

# Personal Action Plans: evaluating self-management initiatives in family law

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## Abstract

*Personal Action Plans (PAPs) have been used to encourage client self-management within healthcare services, and are a novel innovation within legal services. This paper examines the use of PAPs by publicly funded family lawyers in England and Wales. It was intended that PAPs were written collaboratively between lawyers and clients in order to assist clients to clarify and resolve issues independently, and aid referrals to other service providers. Whereas self-management initiatives work best when service providers take a client-aligned approach, our research demonstrates that the PAPs were used as a means of managing clients' expectations. We conclude by suggesting that while PAPs and other forms of self-management tools may work well in healthcare, they have limited potential in the provision of legal services for family law clients.*

## Introduction

In 2001, the Legal Services Commission (LSC) of England and Wales introduced a pilot for a new form of delivery of legal services for family law clients, known as the Family Advice and Information Service (FAInS). The aims of FAInS were to:

- facilitate the dissolution of broken relationships so as to minimise distress to parents and children;
- promote ongoing family relationships and co-operative parenting;
- provide tailored information and access to services through a single gateway (a specialised family law practitioner) that may assist in resolving disputes, or may assist those who are trying to save their relationship;
- identify what specialist support services need to be provided, how they can be best funded and the role that central government plays in this (LSC, 2005).

FAInS was initially supplied by family law practitioners who were required to complete a programme of professional development, and was piloted across fifteen areas in England and Wales. Most of the FAInS providers involved in the pilot were qualified lawyers, although a few were also qualified legal executives, and all had to have at least two years' post-qualification experience.<sup>1</sup> FAInS providers were envisaged as acting as the 'case manager' for the client, and

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<sup>1</sup> For the purposes of this paper, however, we will refer to all of the FAInS practitioners who participated in the research as 'lawyers'.

as well as providing appropriate legal advice and representation, they were encouraged to help the client to identify other services that could be of assistance. The pilot concluded in March 2007 (LSC, 2005).<sup>2</sup>

The FAInS practitioner was provided with funding to conduct an enhanced first meeting with the client, so that they could spend extra time exploring the issues to be addressed. FAInS introduced several new forms to be used by practitioners at this initial meeting, including a Personal Action Plan (PAP).<sup>3</sup> The PAP was to be jointly filled in by the lawyer and client at the conclusion of the meeting, and was intended to clarify issues and encourage the client to take responsibility for resolving issues independently. The LSC expected that the client would retain a copy of the PAP to show to other service providers who might get involved in helping the client (e.g. mediators). It was considered that the use of the PAP as a travelling document would avoid the client feeling embarrassed at having to repeat the particulars of their situation.

PAPs are not new, and have been used primarily in healthcare as a means of changing patients' behaviour. PAPs generally consist of a short written contract drawn up jointly by a healthcare provider and patient. The contract is filled in after an assessment of the patient's holistic position, rather than just focusing on the symptoms of their illness. During this assessment, the objectives are agreed collaboratively by both doctor and patient, actions are established which are directed towards achieving these goals, barriers and supports are identified, and follow-up support is put in place. PAPs are intended to allow the patient to increase their problem-solving skills and understanding of their medical conditions. They work best if the goals are achievable, measurable and positive and promote patients to take an active role in their own short-term care, as well as to develop the skills and knowledge required to prevent and manage health problems in the long term (Glasgow, Davis, Funnell and Beck, 2003, p. 7).

PAPs are generally used as only one of a number of components of self-management support (SMS) intended to promote client responsibility and empowerment. In healthcare, SMS requires multilevel changes, directed at the level of the patient–clinician interaction, the broader healthcare system and community. Research suggests that for SMS to be successful, the patient must be facilitated to take a central role, which in turn requires the clinician to provide education, evidence-based care and support. SMS also requires doctors and patients to share control over decision-making and to develop a long-term therapeutic relationship (Glasgow *et al.*, 2003; Barlow, Wright, Sheasby, Turner and Hainsworth, 2002; May and Mead, 2000). SMS requires a shift from a doctor-centred to a patient-centred consultation, and this move has developed largely as a response to the critique that long-term solutions to medical problems are hindered by the lack of an appreciation of patients' own understanding of their health problems, and the expertise that they can bring to resolving these problems (Stewart *et al.*, 2000).

