</sup>

The use of an additional service described as following the use of mediation or legal representation refers to instances where initial legal advice, mediation or legal representation (or a combination of these services) started after mediation or legal representation began. In some circumstances clients may have started using another service before the previous service use was recorded as completed. Therefore some cases with overlapping dates are included in this analysis.

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<sup>4</sup> See Legal Services Commission funding guidance in:  
[http://www.legalservices.gov.uk/docs/civil\\_contracting/081103CivilSpecificationGeneralProvisionsNov08.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/081103CivilSpecificationGeneralProvisionsNov08.pdf);  
[http://www.legalservices.gov.uk/docs/civil\\_contracting/080701FamilyMediationSpecification.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/080701FamilyMediationSpecification.pdf);  
[http://www.legalservices.gov.uk/docs/cls\\_main/Funding\\_Code\\_Ch20\\_Children\\_and\\_Family\\_General\\_\\_Principles\\_May\\_11.pdf](http://www.legalservices.gov.uk/docs/cls_main/Funding_Code_Ch20_Children_and_Family_General__Principles_May_11.pdf)

## Key findings

### *Numbers of repeat users*

Through matching records we found 17% of approximately 1.4 million clients used more than one legal advice service in the 2004–10 period. If we include those cases where there was an indication of repeat use in the initial record, but no matched record was identified, the proportion of repeat users was 32%.<sup>5</sup> Of those clients who did access more than one legal aid service in the 2004–2010 period, most clients used only two services in total (79% of approximately 250,000 repeat clients).

### *Additional family legal aid service use following publicly funded mediation or legal representation*

Clients were less likely to use additional services following mediation than following legal representation: 6% of mediation sessions and 10% of mediation sessions and assessments (where the assessment was recorded separately) were followed by the use of additional services compared to 21% of legal representation cases.<sup>6</sup> Clients who choose to use mediation may be more amenable to reaching an agreement than those using legal representation or the issues in dispute may vary in complexity. Although these results will be underestimates, the low proportion of repeat users for both mediation and legal representation may also suggest that some clients do not attempt to use further legal aid services to resolve unsettled disputes. Some clients may leave issues unresolved or choose to resolve their issues via privately funded means, through another process or by themselves.

### *Additional family legal aid service use following different outcomes from publicly funded mediation or legal representation*

The proportions of repeat users did not vary according to whether a decision had been reached or not during the previous case. For example, 6% of mediation sessions were followed by the use of additional services regardless of whether the sessions broke down or resulted in agreement. For legal representation cases, 21% were followed by the use of another legal aid service regardless of whether the outcome was a settlement or the case or funding was withdrawn. Clients were slightly more likely to use other services following court determined decisions, where a contested court hearing had taken place.

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<sup>5</sup> Some records indicated that another legal aid service may have been used in the 'outcome' or 'stage reached' field in the data. Records may not have been matched because the repeat use fell outside this time period under analysis, the financial circumstances of clients changed and they became eligible or ineligible for legal aid during this time period, or for any of the reasons mentioned under Section 2.2.

<sup>6</sup> A mediation session can refer to one or more sessions attended that were funded as part of one application for legal aid.

***Length of time between publicly funded mediation and legal representation decisions and additional mediation or legal representation use***

The majority of repeat users who returned to use mediation or legal representation following a decision from either resolution method, returned within 12 months. Those returning following legal representation took longer to return than repeat users who had initially used mediation: 34% of the repeat users following legal representation who returned for mediation or legal representation returned within six months compared to 51% of repeat users following mediation.

***Type of additional family legal aid service(s) used following publicly funded mediation or legal representation***

Repeat clients often used the same legal aid service as they had used before. Around two-thirds of mediation session clients using additional services returned to use mediation again. Around half of legal representation clients using additional services returned to use legal representation. Only a minority of mediation session users went on to use legal representation and vice versa. Clients may prefer to use resolution methods they are familiar with or their disputes may be more suitable for the respective resolution methods.

Half of the additional services used by clients following legal representation included only initial legal advice (and no mediation or legal representation use) whereas around a third of additional services used following mediation only included initial legal advice. This may signify that when clients do return to use additional services, those who have used mediation are more likely to require more assistance than legal representation clients.

***Additional family legal aid service use for the same or different issue type following publicly funded mediation or legal representation***

Repeat users also tended to return with the same type of issue (this data does not show whether clients returned with the same particular issue relating to the same parties). For both mediation and legal representation clients, a higher proportion returned with disputes about the same type of issue than for a different type of issue. The exception was when property and finance issues were dealt with via legal representation; following this more clients returned with different issues. This may suggest that property and finance issues are dealt with effectively through legal representation.

### ***Additional family legal aid service use for the same issue type following publicly funded mediation or legal representation***

Decisions relating to children issues appeared to be more 'sustainable' when made via mediation sessions than legal representation. That is to say, 3% of mediated agreements relating to children were followed by further mediation or legal representation for children issues, whereas 12% of legal representation decisions for children issues were followed by further mediation or legal representation for children issues. Again, this data does not show whether clients returned with the same particular issue relating to the same parties.

Around 1% of property and finance decisions were followed by additional service use for the same type of issue, whether the decision had been made through either mediation or legal representation. It is logical that property and finance issues may not require further dispute resolution once resolved as individuals tend to separate these matters after relationship breakdown. Issues relating to children (including financial arrangements for children) may reoccur as children become older and circumstances change.

### **Conclusions**

A lower proportion of repeat users were identified following mediation than following legal representation. When additional legal aid services were used, decisions made through legal representation appeared to last longer than those made through mediation. When mediation users did return, clients were more likely than legal representation users to require assistance beyond legal advice. However, the majority of returning mediation users tended to return to mediation and half of legal representation users using additional services returned for further legal representation. Decisions relating to children issues also appeared to be more 'sustainable' when mediation had been used.

The proportions of identified repeat users did not vary according to whether a decision had been reached or not in the previous mediation or legal representation case. This may suggest that the outcome achieved in the case does not determine whether additional services are used.

These assumptions about sustainability are broad; it is not possible to explore if an agreement did later break down or not, or examine the reasons for any breakdown of agreements. Some agreements may also break down or need modification due to a change in circumstance, or clients may return with a different issue or a similar issue but relating to different parties. Whether court or mediation was initially used may be irrelevant in these circumstances and qualitative research is needed to investigate the reasons behind repeat use of services.

# 1. Context

This analysis was undertaken by the Ministry of Justice (MoJ) to inform family justice policy developments, particularly in the context of the Family Justice Review.<sup>7</sup> One of the issues of focus in the Review is how the use of mediation can be improved. This analysis aims to improve understanding of the current use of publicly funded mediation, and compare the sustainability of outcomes achieved through mediation to those facilitated through legal representation in private family law disputes.

Private family law disputes are legal disputes arising out of the breakdown of family relationships, including issues which usually relate to arranging child contact or residence, or the division of assets following divorce or separation. Issues of a more specific nature relating to separating couples or families can also occur.

Individuals may seek advice and assistance for their disputes or choose to resolve issues alone. One survey (Plesence et al, 2010) found that half of family issues were dealt with outside of court (36% through agreement, 3% through some other process and 13% resolved themselves) whilst for 18% of family issues the individuals gave up or did nothing. An estimated one-fifth (21%) of family issues reached court.<sup>8</sup> According to a different survey which focused exclusively on child contact cases, about 1 in 10 child contact arrangements involve the courts (ONS, 2008).

All divorce applications are processed by the courts. In 2010, 121,300 divorces were granted in England and Wales. For those choosing to resolve their disputes through court, there were 122,800 children involved in private law applications relating to children arrangements and 82,300 ancillary relief applications disposed of relating to finance or property disputes following divorce or separation (MoJ, 2011b).

Individuals are encouraged to attempt to resolve private family law disputes prior to considering using the court process. Solicitors can be used to obtain legal advice, to

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<sup>7</sup> The Family Justice Review interim report was published in March 2011 and can be found here: <http://www.justice.gov.uk/publications/policy/moj/family-justice-review.htm>

<sup>8</sup> N=973 family problems (reported by 645 respondents). The definition of 'family justice issues' in this survey includes issues related to relationship breakdown (including division of assets, child residence and contact issues and arranging maintenance and child support payments), divorce, domestic violence and children. Problems relating to children include difficulties fostering or adopting children, children being taken into care or being on the Child Protection Register; abduction or threatened abduction of children by a family member; difficulties with children going to a school for which they are eligible and children being unfairly excluded or suspended from school.

negotiate between parties or draw up any resulting agreement or order. Mediation or other dispute resolution methods can also be used to help encourage settlement and agreement between parties.

Individuals can currently apply for legal aid for private law disputes if they meet the eligibility criteria which are based on both the characteristics of the individual and the type of case, and are subject to means testing. Publicly funded clients can attempt to resolve private family law disputes broadly through legal advice, mediation or legal representation (for work in preparation of and/or during court), accessed through specific routes depending on the stage and type of the dispute.

## 1.1 Introduction and aims of research

Mediation is one resolution method for family law disputes such as arranging child contact or financial issues following relationship breakdown.<sup>9</sup> Since 1997, those seeking public funding for assistance in resolving a family law dispute must first attend a meeting to assess their suitability for using mediation, unless they meet specific exemption criteria. However, few separating couples participate in mediation. Of the 60,000 clients referred to mediation assessments in 2010/11, 28,000 individuals participated in mediation.<sup>10</sup> Both parties need to agree to take part in mediation for a session to proceed whereas an application to the court for dispute resolution can be submitted by only one party.

Data from the Legal Services Commission (LSC) in 2010/11 shows that out of around 14,000 publicly funded mediation starts 67% reached full agreement, with another 4% of sessions resulting in a partial agreement or narrowing of issues. LSC data shows that 58% of the publicly funded mediation starts in 2010/11 were attended by parties who were both publicly funded and 42% were attended by one party who was publicly funded and one party who was privately funded.<sup>11</sup> Agreement rates for publicly funded and privately funded family mediation clients vary in a number of small scale studies.<sup>12</sup> It is not known how many privately funded clients use mediation in England and Wales.

For those choosing to use mediation, evidence of its effectiveness in resolving family disputes is limited. Research is often based on small-scale studies or focuses on varying and

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<sup>9</sup> This is not to be confused with relationship counselling for the purposes of keeping couples together.

<sup>10</sup> LSC mediation statistics 2010/2011 (unpublished). Around 60,000 clients took part in an assessment meeting in 2010/11. As part of this process, the mediator will undertake a financial eligibility assessment, domestic violence screening and assess the circumstances of the dispute to see if mediation is suitable. Around 14,000 couples participated in mediation.

<sup>11</sup> LSC fund mediation for eligible individuals whether the other party is publicly funded or privately funded. As the data linking in this project was carried out at an individual level, the analysis could not provide a breakdown of mediation clients who were part of a couple in which both parties were publicly funded or one party was publicly funded.

specific interventions, making an assessment of the effectiveness of mediation difficult (British Academy, 2010). Although users and stakeholders have generally been positive about the process, there is a lack of understanding around whether mediation produces sustained or longer lasting agreements than disputes resolved via legal representation. Little is understood about the differences in the kinds of disputes brought to mediation or to solicitors, or how the pathways through the different legal aid services are chosen.

As part of a wider study about publicly funded mediation, the National Audit Office (NAO) conducted an analysis of the repeat use of mediation, using administrative data from the Legal Services Commission over an 18 month period from October 2004 to March 2006 (NAO, 2007). However, the NAO study did not include a comparison with decisions made using legal representation. There is very little research about 'repeat users' of family dispute resolution services and the sustainability of outcomes arranged through legal representation or mediation. Little is known about the time frame during which agreements can break down.

## Aims

This analysis provides a comparison of the sustainability of mediated outcomes to decisions facilitated through legal representation based on administrative data held in relation to publicly funded clients. Using almost six years of legal aid data, the type and number of family legal aid services used following mediation or legal representation were used as a proxy for examining the sustainability of mediated agreements and decisions reached through legal representation. The analysis focuses on publicly funded clients with private family law disputes between individuals.

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<sup>12</sup> For example see: Walker et al (1994, 2004).

## Research questions

The analysis addressed the following research questions:

- How many family legal aid services do publicly funded clients use in private family law cases?
- What proportion of the mediation or legal representation services used are followed by the use of additional family legal aid services?
- What proportion of publicly funded clients use additional family legal aid services following different outcomes from mediation or legal representation?
- Which family legal aid services do publicly funded clients use following mediation or legal representation?
- For those who do return to use another service, how many clients return to address the same type of issue and how many return for a different issue type?
- How long do decisions taken via mediation and legal representation last?

The analysis does not explore why clients return to use family legal aid services or the reasons for any breakdown of agreements as the datasets used did not contain this information.

## 2. Approach

The Legal Services Commission (LSC) captures use of family legal aid services by publicly funded clients in a series of administrative datasets. The datasets were linked and analysed in order to track a large number of publicly funded clients and explore their use of legal advice, mediation and legal representation services over almost six years.

### 2.1 Scope of data

MoJ received approximately 2.3 million family legal aid claim records through a data sharing agreement with the LSC. The data contained closed case records from October 2004 to July 2010 for all publicly funded clients using family legal aid services during this period.