Various studies have identified the benefits of SMS within healthcare, which include allowing doctors to understand problems from a patient's point of view, promoting patients to manage their own health, develop problem-solving skills, become more self-efficient (Coleman and Newton, 2005), and identify and achieve goals (Estabrooks, Glasgow and Dzewaltowski, 2003; McGann, 1999). PAPs have been demonstrated to increase patients' control over their life (Searle, Mahon, Iso-Ahola, Sdrolia, Adams and Van Dyke, 1995; Kennedy *et al.*, 2004), and improve long-term health outcomes (Lieu *et al.*, 1997; Ruffin, Wilson, Southcott, Smith and Adams, 1999). It would seem logical that both the providers and consumers of legal services could also benefit if SMS initiatives could be successfully extended to legal services.

2 It was then superseded by the FAInS Additional Modes of Delivery Pilot (LSC, 2007).

3 The other new form consisted of a Client Information Form, which the client was to fill in prior to seeing the lawyer. The purpose of this form was to promote the client to focus on the key issues that they wished to discuss.

In the context of our research, FAInS appears to be conceived as a form of SMS, with the PAP representing one element of a wider effort at promoting client self-management. The following section considers the challenges that SMS may potentially pose to traditional conceptions of lawyer–client relationships within family law, which suggests that while this relationship is complex and multilayered, it is still typically one in which the lawyer, rather than the client, takes a central role.

Giddings and Robertson (2002, 2003) have charted the rise of new forms of legal services that facilitate the co-production of legal services, such as self-help divorce kits and the provision of legal advice over the Internet. For legal services to be co-produced the client must be enabled, or at least expected, to take an active role in their own case. Another form of co-produced legal service consists of unbundled services, which involves the client taking on some of the tasks of managing their own case, ranging from filing court documents to court appearances. According to Mosten (1995), the rise of unbundled services in family law reflects changes in clients' expectations of legal services:

'Clients today are more active, more educated in the art of clienthood, more inquisitive, and more demanding in the quest to control the purchase and supervision of legal services.' (p. 213)

The use of unbundled services is seen to transform the lawyer's role in a case from that of an adversarial advocate to a 'coach' or 'case manager', who continues to provide legal advice, but relinquishes some of the control of the case to the client (Mosten, 1995).

While the PAPs are not technically a form of unbundled service, they could be conceived as a form of co-production which attempts to move some of the balance of power in the running of a family law case from the lawyer to the client. Whereas Mosten (1995) wholeheartedly embraces the co-production of legal services in family law, some researchers have raised some serious concerns. Giddings and Robertson (2003) concede that harnessing the productive capacity of legal consumers may seem sensible, as it allows the client to take an active role in resolving their problems and gives them greater control. They warn, however, that self-help services may leave vulnerable clients feeling even more isolated and powerless, and that innovations in legal services are being pushed by a desire to cut the legal aid budget, rather than improving services offered to clients.

Giddings and Robertson (2003) also stress that while efforts to make clients take greater responsibility for their own cases has been strongly promoted in policy spheres, there has been little empirical examination of how this enhanced consumer participation works in practice. As they state:

'Consumer participation simply cannot be taken as a "given". It is highly dependent on a number of factors which vary from one service to another. Unfortunately, little work appears to have been done in the services discipline on consumer participation in legal services in particular and this in itself suggests that we need to know far more about the utility and effectiveness of legal self-help. This potential danger is highlighted by the fact that effective consumer participation in certain kinds of services is particularly challenging. Client participant is more difficult where services are complex and demanding, such as in knowledge-based service settings. It follows that consumer skills, or the lack of them, are highly relevant to the question of the consumer's ability to participate.' (p. 112).