Records showing use of these services were contained in three separate groups of datasets, divided according to their funding arrangements. For this analysis each dataset group was named according to the general type of service offered for that funding stage. Individuals within these databases may have accessed the following legal aid services:

- **Initial legal advice** (known as controlled work) – This covers the initial meeting with a solicitor, and any follow up advice and assistance in divorce proceedings (known as Legal Help). More substantial advice, assistance and negotiation are also available to resolve disputes (known as Family Help – Lower).<sup>13</sup> It may be used to secure early resolution of a family dispute or to obtain a consent order following settlement.<sup>14</sup> Ongoing legal support for cases during or following mediation, such as the formalisation of an agreement, can also be provided.
- **Mediation** for family disputes can be used following an assessment of whether mediation appears suitable to the dispute, circumstances and the parties involved. Clients can be directed to mediation following legal advice, during court proceedings, or clients can self refer directly or take part after the other party has been referred. Both parties need to agree to take part in mediation for it to proceed.
- **Legal representation** (known as certificated work) – If mediation and legal advice do not successfully resolve all issues in dispute, it may become necessary to issue court proceedings (other than for obtaining a consent order) or in the case of a respondent, join proceedings already issued. This additional help is given by solicitors with a view to securing the early resolution of a family dispute

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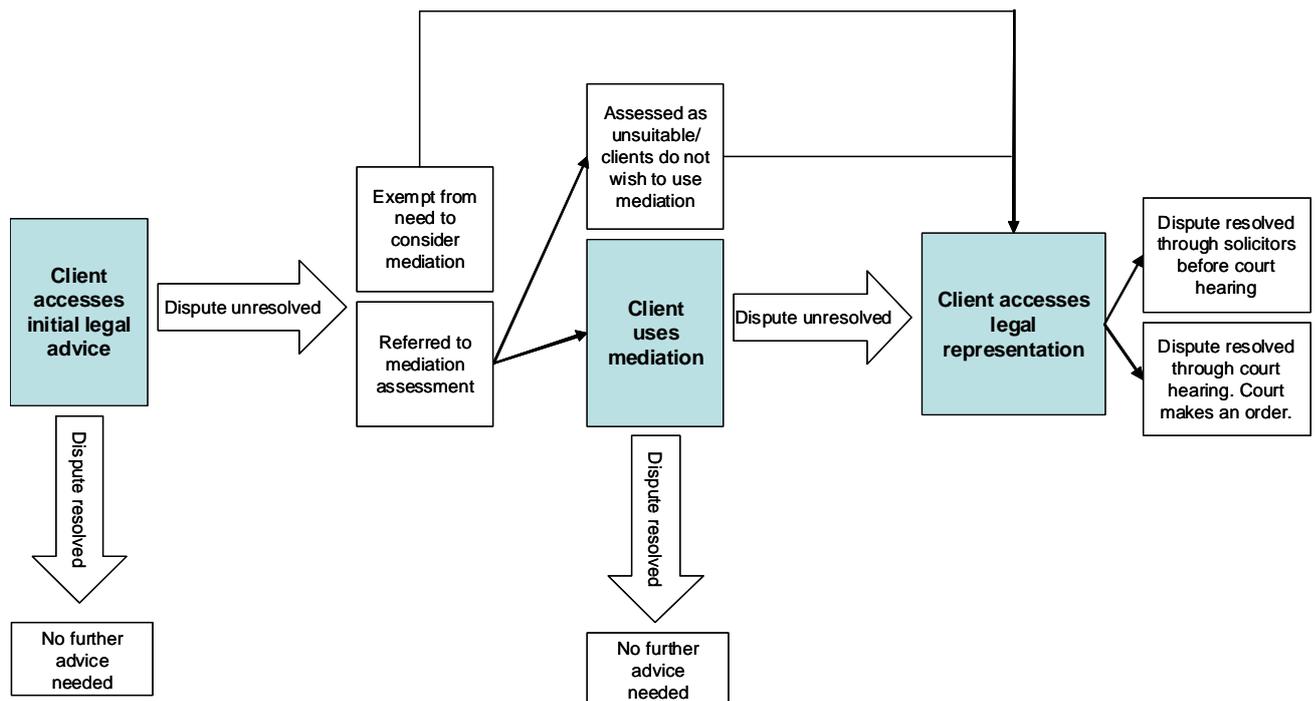
<sup>13</sup> In order for a private law case to progress to Family Help (Lower) a cost benefit test must be conducted and the dispute must be a 'significant family dispute'. A significant family dispute is one which, if not resolved, may lead to family proceedings and for which legal advice and assistance is necessary to enable the client to resolve the issues.

<sup>14</sup> This would be exceptional in relation to children issues but more usual in financial cases.

(known as Family Help – Higher). If this does not succeed, legal representation may be offered to cover preparation for or representation at family proceedings.<sup>15</sup>

Figure 2.1 shows simplified routes to initial dispute resolution through use of family legal aid services (it does not illustrate instances where clients return for further dispute resolution following the breakdown of an agreement). Although publicly funded clients are required to consider mediation before progressing to legal representation, clients can potentially use these services in any order, subject to the stage of their dispute. Clients can potentially return to use a legal aid service regardless of whether an agreement was previously reached or not. For example mediation users may go on to use legal representation if mediation was not successful, or legal representation users may return to use initial legal advice with further issues following a decision.

**Figure 2.1: Simplified client pathways for publicly funded clients through family legal aid service resolution processes during October 2004–July 2010<sup>16</sup>**



In this analysis, a new use of a family legal aid service is described as a new family legal aid ‘case’. This is not to be confused with the use of ‘case’ in terms of the issues in dispute or a court case, and is only used to describe a new family legal aid funding record for a client.

<sup>15</sup> Legal Services Commission, The Funding Code: Chapter 20 Children and Family General Principles, May 2011. [http://www.legalservices.gov.uk/docs/cls\\_main/Funding\\_Code\\_Ch20\\_Children\\_and\\_Family\\_General\\_Principles\\_May\\_11.pdf](http://www.legalservices.gov.uk/docs/cls_main/Funding_Code_Ch20_Children_and_Family_General_Principles_May_11.pdf)

<sup>16</sup> In reality clients can potentially use these services in any order but are constrained by the rules in the LSC Funding Code. For example, a client may use mediation initially if they self refer to that service or may use legal representation initially if they are joining court proceedings as a respondent.

Clients may use legal aid services on a number of occasions but a new case is only recorded in this data when a client has significant issues which allow a new application for funding to be made. A new case (or additional use of a family legal aid service) will only be recorded under the following circumstances when a client presents issues relating to:<sup>17</sup>

- **the same matter but circumstances have changed materially** e.g. agreement has failed. A new case will be reported under initial legal advice if three months since the previous case closure have passed.
- **the same type of matter but relating to a different party.**
- **the same matter but a number of months elapsed since client previously raised issue** – A new case will be reported under initial legal advice in this circumstance if six months have passed. For mediation this is three months; any less and the previous case will be re-opened. Clients returning following legal representation will usually be directed to legal advice unless there are exceptional circumstances.
- **a different, separate and distinct matter** – Many clients have multiple issues which are dealt with in one initial legal advice, mediation or legal representation case. Only when issues are significantly different, such as relating to a different category of law or to different parties, may a separate case be opened before the time constraints described above.

Each dataset contained information about:

- general classifications of the type of issue in dispute;
- start date and end date of the matter dealt with at that service;
- outcome of the use of the service (such as whether agreement was reached during mediation, or whether settlement or a court determined decision occurred in legal representation); and
- personal identifiers of the client (such as name, postcode, gender).

These variables were standardised before analysis as there was little common reporting across the datasets (see 'Standardising data' in Appendix 1 for more information).

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<sup>17</sup> See Legal Services Commission funding guidance in:  
[http://www.legalservices.gov.uk/docs/civil\\_contracting/081103CivilSpecificationGeneralProvisionsNov08.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/081103CivilSpecificationGeneralProvisionsNov08.pdf);  
[http://www.legalservices.gov.uk/docs/civil\\_contracting/080701FamilyMediationSpecification.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/080701FamilyMediationSpecification.pdf);  
[http://www.legalservices.gov.uk/docs/cls\\_main/Funding\\_Code\\_Ch20\\_Children\\_and\\_Family\\_General\\_\\_Principles\\_May\\_11.pdf](http://www.legalservices.gov.uk/docs/cls_main/Funding_Code_Ch20_Children_and_Family_General__Principles_May_11.pdf)

## Type of matter

Private family disputes can include issues relating to:

- divorce/ separation/ dissolution of civil partnership/ nullity/ judicial separation;
- inheritance;
- adoption;
- child contact and residence;
- special guardianship or other specific issues relating to children's arrangements;
- domestic violence; and
- ancillary relief and financial arrangements.<sup>18</sup>

Legal representation records specifically focused on domestic violence, adoption or inheritance applications were excluded from analysis for the purposes of comparing legal representation and mediation, as mediation would not usually be offered in these circumstances.

General family cases may be accompanied by allegations of domestic violence or child protection issues. For example, one study found that parents raised serious welfare concerns (including domestic violence issues) in over half of all child contact court applications (Hunt and Macleod, 2008).<sup>19</sup> Clients are often exempted from using mediation under these circumstances or may be assessed as not suitable for mediation if there is evidence of or an allegation of domestic violence.<sup>20</sup> Therefore, there are likely to be more clients with domestic violence issues in the legal representation records than in mediation records.

Legal representation records which listed domestic violence related proceedings such as injunctions and non-molestation orders as a main or sub issue were excluded for the purposes of comparing legal representation and mediation. This will have excluded legal representation cases where there may have been evidence or allegations of domestic violence. However because only the main issue and one sub issue in dispute were recorded in the research dataset and there may be other subsidiary issues present, it is likely that there may be cases including domestic violence issues within the legal representation data which were not identified in this analysis. The mediation data received did not include information about whether a case included domestic violence issues and therefore it is likely

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<sup>18</sup> Legal Services Commission, The Funding Code: Criteria, May 2011.  
[http://www.legalservices.gov.uk/docs/civil\\_contracting/Funding\\_Code\\_Criteria\\_-\\_May\\_2011.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/Funding_Code_Criteria_-_May_2011.pdf)

<sup>19</sup> 54% of 308 child contact cases.

<sup>20</sup> If a client raises domestic violence issues, such as physical violence or emotional abuse, clients may be automatically exempt from the need to consider mediation if this has resulted in a police investigation or the issuing of civil proceedings for the protection of the applicant in the last 12 months. Otherwise the mediator will decide whether mediation is suitable at the assessment stage in a case where domestic abuse is alleged.

that there were mediation cases which incorporated these issues which were not identified in this analysis.

In addition, the analysis included only records where family law issues were central to the case. If a client also had housing, debt or welfare benefit issues, legal advice in relation to these issues would be funded under separate remuneration arrangements, by providers with contracts to deliver advice in these areas. These cases were excluded from analysis to ensure that conclusions drawn about outcomes or sustainability referred solely to cases with a central family law aspect (see 'Dataset exclusions' in Appendix 1 for further details).

### **Outcome data**

Around 25% of the records in the received legal representation dataset had incomplete outcome data.<sup>21</sup> Cases without complete outcome data are cases in which a bill has not been submitted or paid but may have been closed by a caseworker. As outcome data is essential in this analysis, legal representation records without an outcome were excluded (see 'Dataset exclusions' in Appendix 1). Almost 100% of the mediation case outcomes were reported.

### **Data period**

We obtained data over the longest data period available with consistent reporting in the datasets to explore case histories over the longest possible period. Closed cases from October 2004 to July 2010 were included. Cases which began before October 2004 and closed between October 2004 and July 2010 are captured in this dataset as well as cases which started and closed within the data period. It is possible that clients returned to use legal aid services in relation to the same or different issues after July 2010 but this additional service use is not captured in this data.

If the financial circumstances of clients changed and they became eligible or ineligible for legal aid during this data period, the full picture of their case histories will also not be captured. These issues are likely to have reduced the number of 'repeat users' found through the data linking approach.

Changes to the legal aid process and eligibility of clients occurred during the data period and the analysis needs to be understood within this context. There were changes to legal aid eligibility rules over the data period but these have generally been applied to each funding stage (covering initial legal advice, mediation and legal representation) in a uniform way.

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<sup>21</sup> The proportion of legal representation records without a recorded outcome varied in the 'single' and matched dataset. See 'Dataset exclusions' in Appendix 1 for further details.

Changes were applied to the mediation process in October 2007 when the Legal Services Commission increased the time allowance and remuneration for the mediation assessment meeting stage to allow for a more enhanced assessment meeting to take place. The mediation exemption process was also altered. The domestic violence exemption from attending an assessment or session was tightened so that it could only be relied upon where the client has actually made an allegation of domestic abuse against a potential party to the mediation and this has resulted in a police investigation or the issuing of civil proceedings for the protection of the applicant in the last 12 months.

In relation to initial legal advice, solicitor firms moved onto a scheme of fixed fees rather than hourly rates in October 2007 which was designed to encourage efficiency and earlier resolution of family disputes. The revised Family Fee structure removed the financial disincentives for solicitors to make referrals to mediation, which were believed to have been an obstacle to increasing mediation referrals. As a consequence, solicitors were able to receive the same fixed fee regardless of whether they made a referral to mediation or not. If they referred their client to mediation at an early stage and it resolved the dispute, the firm's profit margins on the fixed fee would be maximised and they would receive a settlement payment. This policy change meant it was now in the interests of the solicitor to make the referral to mediation at an earlier stage.

### **Data quality and data cleaning**

This is the only available data source which allows a comparison of outcomes from mediation and legal representation clients. The large amount of administrative records available improves the value and robustness of the analysis. The family legal aid data used in this analysis originates from administrative records submitted by solicitors and mediators. The data quality is subject to standard human error and is reliant on many people entering data accurately and in accordance with guidance.

During the data cleaning and validation process, we removed cases with poor data quality. For example, cases containing missing, obviously erroneous or incomplete client information were removed if it was judged that it would not be possible to link the record due to a lack of accurate data.