The empirical research that has been done suggests that the self-management of family law services, especially for publicly funded clients, can be problematic. Hunter, Genovese, Melville and Chrzanowski (2000, pp. 200–204) found that family lawyers in Australia were sometimes reluctant to offer unbundled services to their family law clients, and those that did retained control over what tasks were allocated to clients. Lawyers generally felt that unbundled services may be appropriate for self-confident, well-educated and articulate clients, but were inappropriate for the majority of publicly-funded clients, as these clients often presented with very complex cases, and lacked the necessary skills and confidence to take on aspects of their own cases. Some lawyers expressed

reservations about relinquishing power to any of their clients regardless of their funding status, and were concerned about leaving themselves open to professional negligence claims should something go wrong.

More recent interviews with accredited specialists in personal injury and family law, also conducted in Australia, showed similar lawyer reluctance for unbundled services. Research conducted by Robertson and Corbin (2005) showed that lawyers thought that clients wanted to delegate as much responsibility as possible to their legal representative in order to achieve the best possible outcome. Lawyers limit the client's role to providing information and providing some input into decision-making. Even then, some lawyers preferred to do all the 'leg work' and make all the decisions, and to have the client take virtually no active role in their own case.

Family lawyers appear to be reluctant to allow clients to take too much control beyond just the procedural aspects of the case. Research has consistently stressed that family law clients often present in a highly emotional state, and that they are focused on the pain, bitterness and sense of betrayal that is associated with separation and divorce (Berns, 2000; Kaganas and Day Sclater, 2000; Smart and May, 2004; Trinder, Connolly, Kellet and Thoday, 2004). Family lawyers take the raw substance of their client's narratives and transform it into a legal text that identifies and clarifies the issues (Berns, 2000; Mather, Maiman and McEwen, 1995; Harrington, 1994; Mather and Yngvesson, 1980). Family lawyers are reluctant to simply follow the client's lead, but instead work to shape their client's expectations in a way that moves the client towards reaching a resolution (Mather *et al.*, 1995; Hunter *et al.*, 2000; Hunter, 2002; Harrington, 1994; King, 1999; Felstiner and Sarat, 1992). The repackaging of the client's emotional issues into legal problems has been summarised succinctly by Mather *et al.* (1995):

'As negotiations proceed between lawyer and client, standards are established over what is appropriate for discussion in the lawyer's office. Boundaries for talk are established, the lawyer's role is defined, and the client's concerns are transformed into the legal categories of the divorce.'<sup>4</sup> (p. 287)

The focus of family lawyers on shaping their client's expectations has led Moorhead, Sherr and Paterson (2003) to conclude that family lawyers are invariably 'client-centred' rather than 'client-aligned'. A client-centred approach involves:

'paying attention to the practical and emotional needs of the client, not necessarily agreeing with the client's motives, policy or philosophy and not necessarily doing what the client says they want.' (p. 12).

A client-aligned approach involves the lawyer allowing the client to determine both the goals and the process by which the goals are achieved, and for the most part, family lawyers do not feel that such a degree of client control is in the best interests of either the client or the client's children.

It appears that simply and uncritically to embrace client self-management and the co-production of legal services ignores the reality of the complex relationship between family lawyers and their clients (Robertson, 2002). This paper provides an empirical examination of a form of self-management tool, namely the PAPS implemented as part of the FAInS pilot, and in so doing provides a useful window onto the nature of the interplay between lawyers and clients. Our results demonstrate that lawyers are generally reluctant to relinquish too much control over a case to their client, and

4 While empirical research demonstrates that family lawyers are usually very successful in eventually persuading their client to compromise, the relationship between lawyers and clients has also been shown to be highly contested. It would appear that lawyers are not always able to assert their dominance over clients, and 'who's in charge' is often a matter of great complexity and ambiguity (Sarat and Felstiner, 1995; Eekelaar, Maclean and Beinart, 2000; Mather *et al.*, 1995).

consistent with previous empirical research, we show that family lawyers see their role as essentially managing their client's expectations. According to many family lawyers, their practice is directed towards helping their clients to 'move on', and to be able to cope after their legal case has resolved. Our results suggest that the co-production of legal services in family law, especially for publicly-funded clients, is unlikely to help the client take a high level of control within the immediate context of their legal case. Innovations to encourage greater client self-management are likely to be co-opted by lawyers and repackaged as tools to be used to turn their clients' emotional and personal stories into legal texts aimed at getting clients to compromise and reach resolution.