A number of duplicate cases were removed from the data.<sup>22</sup> The duplicates represent approximately 19,000 records during 2004–2010; less than 1% of the dataset. On the

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<sup>22</sup> Duplicate cases occurred where two or more records contained the same client and case details, with the same start and end dates.

balance of probabilities these were erroneous cases, but by removing these duplicates, some cases where a client raised two issues of the same type at the same time but relating to different parties may have been omitted (see 'Data linking stages' and 'Dataset exclusions' in Appendix 1 for further details).

## **2.2 Linking family legal aid data**

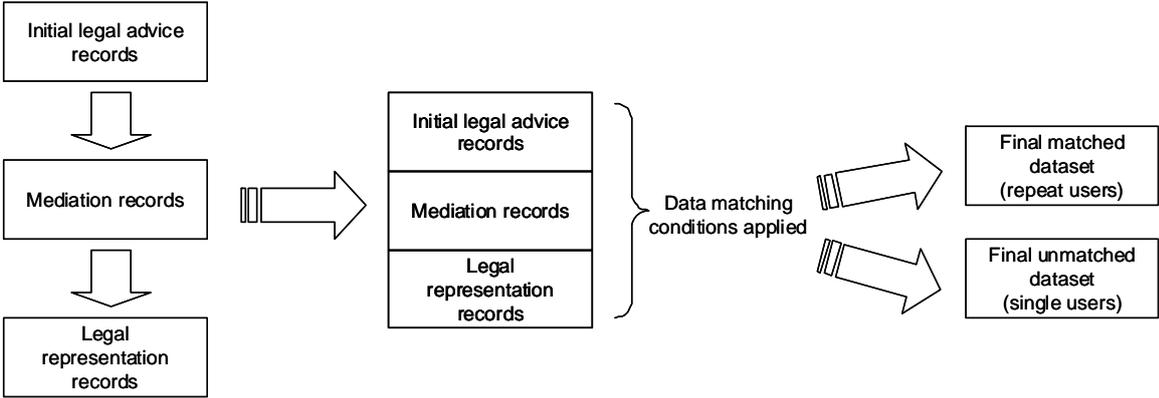
As data was held in three separate groups of databases and there is no unique identifier for legal aid clients within these datasets, the first step involved establishing client case histories through linking the datasets in a data matching exercise. Name, postcode and date of birth identifiers were used to match clients across the different legal aid service databases.

The quality of the data linking depends on the accuracy of the clients' reported personal identifiers. These personal identifiers were cleaned to remove erroneous cases prior to matching. As described above these could be records containing missing, incomplete or obviously incorrect client data.

To account for spelling or data entry issues 'fuzzy matching' was used. This is where the sensitivity of a particular variable can be altered to determine what would constitute a match, changing the probability of particular records matching to each other. Slight variations of personal identifiers as well as exact matches are used when linking clients in the data. Once the datasets were linked further exploratory work was undertaken to establish rules for a confident level of matching accuracy (see 'Data linking stages' in Appendix 1 for further details).

Each dataset incorporates different personal identifiers. Four differing combinations of personal identifiers were used to identify matches across the data; one main combination using full name and postcode linked records across all datasets and three other combinations identified additional matches. Within these additional combinations, more matched records may have been identified in the legal representation and some initial legal advice records than in the remaining data, as an extra personal identifier (date of birth) is recorded in this data. This enabled matches to be identified through combinations based on either full name and postcode or full name and date of birth, as opposed to only the full name and postcode main combination used in the remaining data. Therefore there may be some bias towards greater levels of 'repeat users' being identified occurring between (and within) the legal representation and some initial legal advice data. However, investigation into the linking approach suggests the main combination used across all datasets will have identified the vast majority of matches (see 'Data linking stages' in Appendix 1 for further details on the matching approach).

**Figure 2.2: Linking individual family legal aid service records**



The result of the data linking exercise produced two datasets (see Figure 2.2). One included clients which did not link to any other client record ('single' users) and therefore were assumed to have used only one legal aid service, and another included clients who matched to one or more other client records in the same or a different legal aid dataset. These clients were assumed to be 'repeat users' who had accessed one or more additional family legal aid services (see Table 2.1).

After data cleaning and linking 1,440,236 publicly funded clients remained in these final datasets, which equates to 1,759,295 cases of family legal aid service use.

**Table 2.1: Numbers of publicly funded cases and clients using family legal aid services in final data<sup>23</sup>**

Final dataset	Family legal aid service	Number of publicly funded legal aid cases	Number of publicly funded clients
'Single' data (single users)	Initial legal advice	833,076	833,076
	Mediation (assessment and/or sessions)	138,666	138,666
	Legal representation	220,304	220,304
	<b>Total</b>	<b>1,192,046</b>	<b>1,192,046</b>
Matched data (repeat users)	Initial legal advice	344,457	219,114
	Mediation (assessment and/or sessions)	61,388	47,639
	Legal representation	161,404	122,267
	<b>Total</b>	<b>567,249</b>	<b>248,190<sup>24</sup></b>

The numbers of 'repeat users' found through this matching approach are likely to be an undercount and should be treated as minimum estimates. In the unlinked 'single' record database 21% of the records contained information suggesting another legal aid service had been used, signifying these could not be verified as true 'single' records.<sup>25</sup> These were excluded from analysis because they could include service use from a separate time period and there was no associated case information to allow analysis.

These potential matches may not have been captured for a number of additional reasons. Errors in the recorded personal identifiers will reduce the number of matches that could be found and as the name and postcode of clients may change in a private family law case, where clients often divorce or move house, it is not possible to track all clients completely. However, a variety of personal identifiers were used for linking so that clients who had changed either name or address could be identified. It is unlikely that clients who changed both name and address were identified.

<sup>23</sup> A mediation session can refer to one or more sessions attended that were funded as part of one application for legal aid.

<sup>24</sup> The total number of clients in the matched data is less than the sum of clients in individual service records as each client attended more than one service.

<sup>25</sup> 313,443 out of 1,505,489 single records indicated that another service had been used in the 'outcome' or 'stage reached' variables. These were excluded from analysis, leaving 1,192,046 final single records.

## 2.3 Analysis

The type and number of legal aid services used by clients during the data period and the sequence in which they were used were compared for mediation and legal representation users. These are not exclusive categories of users as some clients may have used both mediation and legal representation. For example, if a client had accessed mediation and legal representation they would be treated as a repeat user and their use of both mediation and legal representation would be analysed on a case basis.

The services used following mediation or legal representation were explored to draw basic conclusions about the sustainability of services and agreements. If no additional services were used following mediation or legal representation, these services were assumed to be more sustainable as no additional help was needed. Clients returning in relation to the same issue type were thought to be more likely to represent cases where a previous agreement may not have been sustained.

When clients who had reached a previous agreement returned to use additional services, the period of time between the agreement and additional service use was compared for mediation and legal representation users. A shorter time period before returning may mean a prior agreement was less sustainable.

These assumptions about sustainability are broad; it is not possible to explore if an agreement did later break down or not, or examine the reasons for any breakdown of agreements. Some agreements may also breakdown or need modification due to a change in circumstances, or clients may return with a different issue or a similar issue but relating to different parties. Whether court or mediation was initially used may be irrelevant in these circumstances and qualitative research is needed to investigate the reasons behind repeat use of services. It is the comparison of general patterns of use by mediation and legal representation clients which are the focus of this analysis.

### **Comparability of mediation and legal representation**

General comparisons can be drawn about the outcomes from these resolution methods as the issues dealt with and service aims are similar. As stated previously, case types which were likely to have been excluded from the mediation process were removed from the legal representation data to ensure the likely client groups for each method were more comparable. However, there may be further differences between the client groups attending mediation or legal representation and differences in the complexity or type of issues brought to dispute resolution. Differences between the processes and data recording of these resolution methods also need to be taken into account when drawing comparisons.

Publicly funded clients are encouraged to use mediation as part of the legal aid process. Since 1997 clients have been required to attend a meeting to assess their suitability for using mediation prior to considering using legal representation (unless exemptions apply). The LSC also covers the cost of a privately funded party's mediation assessment (but not sessions) if the other party is publicly funded. However, use of mediation is voluntary and clients are not compelled to use it, whereas court proceedings can continue without one party in order to implement a resolution.

It is not possible to distinguish with clarity between legal representation clients using solicitors to reach a decision prior to attending court and clients using the court process and adjudication. This has implications as clients in the legal representation data may have used differing resolution processes. The analysis explores legal representation users as a group as well as in categories according to the stage at which the outcome was reached.

Variation also occurs within the mediation data. Some clients will have attended mediation sessions and others may have only attended the assessment stage. These categories were analysed separately where possible. Although mediation session clients will have used the same general process, clients may have used different types of mediation such as co-mediation or shuttle mediation.

## **2.4 Summary of limitations**

The scope of analysis is limited to publicly funded clients with private family law issues which were central to their dispute. The other party in the case may have been publicly funded or privately funded. Analysis only refers to closed cases between October 2004 and July 2010. As discussed previously a number of cases were excluded from the legal representation data for the purposes of comparing these records with mediation data or because there was no outcome information available. Duplicate records and records with poor data quality were removed from both the legal representation and mediation datasets. The exclusion of records for any of these reasons may have affected the numbers of repeat users found in analysis.

The data linking approach used to establish client case histories relied heavily on the use of clients' full names and postcodes, both of which may change in a family law case. This may have affected the number of repeat users found in the matching process. There may also be a slight bias towards matches occurring within and between the initial legal advice and legal representation data.

The differences between the recording of data within the mediation and legal representation records meant that some variables had to be standardised or reclassified. This may have affected the analysis. For example, the legal representation data had to be classified into broad case type categories, meaning that the analysis only focuses on the main listed issue of the case. The variety of additional issues in the mediation and legal representation cases are not accounted for in this analysis. The guidance around what constitutes a new case in the data differs slightly for each dataset and the results will reflect these rules.

As legal representation and mediation are different resolution processes, the comparisons drawn in analysis are general. Clients will be offered and will make different choices on their pathway to dispute resolution and this detail is not recorded within the administrative data analysed. For example it is not possible to clearly distinguish between legal representation clients using solicitors to reach a decision prior to attending court and clients using the court process and adjudication. It is therefore not possible to determine why clients may return to use additional legal aid services.

The analysis cannot account for any possible differences in the types of clients attending mediation or legal representation. Legal aid recipients who choose mediation may differ to those who choose legal representation in terms of the complexity of the case, the issues in dispute, their attitudes towards dispute resolution and their relations with the other party. The findings cannot therefore be used to assess the effectiveness of mediation versus legal representation.

### 3. Results

In this analysis a ‘family legal aid service’ refers to initial legal advice, mediation or legal representation (see definitions at 2.1). When comparing use of mediation to legal representation, this includes clients who had ever attended mediation or legal representation in the datasets. These are not exclusive categories of users as some clients may have used both mediation and legal representation.

The use of an ‘additional service’ described as following the use of mediation or legal representation refers to instances where initial legal advice, mediation or legal representation (or a combination of these services) started after mediation or legal representation began. In some circumstances clients may have started using another service before the previous service use was recorded as completed. Therefore some cases with overlapping dates are included in this analysis.

Unless otherwise stated in these findings, clients using more than one service refers both to clients using the same type or different types of services.

#### 3.1 How many family legal aid services did publicly funded clients use?

##### Numbers of repeat users

Out of all the 1.4 million family legal aid clients<sup>26</sup> in the final data, the majority were identified as using only one legal aid service (83%; 1,192,046 clients) and 17% (248,190 clients) used two or more services during the 2004–2010 period.

As stated previously, this is likely to be an undercount of the number of repeat users. The proportion of repeat users identified in the total data would increase to 32% if the previously excluded ‘single’ cases showing evidence of repeat use (but where no matched record was identified in the time period) were included.<sup>27</sup> These cases were excluded as they may include service use from a separate time period and there was no associated case information to allow analysis of these additional records.

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<sup>26</sup> 1,440,236 total clients in final cleaned data.

<sup>27</sup> Incorporating these 313,443 cases which showed another service had been used would increase the number of repeat users to 561,633 and the total clients within the data to 1,753,679.

**Table 3.1: Publicly funded clients using more than one family legal aid service, 2004–2010<sup>28</sup>** (therefore 17% of the total clients in the data)

Number of legal aid services used	Number of clients	
	Number of clients	% of clients
2	195,099	78.6%
3	39,982	16.1%
4	9626	3.9%
5	2523	1.0%
6	734	0.3%
7	226	0.1%
<b>Total repeat users</b>	<b>248,190</b>	<b>100.0%</b>

Of those family legal aid clients in the matched dataset who did access more than one legal aid service, most clients used two services: 79% used two services; 16% used three services; and 5% used more than three services. Clients using more than one service may have used either the same type or different types of services (Table 3.1).

### 3.2 What proportion of the mediation or legal representation services used by publicly funded clients are followed by the use of additional family legal aid services?

This analysis examined the total data (both single and repeat users) to determine the proportion of mediation and legal representation cases which were followed by the use of any additional legal aid service. Additional service use was used as a proxy for sustainability of decisions; if no additional services were used following mediation or legal representation, this was assumed to show that no additional legal assistance was needed following use of these services.

Details of whether the use of mediation or legal representation had resulted in an agreement or decision were not examined at this point. It is not possible to explain from examining this data whether clients returned following the breakdown of an agreement or examine the reasons for any breakdown of agreements if clients did return to use an additional service. The client may also have returned for further assistance in relation to a different issue or the circumstances of the parties may have changed, meaning that the original agreement needs to be modified.

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<sup>28</sup> 199 clients used between 8 and 32 services in the matched data; these extreme cases were excluded from analysis and a limit of seven services applied to allow manageable analysis in SPSS. (These were excluded prior to data cleaning and so may have been removed through the cleaning process anyway.)

As publicly funded clients can access mediation or legal representation services on more than one occasion, this analysis was carried out at the case level for each client. Analysis on a client basis may miss information about repeat use; for example, if a client had used mediation followed by legal representation, mediation and initial legal advice, analysis on a client level would only highlight one instance of mediation use followed by additional service use, whereas using the case level per client would capture that mediation was followed by additional service use on two occasions. Results at a client level were very similar to results from analysis at the case per client level (see Appendix 2 for client tables).

Use of mediation sessions and assessments were both included in the total 200,054 times that mediation was used in the final datasets<sup>29</sup> (Table 3.2).

**Table 3.2: Mediation services used by publicly funded clients (in both single and matched data), 2004–2010<sup>30</sup>**

Mediation service used	Number of cases	% of all mediation service use
Mediation assessment only	62,612	31%
Mediation session only <sup>31</sup>	76,900	38%
Both mediation and assessment together	60,542	30%
<b>Total mediation service use</b>	<b>200,054</b>	<b>100%</b>

Ten percent of the 200,054 mediation assessment and sessions in the data were identified as being followed by the use of one or more additional family legal aid services. This includes clients assessed as not being suitable for mediation who then went on to use additional services. It may also include clients who were assessed as suitable for mediation but for some reason did not attend a session until over three months after the assessment or whom decided to use alternative approaches to resolve their problem.

<sup>29</sup> LSC annual mediation statistics state there were 83,770 ‘mediation starts’ in the six years between April 2004 – March 2010. These figures are on a per couple basis and include couples where both clients or one client was publicly funded. In this analysis a mediation session refers to one or more sessions attended that were funded as part of one application for legal aid (i.e. a mediation start) and these are counted on an individual basis for publicly funded clients only.

<sup>30</sup> All mediation records consist of separate entries for assessments and sessions. Mediation assessments and sessions were recoded as one overall use of mediation when these occurred consecutively within clients’ records, and the time period between them was less than three months. LSC guidance states that a separate case can be opened if clients attend a mediation session and then return after a three month period. This guidance influenced the limit chosen for identifying one overall mediation use. See: [http://www.legalservices.gov.uk/docs/civil\\_contracting/080701FamilyMediationSpecification.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/080701FamilyMediationSpecification.pdf)

<sup>31</sup> Individuals should have an assessment meeting before a mediation session. The high proportion of ‘mediation session only’ cases here is likely to be mainly due to the time limits chosen in this analysis for specifying one overall mediation use. However, clients may not be recorded as attending an assessment if: the clients transferred their case to another mediation service; the clients were previously not eligible for legal aid but one or both became eligible during the mediation; the service did not report the assessment correctly; or the clients returned for further mediation and the mediator felt it was not necessary to reassess.

When focusing solely on mediation sessions, only 6% of the 137,442 mediation sessions accessed in the data<sup>32</sup> were identified as being followed by use of another family legal aid service within the time period under analysis. Clients using more than one service may have used either the same type or different types of services.

The results in section 3.3 show that 38% of the mediation sessions within the data period did not resolve all of the clients' issues. These cases could potentially be followed by additional service use where clients require assistance with these unresolved issues. Whilst the 6% of mediation sessions identified in this analysis as being followed by additional family legal aid services is likely to be an undercount, it may also indicate that clients return to a solicitor who continues to help them under an existing initial legal advice case (which would not be reported in the data as an additional service use) or instead do not use any further legal aid services.

Of all the 381,708 times legal representation was used in the data (whether for pre-court solicitor negotiations or attendance at court), 21% were identified as being followed by the use of one or more additional family legal aid services within the time period under analysis. This includes clients who may have been directed to mediation via court.

Again, this is likely to be an undercount. The results in section 3.3 also show that 31% of the legal representation cases within the data period were closed when the funding or case was withdrawn. However, it is likely that some clients do not take their disputes any further or resolve their issues through other methods. The Civil and Social Justice Survey estimated that around 18% of a sample of individuals with family justice issues gave up or did nothing instead of reaching a resolution (Pleasence et al, 2010).<sup>33</sup>

### **3.3 What proportion of publicly funded clients use additional legal aid services following different outcomes from mediation or legal representation?**

This analysis examined the total data (both single and repeat users) to determine the proportion of mediation sessions and legal representation cases which were followed by the use of any additional legal aid service, broken down by the outcome of the case.

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<sup>32</sup> This includes mediation sessions only and instances where the mediation session and assessment were together.

<sup>33</sup> N=973 family problems (reported by 645 respondents). The definition of 'family justice issues' in this survey includes issues related to relationship breakdown (including division of assets, child residence and contact issues, and arranging maintenance and child support payments), divorce, domestic violence and children. Problems relating to children include difficulties fostering or adopting children, children being taken into care or being on the Child Protection Register; abduction or threatened abduction of children by a family member; difficulties with children going to a school for which they are eligible and children being unfairly excluded or suspended from school.

Additional service use following a mediation agreement or decision reached though legal representation was used as a proxy for sustainability of decisions. If an additional service was used following an agreement or decision, this was assumed to be more likely to represent cases in which an agreement had broken down and further legal assistance was needed. However, it was not possible to explore if an agreement had actually broken down or examine the reasons for any breakdown of agreements if clients did return to use an additional service. The client may have returned for further assistance in relation to a different issue or the circumstances of the parties may have changed, meaning that the original agreement needs to be modified.

Analysis of the proportion of publicly funded clients using additional services, following different outcomes from mediation and legal representation, was also carried out at the case level for each client. Results at a client level were very similar (see Appendix 2 for client tables).

### **Mediation outcomes**

The majority of publicly funded mediation sessions (66%) in the total data from October 2004 to July 2010 reached full (62%) or partial agreement (4%). Mediation broke down in 34% of sessions (see Table 3.3).

The proportions of additional services used did not vary according to the outcome of the previous mediation session; 6% of mediation sessions were followed by the use of another service regardless of the outcome (see Table 3.5).

**Table 3.3: Outcomes from publicly funded mediation sessions in total data, 2004–2010**

Mediation session outcome	Number of publicly funded sessions	% of publicly funded sessions
Full agreement	85,809	62%
Partial agreement	4,898	4%
Breakdown	46,733	34%
<b>Total</b>	<b>137,440<sup>34</sup></b>	<b>100%</b>

**Legal representation outcomes**

Legal representation is not classified in the data according to whether an agreement was reached or not. Instead outcomes are classified in terms of the following: a settlement (an agreement reached using solicitors prior to court or demonstrated by a consent order during court); a court determination (a decision reached by the court in a contested case and excluding consent orders); and cases which were withdrawn by the client, on the solicitor’s recommendation or because funding was withdrawn (see Appendix 1 for full definitions).

Between October 2004 and July 2010, 69% of all the publicly funded legal representation cases in the data resulted in a decision (40% of all the legal representation cases in the data were reached through a settlement and 29% were determined by court). In 31% of legal representation cases the funding or case was withdrawn (Table 3.4).

**Table 3.4: Outcomes from publicly funded legal representation cases in total data, 2004–2010**

Legal representation outcome	Number of publicly funded cases	% of publicly funded cases
Settlement (including consent orders)	154,208	40%
Determined by court	109,191	29%
Case/ funding withdrawn	118,309	31%
<b>Total</b>	<b>381,708</b>	<b>100%</b>

<sup>34</sup> Two mediation session records did not have an outcome listed.

## Additional service use following mediation or legal representation by outcome

In this analysis clients using more than one service may have used either the same type or different types of services.

Legal representation (whether for pre-court solicitor negotiations or attendance at court) was more than three times more likely than mediation to be followed by the use of additional legal aid services.<sup>35</sup> Similarly to mediation, there was little variation in the proportions of additional services used according to the outcome reached. Clients were slightly more likely to use another legal aid service if a court determined decision had been reached (Table 3.5).

**Table 3.5: Additional publicly funded service use following mediation and legal representation by outcome, 2004–2010**

Legal aid service used	Outcome	Total no. of cases with this level of outcome	% of cases where return to use another service
Mediation session	Full	85,809	6%
	Partial	4,898	6%
	No agreement	46,733	6%
	Any (total mediation sessions)	137,442 <sup>36</sup>	6%
Legal representation	Settlement (including when reflected in consent order)	154,208	21%
	Determined by court	109,191	23%
	Case/ funding withdrawn	118,309	21%
	Any (total legal representation use)	381,708	21%

Legal representation can also be classified by the stage at which the case ended (Table 3.6). When legal representation ended (with any of the outcomes listed above) before court proceedings were issued, a slightly lower proportion of clients used another legal aid service than if proceedings had been issued or the case concluded during proceedings.

<sup>35</sup> The matching approach used may have identified more matches within the legal representation data due to the extra personal identifier included (see 'Data linking stages' in Appendix 1).

<sup>36</sup> Includes two mediation records with missing outcome data.

**Table 3.6: Additional publicly funded service use according to case stage reached – legal representation data only, 2004–2010**

Legal aid service used	Stage at which outcome reached	Total no. of cases where this stage reached	% of cases where return to use another service
Legal representation	Concluded before proceedings issued	71,710	18%
	Proceedings issued, case concluded before final hearing (may include some court hearings)	151,785	21%
	Determined at final hearing or on appeal	158,213	23%
	Any (total legal representation use)	381,708	21%

**3.4 Which family legal aid services were used by publicly funded clients following mediation or legal representation?**

This analysis examined the matched dataset to determine the type of additional family legal aid services used following mediation sessions and use of legal representation.

**Initial legal aid service used**

The majority of repeat users had accessed initial legal advice in the first instance (70% of 248,190 clients). Around a quarter of clients (24%) used legal representation (whether for pre-court solicitor negotiations or attendance at court) as their first legal aid service. This may occur when the client joins proceedings already issued by another party. A small minority (6%) accessed mediation initially.

In the ‘single’ user dataset, 70% of clients had used initial legal advice, 18% had used legal representation and 12% used mediation (including both mediation sessions and assessments).

**Which services are used following mediation and legal representation?**

As publicly funded clients can access mediation or legal representation services on more than one occasion, this analysis was carried out at the case level for each client. Results at a client level were very similar (see Appendix 2 for client tables).

When clients return to use additional legal aid services, the level of assistance they require varies. Some may only require further initial legal advice but others, potentially with more substantial family law disputes, will need further mediation or legal representation. Therefore

the type of additional legal aid service was used as a proxy for the amount of assistance required when clients return to use an additional legal aid service.

This section compares the services used following mediation sessions or legal representation (whether for pre-court solicitor negotiations or attendance at court). As additional service use may include one or more services, for the purposes of this analysis we divided the additional services into the following groups:

- initial legal advice only (no matter how many times initial legal advice was used);
- includes a mediation session or assessment (this can also include initial legal advice but excludes legal representation); and
- includes legal representation (this group can also include mediation and initial legal advice services).
- These groups do not overlap and sum to the total additional service use.

We formed these groups on the assumption that more resources would be required for legal representation cases than for mediation, and more for mediation than initial legal advice. However, this is a generalisation to which there will certainly be exceptions. Details of the funding required for each case were not included in the research dataset.

**Table 3.7: Additional publicly funded services used following mediation session by outcome, 2004–2010**

	Outcome of mediation session		
	Full and partial agreement	Breakdown	Total mediation sessions
Additional legal aid service(s) used	% of cases with this outcome where additional service(s) used		
Initial legal advice only	27%	31%	29%
Includes mediation session/ assessment (excludes legal rep)	67%	60%	65%
Includes legal representation	6%	9%	7%
<b>Total number of cases with additional service use</b>	<b>5,233 (100%)</b>	<b>2,899 (100%)</b>	<b>8,134 (100%)</b>

(Totals may not sum to 100% due to rounding. Two mediation records did not have an outcome listed)

**Table 3.8: Additional publicly funded services used following legal representation by outcome, 2004–2010**

	Outcome of legal representation			
	Settlement	Court determined decision	Withdrawn	Total legal representation
Additional legal aid service(s) used	% of cases with this outcome where additional service(s) used			
Initial legal advice only	54%	51%	45%	50%
Includes mediation session/ assessment (excludes legal rep)	2%	2%	2%	2%
Includes legal representation	44%	48%	54%	48%
<b>Total number of cases with additional service use</b>	<b>31,809 (100%)</b>	<b>24,905 (100%)</b>	<b>24,565 (100%)</b>	<b>81,279 (100%)</b>

(Totals may not sum to 100% due to rounding)

The analysis presented in Tables 3.7 and 3.8 again reflects the finding that there is little variation in the proportions of additional services used for both mediation and legal representation, regardless of the outcome.<sup>37</sup>

Initial legal advice accounted for around half of the additional services used following legal representation. This proportion was lower following mediation, where initial legal advice accounted for just under a third of additional services used (Tables 3.7 and 3.8). When clients reach an agreement through mediation and opt to formalise this agreement using a solicitor, this work would be classified under initial legal advice. However, if the client had been referred to mediation via a solicitor providing initial legal advice, the solicitor would not close the case and this formalisation of an agreement would be treated as part of the ongoing initial legal advice case and not an additional service use.

The majority (65%) of additional services used following mediation included further mediation use. This possibly indicates clients' preferences to use this resolution method for modifying agreements or new disputes and that their issues were suitable for mediation. It also

<sup>37</sup> The NAO (2007) study examined the proportion of mediation users who went onto a contested court hearing, by the outcome of the mediation session from October 2004 to March 2006. The study found higher proportions of repeat clients than in this analysis and greater variation in return rates according to the mediation outcome. For example the study found 13% of mediation clients progressed to a contested court hearing after signing a memorandum of agreement (compared to 6% of mediation sessions where additional services were used which progressed to legal representation in this analysis) and 31% progressed to a contested court after failing to reach an agreement (compared to 9% of mediation sessions where additional services were used which progressed to legal representation in this analysis). Little detail regarding the methodology the NAO used is available so it is not possible to explain the discrepancy in findings. A possible explanation could include using a different data linking approach which increased their match rate. It was not possible to determine whether clients had proceeded to a court hearing in the data MoJ received, only that legal representation clients had cases which ended either a) when proceedings were issued/the case concluded before a final hearing or b) when the case was determined at final hearing or on appeal.

highlights that issues were substantial enough to require further dispute resolution. The proportion of repeat mediation use did not vary much according to whether the previous mediation reached agreement or not. This indicates that even where mediation is not successful, clients are still willing to attempt mediation again. Legal representation was used following mediation in only a minority of cases.