## Methods

An evaluation of FAInS was conducted by a consortium of researchers, and investigated the operation of FAInS within six of the fifteen FAInS pilot areas (Walker *et al.*, 2007).<sup>5</sup> The research was designed as a 'before and after study', which sought to compare the practice of publicly funded family lawyers before their involvement in the pilot, and after, including their use of the PAPs. The data for this paper was collected as part of that evaluation, and is drawn from the 'after' phase of the research. Lawyers were asked to send a copy of each PAP and any amended/updated forms to the research team. During a six-month period between 1 June 2004 and 30 November 2004, PAPs were completed by lawyers in respect of 1,456 FAInS clients.

Lawyers were also asked to send the research team information about all new publicly funded family law clients in the form of a Record of First Meeting form, which recorded information about clients and the issues involved in the case. Approximately 95 percent of lawyers provided copies of both the PAP and a Record of First Meeting form. No reasons were given on the Record of First Meeting forms for why a PAP had not been completed for the remaining 5 percent of clients. Ninety-two percent of clients who possessed a completed PAP consented to a copy being sent to us, with the result that we received 1,218 completed PAPs.

A sample of 200 PAPs was randomly selected for content analysis. We are aware that family law cases are often highly variable, and we wanted a sample large enough to provide a representative sample. Content analysis involves the examination of the communicative features of a text (Neuendorf, 2002). Our analysis provides some insight into how lawyers and their clients completed the PAP. However, content analysis has been criticised for decontextualising the texts being analysed (Hardy, Harley and Phillips, 2004), and we are aware that our analysis cannot provide a complete picture of the interaction between lawyer and clients. Thus, we supplemented our analysis with data from semi-structured interviews with twenty-two lawyers. Lawyers were asked questions about their practice, including their use of the PAPs. Observations were also conducted of forty initial meetings between lawyers and clients, which provided us with an opportunity to see lawyers and clients actually using the PAPs.<sup>6</sup>

Legal services markets, including family law, are very diverse, and our sample is not representative of all family lawyers in England and Wales. Our findings relate only to clients who have received public funding to support their case. Publicly-funded clients will have lower levels of income, are more likely to be women and have a lower level of education compared to clients who can afford to pay a lawyer to run their case (Hunter, 1999; Hunter *et al.*, 2000). Research has also shown that publicly-funded clients often present with more complex cases, typically involving additional issues

5 The research was based at the Newcastle Centre for Family Studies at the University of Newcastle upon Tyne, which has since been closed, and was funded by the Legal Services Commission. However, the views expressed herein are those of the authors alone.

6 The lawyer interviews and observations were conducted in four of the FAInS pilot areas. For full methodological details see Walker *et al.*, (2007).

such as debt and problems with housing, as well as additional aggravating factors such as drug and alcohol abuse (Hunter *et al.*, 2000).

The practitioners involved in this research undertake publicly-funded work and, for the most part, family law or child care matters made up the bulk of their workload. These practitioners all worked in high street firms with an LSC contract.<sup>7</sup> The practitioners we spoke to all felt that they took a non-adversarial approach to resolving family law cases. However, they identified lawyers who take a different approach. These other lawyers were considered to be relatively few, and we were told that for the most part, contracting arrangements with the LSC and the greater emphasis within the profession on non-adversarial settlement had driven out lawyers who were more aggressive and confrontational. Other research also suggests that there is a small minority of family lawyers who take an adversarial stance (Mather *et al.*, 1995; Hunter *et al.*, 2000). We acknowledge that this small group of lawyers who take a confrontation approach would most likely produce PAPs that would significantly differ compared to those produced by our sample of practitioners.

### Analysis of the Personal Action Plans: background statements

The PAPs introduced by the FAInS pilot consisted of a short pro forma contract to be filled in collaboratively by lawyers and clients. The form was produced by the LSC, who expected lawyers to work through the PAP with their clients at the conclusion of the initial interview. The PAP consisted of a single-page document divided into sections on 'background statement', 'key issues', 'client actions' and 'lawyer actions'. It was stressed to the lawyers at training sessions organised by the LSC that the form was a 'document for the client', and that while the lawyer filled in the form, the process of deciding what should go onto the form was to be agreed in conjunction with the client.

Our analysis looks at the content of each section of the form, commencing with the background statements. We found that lawyers take two broad approaches towards producing these statements. First, the majority of background statements ( $N = 125$ , 63%) provided very little information about either the client or the case at hand. Of these, most ( $N = 87$ , 70%) contained only personal information about the client, such as the children's names and dates of birth, the parties' marital status and the approximate value of the marital home. The information required for proving eligibility for public help, such as the types of benefits the client receives, their income, tax credits and child support, was provided in most background statements. These PAPs provided no information about what the client wanted, nor did they give any background about the issues raised by clients. In 30 percent ( $N = 38$ ) of these PAPs, the background statements consisted of a very short phrase which referred only to the main issue at hand (e.g. 'contact', 'marriage breakdown', 'parties have separated', 'matrimonial home', 'grounds for divorce').

One of the rationales underlying the implementation of FAInS was the acknowledgement that family law clients often face multiple problems. FAInS was intended to allow lawyers to identify the range of issues, both legal and non-legal, that a family law client may face, and to encourage their clients to seek help from other services if appropriate.<sup>8</sup> Most of the PAPs, however, identified a single issue.

Another aim of the PAPs was to provide a travelling document which the client could give to another service provider. Nevertheless, most background statements were not self-explanatory, so

7 As the lawyers involved in our research all took on publicly funded work, and for many this made up the bulk of their caseload, our sample is not representative of all family lawyers. Research suggests that lawyers more actively manage the expectations of publicly funded clients, whereas self-funded clients are given more scope to set their own agenda. Publicly funded lawyers must juggle heavy caseloads for limited financial returns, and the types of work that they are allowed to do for their clients is often restricted by funding (Eekelaar *et al.*, 2000; Hunter *et al.*, 2000).

8 For full discussion of the rationales behind FAInS, see Walker *et al.* (2007).

that it would be impossible for someone unfamiliar with the case to gain an idea of the nature of the client's problems, or the solutions the client was seeking.

Not all lawyers were convinced that using the PAP as a travelling document was a worthwhile goal. Some claimed that clients can become upset, dwell on the other party's behaviour, and generally 'work themselves up' if too many details are written down. Some lawyers also considered the PAP to be overly intrusive, and suggested that their clients were not comfortable putting down details concerning sensitive issues such as domestic violence. Clients were described as being potentially uncomfortable allowing this information to be shared with another service, as one lawyer explained:

'I am concerned with how much background to put in. What if the client wants to keep some of the background material confidential?'

Some lawyers claimed that completing a detailed background statement is asking too much of a client who is already distressed and feeling overwhelmed:

'What if a client is being swamped by all the forms that we have to go through . . . They don't understand why I can't get on with it, they don't see that this [the PAP] is in any way connected to them.'

For some lawyers, the PAP was felt to be unnecessary as much more detailed information was provided in the form of a client care letter,<sup>9</sup> which was posted to the client after each lawyer meeting. These lawyers clearly felt that the PAP had added very little to the service they provided to their client, as one lawyer emphasised:

'I cannot . . . see how you can [complete the PAP], having taken instructions, gone through everything that you want to go through with the client. And, obviously, they ask you questions, you are answering questions, you try to deal with what they are raising. To then say 'Right, let's put all of this down, and agree to an action'. You don't have the time. You couldn't possibly. Well, you would only see three clients a day.'