Only 2% of additional services used following legal representation included the use of mediation. Almost half of additional services used following legal representation included the use of further legal representation, regardless of whether cases had settled, reached a court determined decision or were withdrawn. These findings could indicate that clients are satisfied with the legal representation process, or that clients are not willing to attempt, or have issues which are not suitable for, mediation. It also highlights that these clients had further issues which were substantial enough to require further dispute resolution. Research shows that clients who attend court for their family disputes tend to have multiple problems. Trinder et al (2006) found that parents in court proceedings for child contact issues had experienced on average seven different problems relating to contact arrangements in the three months prior to the application being made.<sup>38</sup> Therefore multiple issues may prompt further dispute resolution even after a legal representation settlement.

When disputes had not been successfully resolved the additional service use was more likely to include legal representation than when disputes had been resolved. When mediation broke down, 9% of the additional services used included legal representation as opposed to 6% when agreement was reached. When legal representation cases were withdrawn additional legal representation was used in 54% of cases but when a decision was reached this was less than 50%.

### **3.5 How many publicly funded clients return to address the same type of issue and how many return for a different issue type?**

This analysis examined the total data (both single and repeat users) to determine whether publicly funded mediation session or legal representation clients who used additional mediation sessions or legal representation returned with the same or different types of issues. It does not reference if people returned for initial legal advice or mediation assessments, as the type of issue type was not distinguished for these services. By focusing on additional mediation sessions or legal representation, the analysis examines clients who may have returned with more substantial issues requiring this level of assistance.

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<sup>38</sup> N=250 parents.

Although it was possible to determine if clients returned with the same type of issue, it was not possible, using this data, to distinguish if it was the same particular issue as dealt with previously. Therefore, clients returning for the same type of issue may include those returning because an agreement broke down or because circumstances changed and arrangements needed to be modified. Clients may also return to discuss matters of a different nature but under the same broad category. It was also not possible to identify whether the dispute involved the same parties; the client may be in another relationship where these issues are present.

Family mediation sessions in the LSC data address the following types of issues:<sup>39</sup>

- ‘Child Only’ – where all issues relevant to any arrangements for the children of a family, including extended family, are considered in the mediation. This does not include aspects relating to family assets, property and pensions other than arrangements for child support.
- ‘Property and Finance’ – where all issues relevant to the financial aspects of separation or divorce are considered in the mediation. This does not include aspects relating to children arrangements.
- ‘All Issues’ – where all issues relevant to the legal, financial and emotional aspects of separation or divorce are considered in the mediation. This may include communications, arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and any arrangements to be made for the children in the family.

Legal representation data provides more detail about the issues in dispute. To aid comparative analysis, these matter types within the legal representation data were reclassified to reflect the broad categories above. The matter types provide details of the main issue in the case so categorisation on this basis will mask any variation of issues in a dispute. The classification of the matter type, or issue type in mediation, also depends on caseworkers’ or mediators’ judgement in labelling the main issue. Some matter types in the legal representation data could not be re-categorised as they were too general to indicate whether the main issue related to children, property or finance or ‘all issues’. These were classified as ‘miscellaneous’ (see ‘Standardising data’ in Appendix 1 for full explanation of issue type classifications).

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<sup>39</sup> Legal Services Commission, 2010 Standard Civil Contract - Family Mediation Specification  
[http://www.legalservices.gov.uk/docs/civil\\_contracting/Family\\_Mediation\\_Specification\\_-\\_Dec\\_09.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/Family_Mediation_Specification_-_Dec_09.pdf)

This analysis was examined on a client basis. It was not possible to determine whether further service use for a different issue had occurred on a case basis due to a double counting issue.

**Table 3.9: Publicly funded clients returning to either mediation sessions or legal representation with the same or different type of issue, 2004–2010<sup>40</sup>**

Legal aid service used	Issue type	Total no. of clients with this issue type	% of clients returning to mediation session/ legal representation with <i>same</i> issue type	% of clients returning to mediation session/ legal representation with <i>different</i> issue type
Mediation session	Child only	48,419	2.8%	0.2%
	Property and finance	24,300	1.0%	0.5%
	'All' issues	62,457	1.6%	0.7%
	<b>Total (per client)</b>	<b>134,597<sup>41</sup></b>	<b>1.9%</b>	<b>0.5%</b>
Legal representation	Child only	228,067	11.5%	0.7%
	Property and finance	21,981	1.8%	8.9%
	'All issues'	98,409	2.9%	2.7%
	<b>Total (per client)</b>	<b>342,571<sup>42</sup></b>	<b>8.6%</b>	<b>1.8%</b>

A higher proportion of clients returned for further mediation or legal representation in relation to the same type of issue, rather than a different issue type (Table 3.9).

<sup>40</sup> The proportions of clients returning to mediation or legal representation in this table are lower than the overall return rates in Table 3.5 as mediation assessments and initial legal advice services are excluded here. 6% of total mediation sessions were followed by additional service use. Table 3.9 shows 2.4% of mediation session clients used another mediation session or legal representation following this and the results exclude mediation sessions which were followed by initial legal advice or mediation assessments only. 3.5% of mediation sessions were followed by initial legal advice or mediation assessments only (4756 mediation sessions).

<sup>41</sup> There were 134,597 clients in the data who had ever attended a mediation session. This is lower than the sum of the number of clients who attended child only, property and finance and 'all' issues mediation sessions as some clients used mediation on more than one occasion.

<sup>42</sup> Issue types do not sum to total as clients can have more than one issue or legal representation use in their case history.

The exception to this was when property and finance issues were dealt with via legal representation; following this more clients returned for a different type of issue. This may suggest that property and finance issues are dealt with effectively through legal representation. It is logical that property and finance issues may not require further dispute resolution. Issues relating to children may reoccur as children grow older and circumstances change. A similar proportion (around 1%) of mediation and legal representation repeat clients with property and finance issues returned with further property and finance issues.

Compared to mediation, a higher proportion of legal representation clients returned to use additional legal representation or mediation.<sup>43</sup> For both mediation session and legal representation clients, a higher proportion of clients returned to revisit children issues than for property and finance or 'all' issues.

It is difficult to draw conclusions about clients who had disputes relating to 'all issues'. There is no information within the data to specify what the balance of issues was within these disputes and subsequently whether the variety of issues changed or remained the same on return for further assistance.

### **How many publicly funded clients used additional legal aid services for the same issue type following case resolution?**

A basic concept of sustainability is examined using the total data (both single and repeat users) in this section by analysing the proportion of cases in which clients return for further mediation or legal representation in relation to the same issue type, after an agreement or decision was previously reached (Table 3.10). Clients returning in relation to the same issue type following a previous agreement were thought to be more likely to represent cases where the previous agreement may not have been sustained. These assumptions about sustainability are broad; it is not possible to explore if an agreement did later breakdown or not, or examine the reasons for any breakdown of agreements. Some agreements may also breakdown or need modification due to a change in circumstances, or clients may return with a different issue or a similar issue but relating to different parties. Whether court or mediation was initially used may be irrelevant in these circumstances and qualitative research is needed to investigate the reasons behind repeat use of services.

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<sup>43</sup> The matching approach used may have identified more matches within the legal representation data due to the extra personal identifier included (see 'Data linking stages' in Appendix 1).

As publicly funded clients can access mediation or legal representation services on more than one occasion, this analysis was carried out at the case level for each client. Again, results at a client level were very similar (see Appendix 2 for client tables).

This analysis uses the case outcome as a proxy for the extent of agreement that was reached. Full and partial agreements were combined in the mediation data as the number of partial agreements was relatively small and previous analysis showed that the proportion of repeat users was very similar for full and partial agreements.

**Table 3.10: Additional publicly funded service use for same issue type, broken down by outcome, 2004–2010**

Legal aid service used	Issue type	Outcome	Total no. of cases with this issue outcome	% of cases where return to mediation session/ legal rep with the same issue type
Mediation session	Child only	Full and partial agreement	34,429	3%
		Breakdown	15,126	3%
	Property and finance	Full and partial agreement	14,776	1%
		Breakdown	9,756	1%
Legal representation	Child only	Settlement	91,238	12%
		Court determined	87,262	12%
		Withdrawn	79,409	11%
	Property and finance	Settlement	10,791	1%
		Court determined	4,461	1%
		Withdrawn	7,127	4%

Decisions relating to children issues appeared to be more ‘sustainable’ when made via mediation sessions than legal representation: 3% of mediated agreements relating to children were followed by further mediation or legal representation for children issues, whereas 12% of legal representation decisions for children issues were followed by further mediation or legal representation for children issues.

However, when looking at property and finance issues, mediation and legal representation decisions appear to have the same level of ‘sustainability’. Only 1% of property and finance decisions made through both mediation and legal representation were then followed by further use of legal aid services for property and finance issues.

'All issues' cases dealt with via mediation or legal representation were not included in this analysis due to the difficulty in determining whether the issues dealt with in a further 'all issues' case would include the same issues as addressed previously.

As previously mentioned these results are likely to be an undercount. However, only a minority of mediation and legal representation cases which broke down or were withdrawn returned for further assistance relating to the same issue. This implies that some clients either do not resolve their issues or choose to resolve their issues via privately funded means, through another process or by themselves.

### **3.6 How long do decisions taken via mediation and legal representation last?**

This analysis examined the matched dataset of repeat users. The analysis focused on mediation sessions and legal representation where decisions had been reached and an additional mediation session or assessment or legal representation service had been used. Clients returning with the same or different type of issue were included in the analysis.

Another basic proxy for sustainability is the longevity of arrangements made through mediation or legal representation. This was explored by investigating the time period between the end of the previous case and the start of the additional mediation assessment or session, or legal representation service use.<sup>44</sup> However, it is not possible to determine from the data whether the previous arrangement had actually broken down or what the reasons for any breakdown of arrangement were.

Cases where the additional services only included initial legal advice were excluded. An assumption was made that issues dealt with at initial legal advice may not be substantial enough to deem the original arrangement as broken down, or in need of significant modification.

Some clients used additional services before the previous service use was recorded as completed. Only cases which ended before the additional service use began were included in this analysis (so cases with overlapping dates were excluded).

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<sup>44</sup> As stated previously in Section 2.1, the time period between the previous case conclusion and when a new case can commence in relation to exactly the same issue and parties is slightly different for mediation and initial legal advice (three months for mediation and six months for initial legal advice). This only applies to a subset of returning cases but may affect the number of repeat users and the time period between use of legal aid services.

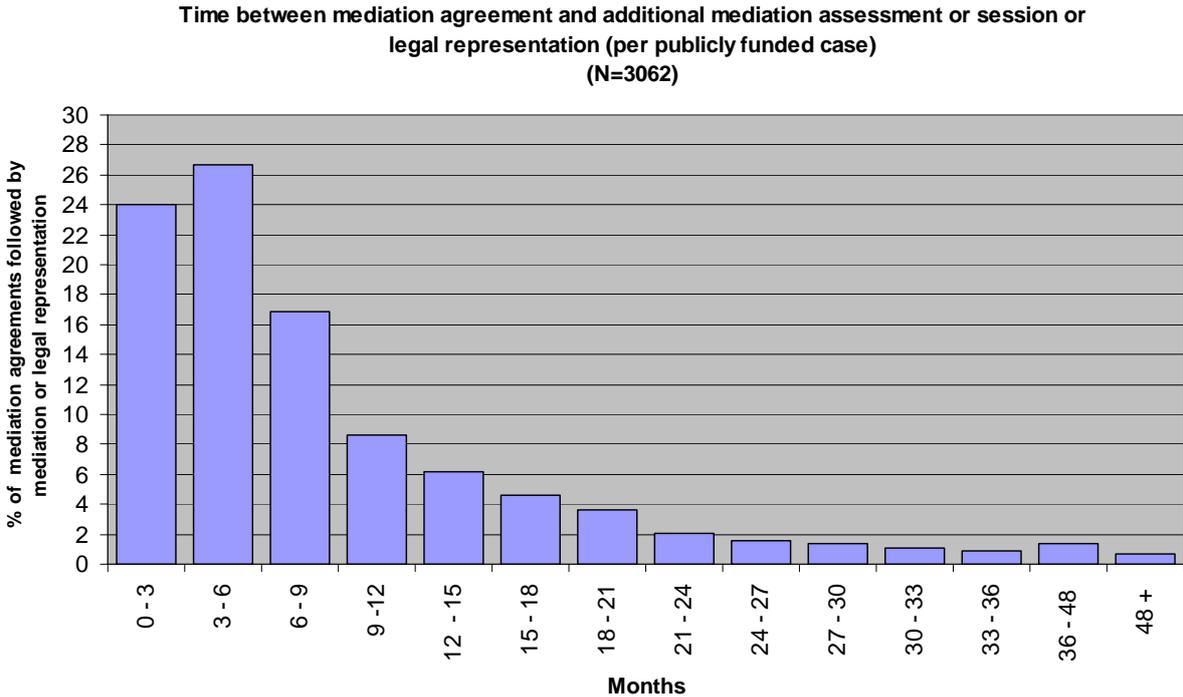
**Mediation sessions with additional mediation or legal representation use**

Around half (51%) of mediation session clients who returned to use mediation or legal representation returned within six months of when their previous agreement had been reached.