One possible explanation for the format of the majority of background statements is that many lawyers filled in the PAPs in a way that reduced additional paperwork. Lawyers take attendance notes for each client meeting, and at the initial meeting these notes include considerable personal information about the client. It is particularly important that lawyers representing publicly funded clients collect detailed personal information, as it is required by the LSC. Our observations and interviews with lawyers suggest that many of the PAPs were filled in after the client had left the office, with the lawyer cutting-and-pasting personal information from their attendance notes. Lawyers appeared to do this in an effort to avoid what they perceived as being needless duplication and to reduce the amount of time taken to complete the PAP, as the following remarks show:

'I started typing up the Personal Action Plans myself, but I don't tend to do so now, unless it's urgent. Mostly, I dictate them and the girls have the pro formas on their computers. It took me a while to get a system that works, but now if I dictate the background first, the girls can cut and paste the first part of the attendance note into the first part of the personal action form and it stops that duplication.'

'I think that solicitors are being stretched too far. You just get to the end of the first meeting, after an hour or an hour and a half, sometimes longer, the first meeting lasts twenty minutes longer for FAINs, and then you need to do the PAP. It duplicates too much of what we have already asked.'

9 After each meeting, the lawyer is required by the LSC to send their client a 'client care letter', which summarises the meeting and details the advice given and the actions to be taken by the lawyer.



These comments suggest that lawyers did not always consider the PAPs to have much value for the client, and instead they perceived the PAPs as increasing the amount of paperwork required by the LSC. It appears that this perception meant that many of the PAPs were not completed in conjunction with the client, and did not pay much attention to the client's emotions or goals.

The second approach to completing the background statements appeared to take into consideration the client's views. A third ( $N = 75$ , 37.5%) of the background statements consisted of a narrative describing what had been going on in the client's life that had led them to seek legal advice. Most of these background statements identified the key issues and recorded personal details, and then also provided a statement of the client's 'story'. These background statements were more self-explanatory, and as it would have been possible for a third party to gain an idea of why the client was seeking legal advice, these PAPs could have functioned as a travelling document.

While these background statements were written by the lawyer, most were written in a way that validated the client's presentation of the facts. Examples included: '[The other party] had seen the children regularly, usually on a Sunday, but his threatening and abusive behaviour has continued'. Several lawyers appeared to use other linguistic devices in order to diminish the social distance between themselves and their clients. For instance, a number of the PAPs contained informal statements that were possibly intended to develop rapport with the client, such as: '[The client] pops in to see the children'; '[The client] is nipping back occasionally to the house'; '[The client] simply wants a quick divorce'. A few PAPs referred to the client's emotional state: 'The client is very concerned'; 'The client is devastated'; 'The client feels that arrangements are unfair'; 'Client is worried'. Some provided recognition of the problems the client was experiencing, such as: 'The marriage has been going terribly wrong'; 'The parties have had difficulties'; 'The marriage has faced problems'.

These background statements read as if the client were presenting their case from their own point of view, provided a greater sense of the underlying cause of the client's problem and prevailing emotions, and allowed the lawyer to express a degree of empathy with the client. Our observations and lawyer interviews suggest that lawyers who tended to produce these 'narrative' PAPs were more likely to complete the background statements with their client during the initial interview rather than cut-and-paste from their attendance notes after the client had left.

Not all the lawyers, however, presented the background statements in this way. Some lawyers had written the PAP in a way that emphasised that they had listened to the client, but had not necessarily taken on the client's point of view. These PAPs contained phrases such as: 'The client feels/says/believes', 'It is understood/explained/confirmed'; 'It appears to be/seems to be'. In several instances, the lawyer provided their own commentary, and their tone suggests a degree of scepticism about the validity of the client's story. For example, phrases such as: 'It seems bizarre'; 'This seems odd to me'; 'If this is the case'; 'On the face of it' were found in some PAPs.