In 26% of cases, clients returned for mediation or legal representation between 6 to 12 months following the date of the previous agreement. The remaining 23% of cases returned between 12 months and the maximum reported time of just over five years (we analysed a fixed period of almost six years of data).

The mean time period for additional mediation or legal representation use to occur after a mediation agreement was approximately 9 months (N=3062 cases).<sup>45</sup>

**Figure 3.1: Time between publicly funded mediation agreement and additional mediation assessment or session or legal representation, 2004–2010**



<sup>45</sup> 3818 mediation sessions were followed by mediation or legal representation use. However, in 756 of these cases, the additional service use started before the previous mediation case ended. These cases were not included in this time period analysis.

## Legal representation cases with additional mediation or legal representation use

### Settlements reached through legal representation

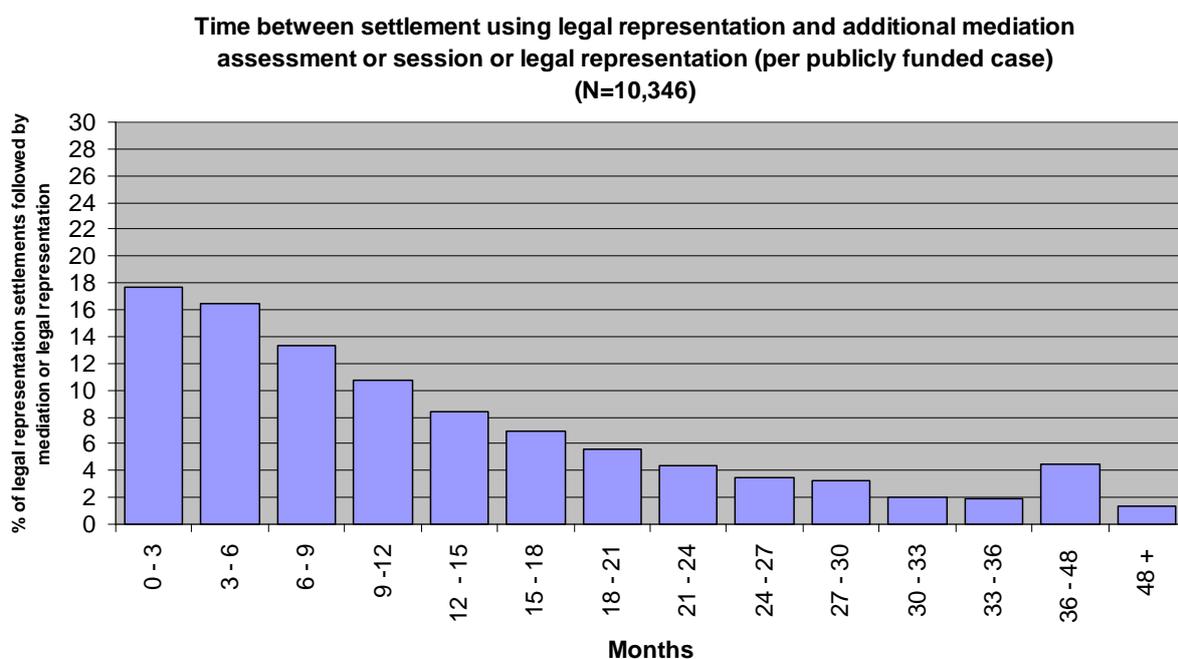
The majority (58%) of clients with a legal representation settlement who returned to use mediation or legal representation returned within twelve months of when their previous settlement had been reached.

In 34% of cases clients returned for mediation or legal representation within six months after the previous legal representation settlement and 24% between 6 to 12 months following legal representation settlement.

In a further 25% of cases clients returned to use legal representation or mediation between 12 to 24 months and the remaining 17% of cases returned between 24 months and the maximum reported time of around five years (we analysed a fixed period of almost six years of data).

The mean time for additional mediation or legal representation use to occur after a settlement reached through legal representation was approximately 13 months (N=10,346 cases).<sup>46</sup>

**Figure 3.2: Time between publicly funded legal representation settlement and additional mediation assessment or session or legal representation, 2004–2010**



<sup>46</sup> 14,716 legal representation settlements were followed by mediation or legal representation use. However, in 4370 of these cases, the additional service use started before the previous legal representation case ended. These cases were not included in this time period analysis.

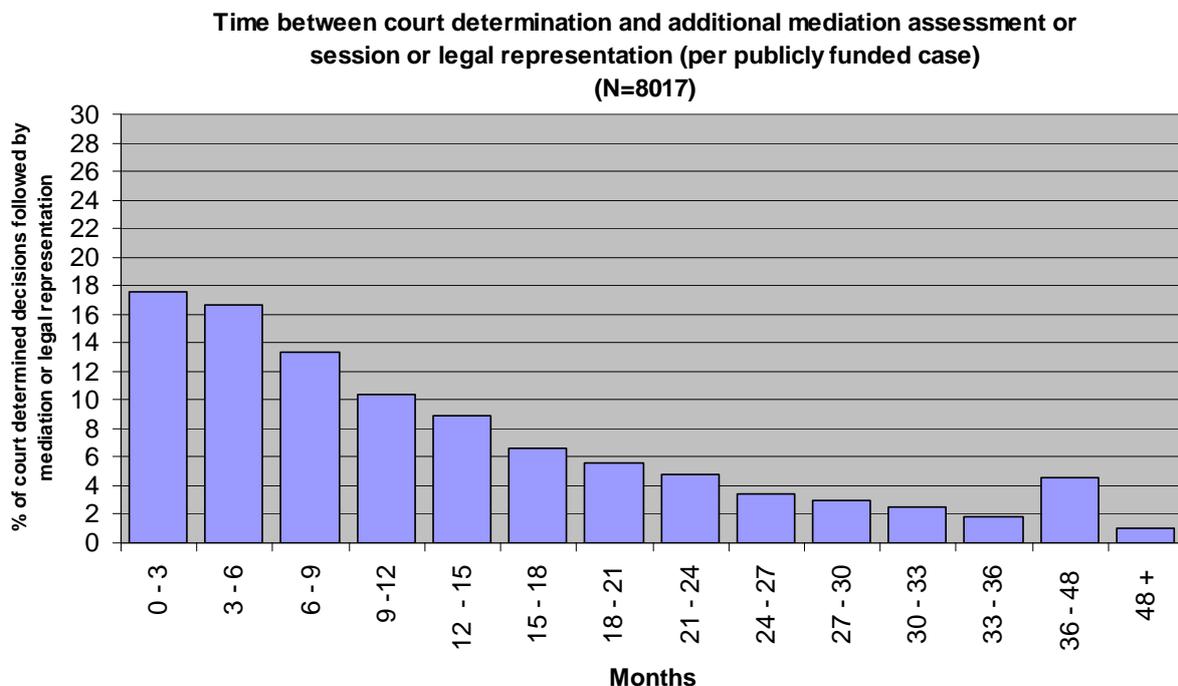
### Court determined decisions reached through legal representation

The time period between previous decisions and additional mediation or legal representation use was very similar for court determined outcomes to when settlements through legal representation were reached. The majority (58%) of additional legal representation or mediation use following a court determined decision occurred within 12 months of the previous court determined decision. In 34% of cases clients returned for mediation or legal representation less than six months after the previous court determined decision, and 24% occurred within 6 to 12 months following a court determined decision.

In a further 26% of cases, clients returned to use legal representation or mediation between 12 to 24 months and the remaining 16% of cases returned between 24 months and the maximum reported time of just over five years (we analysed a fixed period of almost six years of data).

The mean time for additional mediation or legal representation use to occur after a court determined decision reached through legal representation was approximately 13 months (N=8017 cases).<sup>47</sup>

**Figure 3.3: Time between publicly funded court determined decision and additional mediation assessment or session or legal representation, 2004–2010**



<sup>47</sup> 12,197 court determined decisions were followed by mediation or legal representation use. However, in 4180 of these cases, the additional service use started before the previous legal representation case ended. These cases were not included in this time period analysis.

## 4. Conclusions

This analysis of the use of family legal aid services by approximately 1.4 million publicly funded clients between October 2004 and July 2010 provides an indication of the scale of repeat users of family legal aid services, and an insight into the sustainability of decisions reached through mediation and legal representation. As discussed in Section 2, the results are likely to be underestimates and, due to issues about the comparability of each resolution method and a lack of information about the reasons why publicly funded clients may use additional legal aid services, the findings represent approximate patterns of additional service use. The comparisons drawn do not take into account any differences which may occur between the types of clients which may use mediation or legal representation and the range and complexity of issues which may be typically brought to these resolution processes.

Through matching records, we found 17% of approximately 1.4 million clients used more than one legal advice service in the 2004–2010 period. If we include those cases where there was evidence of repeat use in the initial record, but no matched record was identified, the proportion of repeat users was 32%. Of those clients who did access more than one legal aid service in the 2004–2010 period, most clients used two services in total (79% of approximately 250,000 repeat clients).

Overall, a lower proportion of clients were identified as using additional services following mediation than following legal representation: 6% of mediation sessions and 10% of mediation sessions and assessments (where the assessment was recorded separately) were followed by the use of additional services compared to 21% of legal representation cases (whether pre-court solicitor negotiations or court proceedings were used). The repeat use estimates for mediation users may not include instances where clients return to a solicitor who continues to help them under an existing initial legal advice case, as this change of service would not be recorded in the data.

A similar proportion of clients using mediation and legal representation achieved a decision (around 70%) in their dispute. Out of all the mediation sessions 66% reached an agreement over the data period, whilst 40% of legal representation cases reached a settlement, with a further 29% reaching a court determined decision.

For both mediation and legal representation, the proportion of cases which went unresolved (for example where mediation breaks down or a legal representation case is withdrawn) was higher than the identified proportions of repeat users. Although the proportions of repeat users will be underestimates, it also suggests that some clients do not attempt to use further

publicly funded family legal aid services to resolve their unsettled disputes. Clients may not resolve their issues or may instead choose to resolve their issues via privately funded means, through another process or by themselves. This study does not tell us how successful non legally aided dispute resolution processes were.

The proportions of repeat users following mediation or legal representation did not vary much according to whether a decision had been reached or not during the previous case. For example, 6% of mediation sessions were followed by the use of additional services whether the sessions broke down or resulted in agreement. For legal representation cases, 21% were followed by the use of another legal aid service regardless of whether the outcome was a settlement or case/funding withdrawn. Clients were slightly more likely to use another service if a court determination had been reached, where a contested hearing had taken place. When focusing on the stage the legal representation use ended, a slightly lower proportion of clients (18%) used another legal aid service when the case concluded before proceedings were issued, than if proceedings had been issued or the case ended during court proceedings (around 22%).

Repeat users were very slightly more likely to go on to use legal representation when mediation or legal representation did not successfully resolve disputes than if the dispute had been resolved.

The majority of repeat users who returned to use mediation or legal representation following either resolution method, returned within 12 months. Repeat users following legal representation took longer to return to use these services than repeat users who had previously used mediation, that is, 34% of the repeat users following legal representation who returned for mediation or legal representation returned within six months compared to 51% of repeat users following mediation.

Repeat clients often used the same legal aid service as they had used before. The majority (around two-thirds) of mediation session clients using additional services returned to use mediation again. Around half of legal representation clients using additional services returned to use legal representation. Only a minority of mediation session users go on to use legal representation and vice versa. This may indicate that clients prefer to use resolution methods they are familiar with or that their disputes were more suitable for the respective resolution methods. It also shows that when clients returned it was often with significant issues requiring further dispute resolution which may have been too advanced for initial legal advice to resolve.

Half of the additional services used following legal representation included only initial legal advice (and no mediation or legal representation use), whereas around a third of additional services used following mediation included only initial legal advice. This may signify that when clients do return to use additional services, those who have used mediation are more likely to require more assistance than legal representation clients.

Repeat users also tended to return with the same type of issue. For both mediation and legal representation clients a higher proportion returned with disputes relating to the same type of issue than for a different type of issue. The exception was when property and finance issues were dealt with via legal representation; following this more clients returned with different issues. This may suggest that property and finance issues are dealt with effectively through legal representation.

Decisions relating to children issues appeared to be more 'sustainable' when made via mediation sessions than legal representation: 3% of mediated agreements relating to children were followed by further mediation or legal representation for children issues, whereas 12% of legal representation decisions for children issues were followed by further mediation or legal representation for children issues.

Only 1% of property and finance decisions were followed by additional service use for the same issue, whether the decision had been made through either mediation or legal representation. It is logical that property and finance issues may not require further dispute resolution once resolved as individuals tend to separate these matters after relationship breakdown. Issues relating to children (including financial arrangements for children) may reoccur as children become older and circumstances change.

Whilst these findings may be useful for future resource planning, further research is needed to explore the reasons why clients return to use additional family legal aid services and the longer term outcomes of those using mediation or legal representation. Additional research is needed to explore the possible reasons behind the finding that the proportions of repeat users following mediation or legal representation did not vary much according to whether a decision had been reached or not during the previous case. It would also be useful to explore how non legally aided clients use mediation and legal representation to resolve private family law issues.

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## Glossary

This glossary provides a brief description of the main terms used in this report.

**Ancillary relief:** This refers to a number of different types of order used to settle financial disputes during divorce proceedings. Examples include: periodical payments, pension sharing, property adjustment and lump sums, and they can be made in favour of either the former spouse or the couple's children.

**Application:** The act of asking the court to make an order.

**Case:** In this analysis, a new use of a family legal aid service is described as a new family legal aid 'case'. This is not to be confused with the use of 'case' in terms of the issues in dispute or a court case, and is only used to describe a new family legal aid funding record for a client.

**Disposal:** Completion of a case, where an outcome is determined by an order being made or refused or where the application is withdrawn.

**Divorce:** This is the legal ending of a marriage.

**Domestic violence:** When applying for private family law proceedings this refers to applications such as those relating to injunctions or non-molestation orders for the protection of a person from harm. (This does not include public law proceedings which are often concerned with taking a child into local authority care.) If a client raises domestic violence issues such as physical violence or emotional abuse when mediation is being proposed, clients may be automatically exempt from the need to consider mediation if this has resulted in a police investigation or the issuing of civil proceedings for the protection of the applicant in the last 12 months. Otherwise the mediator will decide whether mediation is suitable at the assessment stage in a case where domestic abuse is alleged.

**Family proceedings:** Legal proceedings relating to family law issues before any court or panel in England and Wales. Mediation and any form of dispute resolution which cannot make a determination which is binding on the client do not count as proceedings.

**Initial legal advice (as defined in this report):** This is otherwise known as controlled work. It covers the initial meeting with a solicitor, and any follow-up advice and assistance in divorce proceedings (known as Legal Help). More substantial advice, assistance and

negotiation are also available to resolve disputes (known as Family Help – Lower). It may be used to secure early resolution of a family dispute or to obtain a consent order following settlement. Ongoing legal support for cases during or following mediation, such as the formalisation of an agreement, can also be provided.

- *Controlled work*: Work under the Legal Services Commission’s civil contract that covers the basic levels of legal advice and representation, including initial meetings and in family cases negotiations, and is referred to as Legal Help or as Family Help Lower.
- *Legal Help*: Advice and assistance about a legal problem, not including representation or advocacy in proceedings.
- *Family Help (Lower)*: Advice, assistance and negotiation relating to a family legal aid issue, excluding the issuing of proceedings or representation in proceedings other than help in obtaining a consent order following settlement of a family dispute. In order for a private law case to progress to Family Help (Lower) a cost benefit test must be conducted and the dispute must be a ‘significant family dispute’. A significant family dispute is one which, if not resolved, may lead to family proceedings and for which legal advice and assistance is necessary to enable the client to resolve the issues.

**Legal representation (as defined in this report)**: This is otherwise known as certificated work. If mediation and legal advice do not successfully resolve all issues in dispute, it may become necessary to issue court proceedings (other than for obtaining a consent order) or in the case of a respondent, join proceedings already issued. This additional help is given by solicitors with a view to securing the early resolution of a family dispute (known as Family Help – Higher). If this does not succeed, legal representation may be offered to cover preparation for or representation at family proceedings.

- *Certificated work*: The Legal Services Commission issues funding certificates following a successful application for legal aid funding for certain types of work. The main type of work covered under certificated work is representation in court proceedings.
- *Family Help (Higher)*: Advice, assistance and negotiation relating to a family legal aid issue within certificated work, excluding the issuing of proceedings or representation in proceedings other than help in obtaining a consent order following settlement of a family dispute.

**Legal Services Commission:** The body responsible for commissioning civil, family and criminal legal aid services from solicitors, barristers, advice agencies, and family mediators across England and Wales. It also commissions services to be provided over the telephone and the internet as well as in person.

**Licensed work:** Work under the civil contract that covers all Legal Representation (representation by solicitors and barristers for civil cases which could go to court) except work covered by Controlled Work or Very High Cost Cases, which are managed under separate contracts.

**Matter start:** An instance of help given by a service provider to a legally aided client under Controlled Work.

**Mediation:** Involves an independent third person helping parties in dispute to reach a resolution. The mediator does not make decisions or impose a settlement. They encourage and facilitate a settlement that is decided by and acceptable to the parties themselves. Before funding for mediation is granted, an assessment is made of whether mediation appears suitable to the dispute, the parties and the circumstances. Clients can be directed to mediation following legal advice, during court proceedings, or clients can self refer directly or take part after the other party has been referred. Both parties need to agree to take part in mediation for it to proceed.

- Willingness test: This requires the mediation service to attempt to make initial contact with the other party by letter and twice by telephone to determine whether they are willing to attend an assessment meeting and consider mediation.
- Mediation assessment: At these meetings mediators review whether mediation is suitable to the dispute and the parties and all the circumstances. A financial eligibility assessment and domestic violence screening will also take place.
- Mediation session: Mediation beyond the assessment meeting may be provided only where the mediator is satisfied that mediation is suitable to the dispute and the parties and all the circumstances. Multiple sessions may be used to resolve a dispute.

Classification of family issues dealt with through family mediation:

- 'All Issues' means a Family Mediation where all issues pertinent to the legal, financial and emotional aspects of separation or divorce are considered in the mediation. (This may include communications, arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and any arrangements to be made for the child/ren of the family);
- 'Child Only' means Family Mediation where all issues pertinent to any arrangements for the children of a family, including extended family, are considered in the mediation (this does not include aspects relating to family assets, property and pensions other than arrangements for child support). 'Child' or 'Children' means a person or persons under the age of 18.
- 'Property and Finance' means where all issues relevant to the financial aspects of separation or divorce are considered in the mediation. This does not include aspects relating to child/ren arrangements.

**Merits test:** The consideration of all the legal circumstances of a case to assess whether a case has sufficient legal merit to justify the provision of public funding.

**Non-molestation Order:** This is a type of civil injunction used in domestic violence cases. It prevents the applicant and/or any relevant children from being molested by someone who has previously been violent towards them. Since July 2007, failing to obey the restrictions of these orders has been a criminal offence for which someone could be arrested.

**Order:** The document bearing the seal of the court recording its decision in a case.

**Private family law dispute:** These are legal disputes arising out of the breakdown of family relationships. The disputes can include issues relating to: divorce/ separation/ dissolution of civil partnership/ nullity/ judicial separation; inheritance; adoption; child contact and residence; special guardianship or other specific issues relating to children's arrangements; domestic violence; and ancillary relief and financial arrangements.

**Repeat user:** A publicly funded client who had used family legal aid services on more than one occasion. These clients were identified through the data linking process as someone who had more than one family legal aid case record, either from the same or a different legal aid service.

# Appendix 1

## Data linking stages

### Matching approach

The data received from the LSC contained closed case records relating to publicly funded clients' use of these general family legal aid services: initial legal advice; mediation; and legal representation.

Each dataset covered different time periods. For consistency the period of October 2004 – July 2010 was used in the analysis.

**Table A1.1: Properties of obtained LSC family legal aid datasets**

Family legal aid service dataset	Approximate number of records (prior to data cleaning etc.)	Dataset period	Personal identifiers included in data
Initial legal advice (split over two datasets)	0.74 million	Oct 2004 – Sept 2007	Full name Postcode
	0.67 million	Oct 2007 – Oct 2010	Full name Postcode Date of birth
Mediation	0.39 million	Oct 2004 – July 2010	Full name Postcode
Legal representation	0.55 million	Oct 2004 – July 2010	Full name Postcode Date of birth

As there is no unique identifier for legal aid clients across these datasets, the datasets were linked in a data matching exercise to establish client case histories within the data. Name, postcode and date of birth identifiers were used to match clients across the different legal aid service databases.

As each dataset incorporates different personal identifiers, four combinations of personal identifiers were used to identify matching client records across the data. Records matching on the basis of full name and postcode could be identified across all datasets. Additional combinations were used to identify matches where clients may have changed their name or address (as can occur in private family law cases).

**Table A1.2: Interim matches identified through different combinations of personal identifiers**

Match combination condition	Approx. number of interim matches identified	Dataset coverage
Full name – Post code	330,000	All
Full name – Age band – Post code	179,000	Earlier legal advice Mediation
Full name – Date of birth	184,000	Legal representation Later legal advice
Full name – Date of Birth – Post code	129,000	Legal representation Later legal advice
<b>Total matches</b>	<b>380,000</b>	<b>All</b>

**Note:** The sum of these interim matches is not the total number of matches as the same match could be found through a variety of combinations. The numbers of interim matches for each combination used overlap and are not independent of each other.

More matched records may have been identified in the legal representation and later legal advice records than in the other datasets. The extra personal identifier of date of birth is recorded in this data allowing matches to be identified through more match combinations. However, initial investigations suggested that the majority of matches will have been identified through the main ‘full name and postcode’ combination (Table A1.2). This combination identified approximately 330,000 matches at an interim stage where the total number of matches was around 380,000 (around 335,000 final matches were identified and after data cleaning there were around 250,000 final matches). This shows that 13% of the total matches may have been identified using the additional combinations. However, it is not possible to identify which of the additional combinations were used to pick up the additional matches or which datasets these matches tended to contain.

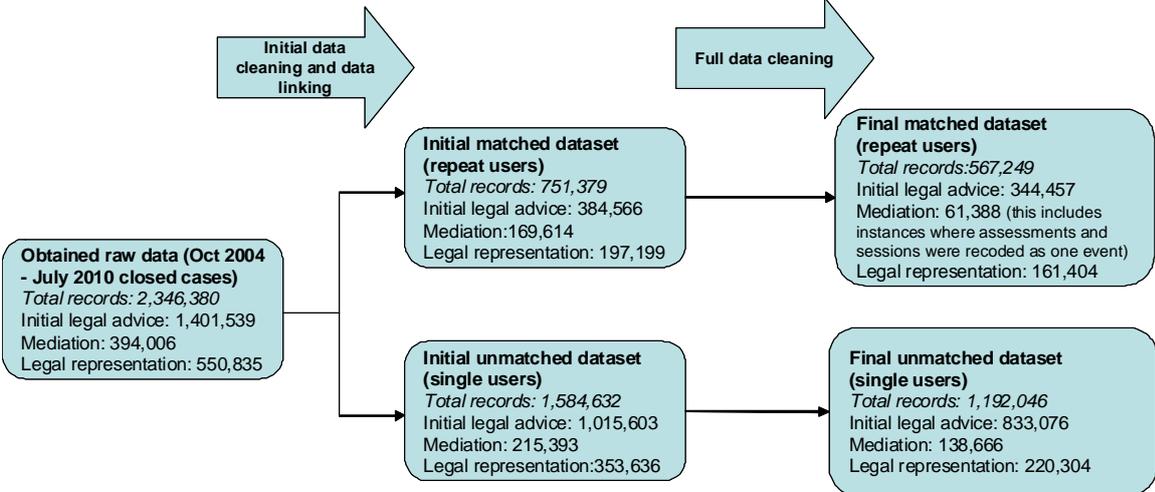
Dataflux (a data management programme) was used to apply these matching conditions to the data. To account for spelling variation or data entry issues ‘fuzzy matching’ was used. This is where the sensitivity of a particular variable can be altered to determine what would constitute a match, changing the probability of particular records matching to each other. More matches are likely to be created when a lower sensitivity is used. The sensitivity for matching was set to 85% which is standard for this kind of matching approach.

The result of the data linking exercise produced two datasets. One included clients which did not link to any other client record ('single' users) and therefore were assumed to have used only one legal aid service, and another included clients who matched to one or more other client records in the same or a different legal aid dataset. These clients were assumed to be 'repeat users' who had accessed one or more additional family legal aid services.

**Accuracy of matches**

Initial quality checking of a sample of the matched records indicated that around 98% of the records appeared to represent genuine matches.<sup>48</sup> Further investigations and data cleaning were carried out to establish a confident level of matching accuracy. It was also important to clean the single data further to ensure that these records were in this dataset because the clients only accessed one legal aid service and not because poor data quality meant they were incapable of producing a match.

**Figure A1.1: Numbers of records included in datasets following data linking and cleaning**



**Cleaning full name field**

All the matching combinations relied on the accuracy of the full name field. The matched and single records were examined to determine the level of error in this field which would produce an acceptable match, that is, we could be confident the records related to the same individual.

<sup>48</sup> Approximately 400 matches produced by each match combination condition were checked to see if the records within the match appeared to refer to the same individual.

Records were removed from the 'single' and matched data if the level of detail in the name field meant it was unlikely that the record could ever produce an accurate match. For example, an entry of 'Formerly Smith' would have been removed as there is not sufficient information to confidently match this record to another client. Names with obvious errors in were removed, for example 'entered in error' or 'name not provided'.

Name entries including a few erroneous characters were found to still produce valid matches. However, records containing '(deceased)' embedded within the client name were only found within the single records. These were removed as they may not have been likely to match to another record.

### *Cleaning postcode field*

The mediation and earlier legal advice data does not contain date of birth information and so relies on the postcode field for matching. Firstly, records with obvious errors (such as 'unknown') in the postcode were removed from the matched and single data.

Many of the postcode records contained smaller errors or incomplete postcodes. Each part of a postcode contains information about its location. From left to right each part of the postcode narrows down its destination. It was decided that postcodes containing enough information to determine the postal sector would be adequate for determining a match where records were likely to relate to the same individual. The postal sector determines the local area or neighbourhood that mail should go to and is specified by the first half of the postcode and the first character of the second part of the postcode, for example **BD22 9MJ**.

A set of postcode criteria were devised in order to exclude potentially inaccurate matches or single records which would not have produced accurate matches (Table A1.3). All erroneous characters such as '\*' or 'XXX' were removed from the data to establish the number of valid characters within each record. Matched or single records with postcodes of five or more characters were kept in the data as they had either survived the initial cleaning process or the matching process.

**Table A1.3: Criteria for including or excluding records with incomplete postcodes in mediation and earlier legal advice data**

Excluded/ included in matched and single data	Number/ arrangement of characters in postcode	Example of postcode
Included	Five characters or more	'BD22 9' or 'N1 2HJ'
	Four characters and only first character in first half of postcode is a letter	'N1 2H' or 'N14 9'
	Four characters and first two characters are letters First half of postcode is three characters	'BD2 2'
	Three characters and only first character is a letter First half of postcode is two characters	'N1 2'
Excluded	Two characters or less	'N1' or 'BD'
	Three characters and postcode begins with two letters	'BD2'
	Four characters and first two characters are letters No space is included in postcode	'BD22'
	Three characters and only first character is a letter No space is included in postcode	'N12'

Where legal representation records did not include or had a faulty date of birth (see 'Cleaning date of birth field') the postcode rules above were applied.

**Cleaning date of birth field**

Only the legal representation and later legal advice datasets included a date of birth field. As records in these datasets could match using either postcode or date of birth, date of birth was also cleaned to help improve the likelihood of records matching.

It is less obvious to determine when a date of birth has been entered in error. Records with an obviously incorrect date of birth which indicated that a client had not been born (i.e. was after the end of the data period in July 2010) were extracted. The postcode cleaning criteria were applied to these records and any matched or single records with both a faulty postcode and date of birth were removed.

**Dataset exclusions**

MoJ received approximately 2.3 million legal aid claim records through a data sharing agreement with the LSC. After data cleaning and linking, 1,440,236 publicly funded clients remained in these final datasets, which equates 1,759,295 records showing use of family legal services.

### ***‘Single’ records which could not be verified as true single records***

In the unlinked ‘single’ record database 21% of the 1.5 million records contained information in the ‘outcome’ or ‘stage reached’ variables suggesting another legal aid service had been used, signifying these could not be verified as true ‘single’ records. These were excluded from analysis, leaving 1,192,046 final single records. Table A1.4 shows the primary listing of the service used and the suggested additional service.

**Table A1.4: Single records indicating another service had been used**

<b>Primary listing of record</b>	<b>Secondary dataset indication</b>	<b>No. of records</b>
Initial legal advice	Legal representation	171,147
Mediation	Initial legal advice	117,526
Mediation	Legal representation	1,317
Legal representation	Mediation/ initial legal advice	14,439
Legal representation	Mediation	9,014
<b>Total</b>		<b>313,443</b>

### ***Duplicate cases***

Additional cleaning was carried out in the ‘matches’ database when duplicate records with the same client details were removed. These cases had the same client and case details and the same start and end date. The duplicates represent approximately 19,000 records during 2004–2010; less than 1% of the final dataset (including matched and single records). On the balance of probabilities these were erroneous cases but by removing these duplicates, some cases where a client raised two issues of the same type at the same time but relating to different parties, may have been omitted.

A higher proportion of duplicates were found in the initial legal advice and mediation data (Table A1.5). Mediators and solicitors are expected to verify the legal aid eligibility of clients themselves and submit claims for clients on their behalf. The legal representation data is subject to more checks: solicitors have to apply to LSC for a certificate, LSC validate the claim and check a certificate has not already been issued for the particular client’s issue.

**Table A1.5: Potential duplicate records in each database**

Database	Approx. total records in matched data at this cleaning stage (2004–2010)	Approx. number of potential duplicates	% of duplicates in matched records
Initial legal advice	384,500	16,700	4.3%
Mediation	177,000	2,100	1.2%
Legal representation	197,200	500	0.3%
<b>Total records</b>	<b>758,700</b>	<b>19,300</b>	<b>2.5%</b>

***Cases not suitable for mediation or where private family law was not the main issue***

Legal representation cases where the matter type indicated that the case would probably not have been suitable for mediation were removed, in order to provide a better comparison of case outcomes between decisions reached through mediation and court. This report focuses on cases with a central family law aspect so legal representation cases where the main issue in the case was not related to private family law were removed.

- Approximately 17,400 domestic violence related cases were removed from the raw data prior to data linking.
- Approximately another 3900 records were removed from the matched and single data:
  - **Cases not suitable for mediation** – including records relating to adoption, injunctions or non-molestation orders, the inheritance act, validity of marriage/ divorce, divorce impractical without representation and cases with a public law aspect.
  - **Cases where the main issue was not a private law family issue** – including records relating to negligence, housing, debt, contract, probate and inheritance, public law, actions against the police, administrative law and employment.

### ***Legal representation cases without an outcome***

Approximately 25% of the raw legal representation data did not have outcome codes recorded. These are cases in which a bill has not been submitted or paid but may have been closed by a caseworker. This was an issue as these codes were used in analysis to determine case closure, the outcome of the case and the stage at which the case ended. Approximately 100,000 of these missing outcome cases were removed from the singles data (around 32% of the single legal representation records) and approximately 20,000 records were removed from the matched data (around 10% of the legal representation records within the matched dataset).

Initial examination of the cases with missing outcome codes suggested that these were missing at random as the mix of case and client types was comparable to cases including outcome codes.

### **Standardising data**

#### ***Start and end dates***

Start and end dates in the data were used to determine the order in which clients had accessed services and the time between accessing different services. Both the initial legal advice and legal representation data include dates in a day/month/year format. Whilst mediation record start dates are also in this format, the month and year are only provided for the mediation end date. The date of the last day in the month was assigned to these end dates for the analysis, as this was the last possible date the mediation could have ended. When examining the time between when an additional service was accessed following mediation, this reformatting of the dates may have resulted in more cases with overlapping dates (where the subsequent service use started before the previous service use ended).

#### ***Numbers of mediation visits***

In the mediation data both assessment and mediation meetings for the same client are recorded as separate records. These records may have matched together during data linking indicating that mediation was used twice, when in fact they may have been related to one overall use of mediation.

Mediation and assessment meeting records were combined to show only one use of mediation when the mediation and assessment record occurred in succession (i.e. there were no visits to other legal aid services in between these records) and the time period between them was less than three months. LSC guidance states that a separate case can be opened if clients attend a mediation session and then return after a three month period. This guidance influenced the limit chosen for identifying overall mediation use (see [http://www.legalservices.gov.uk/docs/civil\\_contracting/080701FamilyMediationSpecification.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/080701FamilyMediationSpecification.pdf) ).

Around 46,000 matches were reclassified as single records after this recoding. Clients with only one record showing one overall use of mediation (which incorporated one mediation assessment and session record) were removed from the matched data and inserted into the 'single' dataset.

### ***Standardising issue types***

The mediation data is grouped into cases with the following broad issue types: children issues, property and finance issues, and 'all issues'.

The legal representation data provides more detail about the issues in a case. The proceeding code gives the most detailed description of the issue being dealt with. As these relate to specific applications or points of law there is often more than one proceeding code listed for each case. However, only one proceeding code was provided in the data received and the LSC could not guarantee that this was the main proceeding code for each case.

The matter code provides a more general description of the main issues in the case and was used to group the legal representation into the same broad categories used in the mediation data. This categorisation is rough and as they have been classified by the main issue or matter type this will mask any variation of issues in a case. Some general matter types could not be categorised into the new issue types as it was not clear from only looking at the matter code what the main issue in the case was. These have been classified as 'miscellaneous'.

**Table A1.6: Reclassification of issue types in legal representation data**

Legal representation matter type	Re-classified issue type category
Children – Child Support Act	Children
Children – Financial (other than Child Support Act)	Children
Children – High Court Jurisdiction	Children
Children – Miscellaneous Proceedings	Children
Miscellaneous Proceedings (Matrimonial)	All issues
Other Children Act	Children
Children Act Section 8 Orders	Children
Divorce	All issues
Other Family – Financial and Property	Finance and property
Judicial Separation	All issues
Nullity	All issues
Specified Family Proceedings	Miscellaneous
Other GF	Miscellaneous
House of Lords Appeal	Miscellaneous
Help with mediation (with HM001 – Children proceeding code)	Children
Help with mediation (with HM002 – Financial proceeding code)	Finance and property
Help with mediation (with HM003 – All issues proceeding code)	All issues
Help with mediation (with any other proceeding code)	Miscellaneous

## Case outcome and stage reached definitions

### *Mediation outcomes*

**Full agreement** – An agreed proposal was reached. This includes situations where the proposal may or may not have been written up.

**Partial agreement** – This applies to ‘all issues’ mediations where an agreed proposal was reached but only for either children issues or property and finance issues.

**No agreement** – Mediation broke down and no agreed proposal was reached.

### *Legal representation outcomes*

**Settlement** – The case ended with a settlement. This includes cases concluding prior to or during court as cases where the settlement was reflected in a consent order are included.

**Determined by court** – Cases ended with a court determined decision, either determined at trial or at an interim stage, such as through summary judgement or dismissal.

**Case/funding withdrawn** – The case was withdrawn on the basis of: the solicitor or counsel's recommendation; the client withdrew or ceased to give instructions; or the LSC discharged the certificate on the merits of the case. These outcomes apply whether or not there was a subsequent order or consent order confirming the case was not proceeding. This category also includes cases where funding was withdrawn but not on the basis of the merits of the case, for example the client went out of scope financially, death or bankruptcy of the client occurred or the discharge or revocation of a certificate was for non-disclosure.

### *Legal representation stage reached*

**Concluded before proceedings issued** – Court proceedings were not issued. Judicial review cases which concluded before permission was applied for and considered by court are included (including when the case was withdrawn or settled before the court made an initial decision whether or not to grant permission).

**Proceedings issued, case concluded before final hearing** – Court proceedings were issued but the case may or may not have been heard in court. Judicial review cases where the application was considered and either permission was granted or not granted but no final hearing took place are included.

**Determined at final hearing or on appeal** – This applies when the case concluded on the day of or during the final hearing, whether the trial was contested or settled at the door of the court or during trial. 'Determined on appeal' applies when an effective appeal was pursued against the final first instance decision. Judicial review cases where permission was granted and the case was determined at final hearing or on appeal were included.

## Appendix 2

### Additional tables of results – client basis

The case numbers (and percentages) in these tables do not sum to the total number of cases as some clients used mediation or legal representation on more than one occasion.

**Table A2.1: Additional publicly funded service use following mediation and legal representation by case outcome (client basis), 2004–2010**

Legal aid service used	Outcome	Total no. of clients with this outcome	% of clients returning to use another service
Mediation session	Full	84,334	6%
	Partial	4,883	6%
	No agreement	46,384	6%
	Any (total mediation sessions)	134,603	6%
Legal representation	Settlement (including when reflected in consent order)	146,950	20%
	Determined by court	103,854	23%
	Case/ funding withdrawn	113,756	21%
	Any (total legal representation cases)	342,571	21%

**Table A2.2: Additional publicly funded service use according to case stage reached – legal representation data only (client basis), 2004–2010**

Legal aid service used	Stage at which outcome reached	Total no. of clients where this stage reached	% of clients returning to use another service
Legal representation	Concluded before proceedings issued	70,111	18%
	Concluded after proceedings issued or via court	280,800	21%
	Proceedings issued and case concluded before final hearing (may include some court hearings)	143,585	21%
	Determined at final hearing or on appeal	148,675	22%
	Any (total legal representation cases)	342,571	21%

**Table A2.3: Additional publicly funded services used following mediation session (client basis), 2004–2010**

Outcome	Total no. of clients with additional service use	Additional legal aid service(s) used	
		Additional legal aid service(s) used	% of clients using additional service(s)
Full and partial agreement	5,092	Initial legal advice only	28%
		Includes mediation session/assessment (excludes legal rep)	67%
		Includes legal representation	6%
Breakdown	2,871	Initial legal advice only	32%
		Includes mediation session/assessment (excludes legal rep)	60%
		Includes legal representation	9%
Total mediation sessions	7,878	Initial legal advice only	29%
		Includes mediation session/assessment (excludes legal rep)	64%
		Includes legal representation	7%

**Table A2.4: Additional publicly funded services used following legal representation (client basis), 2004–2010**

Outcome	Total no. of clients with additional service use	Additional legal aid service(s) used	
		Additional legal aid service(s) used	% of clients using additional service(s)
Settlement	29,690	Initial legal advice only	58%
		Includes mediation session/assessment (excludes legal rep)	2%
		Includes legal representation (can include mediation)	44%
Court determined decision	23,377	Initial legal advice only	54%
		Includes mediation session/assessment (excludes legal rep)	2%
		Includes legal representation	48%
Withdrawn	23,323	Initial legal advice only	47%
		Includes mediation session/assessment (excludes legal rep)	2%
		Includes legal representation	54%
Total legal representation	70,433	Initial legal advice only	58%
		Includes mediation session/assessment (excludes legal rep)	2%
		Includes legal representation	49%

**Table A2.5: Additional publicly funded service use for same issue type, broken down by outcome (client basis), 2004–2010**

Legal aid service used	Issue type	Outcome	Total no. of clients with this issue outcome	% of clients returning to mediation session/legal rep with the same issue type
Mediation session	Child only	Full and partial agreement	33,714	3%
		Breakdown	15,028	3%
	Property and finance	Full and partial agreement	14,690	1%
		Breakdown	9,704	1%
Legal representation	Child only	Settlement	85,789	12%
		Court determined	82,611	12%
		Withdrawn	76,100	11%
	Property and finance	Settlement	10,735	1%
		Court determined	4,430	1%
		Withdrawn	7,054	4%

**Ministry of Justice Research Series 8/11**

**Sustainability of mediation and legal representation in private family law cases**

This analysis compares the sustainability of outcomes achieved through mediation to those reached through legal representation for publicly funded clients with private family law disputes. Legal aid administrative records for 1.4 million publicly funded clients between 2004 and 2010 were used to examine outcomes from, and repeat use of, family legal aid services. The type and number of family legal aid services used following mediation or legal representation were used as a proxy for examining the sustainability of mediated agreements and decisions reached through legal representation. Results illustrated that clients were less likely to use additional services following mediation than following legal representation, suggesting mediation users have more sustainable resolutions. However, amongst those who did use additional services, those returning following legal representation took longer to return than those who had used mediation. The findings cannot be used to directly compare the effectiveness of mediation and representation, as the groups using these resolution processes are likely to differ in terms of case complexity and the willingness of the parties to reach agreement.

ISBN 9781840994919

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