Some lawyers also appeared to use the PAPS as a means of encouraging the client to see the situation from the other party's point of view. For instance, lawyers had written: 'The client feels guilty about stopping contact'; 'The client thinks that the other party is a brilliant mum'; 'The client would like to apologise to the other party for causing them stress and upset'; 'The client recognises [the] other party's need for housing'; 'The other party was devastated'; 'There has been an amicable separation'; 'There seems to be a misunderstanding'.

Individual lawyers tended to adopt a particular style as to how they produced the PAP, which they then kept to regardless of different issues or clients.<sup>10</sup> Even the narrative background statements which presented the client's point of view generally followed a similar structure. The background statements started with the client's current marital status, followed by some key facts, a short history of the

10 Although lawyers from one pilot area in particular tended to produce more individualised PAPs.



**Table 1** Issues recorded in the Personal Action Plans

Issues	Number of PAPs	%
Contact	84	21
Divorce	61	15
Protection from violence	54	13
Financial issues	42	10
Housing	25	6
Residence	23	6
Property	20	5
Maintenance/child support	17	4
Parental responsibility	13	3
Other issues	64	16
<b>Total</b>	<b>403</b>	<b>100</b>

relationship, and key issues and problems (legal and non-legal) faced by the client. The way in which lawyers might shape their client's narrative into a given structure was also stressed in interviews:

'I don't have a pro-forma form, but the structure is still there. First, get all the personal information, everything that is needed for the divorce petition, then ideally give advice at the end, although this isn't always the case depending on the client.'

Some lawyers finished the background statement with a comment about what the client wanted or needed, the client's current options or what the lawyer was going to do next. Just over two thirds ( $N = 128$ , 69%) of all the background statements, however, offered no recognition of what the client wanted. Some simply reinforced the lawyer's role in providing advice and direction to the client, containing statements such as: 'I will do'; 'I advised'. These PAPs also tended to stress the client's acceptance of their lawyer's advice, and contained phrases such as: 'The client accepts'; 'The client agreed'; 'The client admits'.

It would appear that some background statements provided a sense of the client's emotional state, gave enough background information about the client's situation so that the PAP could be used as a travelling document, and presented the client's narrative from their own perspective. Others were written in such a way as to provide a sense of the client's story, but did not take on the client's point of view. These PAPs, however, were in the minority, and most background statements provided very little information about the case at hand, were often not completed in conjunction with the client, and in some cases appeared to be used by the lawyer in an effort to structure the client's narrative and to begin to manage the client's expectations.

## Exploring issues

Following the background statement, the PAPs have a section labelled 'key issues'. In our sample of 200 PAPs, lawyers had recorded a total of 403 issues (see Table 1). The major issues were contact, divorce and protection from violence.<sup>11</sup>

One of the aims of FAInS was to encourage lawyers to explore both legal and non-legal issues faced by clients during the diagnostic initial interview. For the most part, however, the types of issues recorded on the PAPs are legal issues. The non-legal issues that were recognised were highly variable,

11 Lawyers were asked to identify the client's three main issues of concern on the Record of First Meetings. These key issues appear to be very similar to the issues identified in the PAPs, those identified most frequently being contact, divorce, protection from violence, and issues relating to property and finances.

and included: the need for personal and relationship counselling; counselling for children; the other party's alcohol problem; pension forecasting; help dealing with the police; cultural pressure to reconcile; problems with employment; the client's alcohol problem; and resolving immigration status. The diversity of these 'other issues' provides a glimpse into the often complex array of problems faced by family law clients, although the PAPs suggest that this complexity is not always addressed by lawyers.

Clients were also described as being 'in a fog', where they were not able to see clearly what their problems were. They were said to come into the solicitor's office and 'dump' all their problems on their solicitor, and expect them to resolve the issues. Another aim of the PAP was to assist clients to move out of this 'fog' and to clarify issues. In 124 (62%) of the PAPs in our sample the lawyer had simply identified the key issues without adding any substantial extra comment: for example, 'contact and harassment re the same'; 'contact issues'; 'divorce/children/debts'. In seven PAPs (4%), the issues section had either not been filled in or only contained a reference to the background statement (e.g. 'see background'). In the remaining sixty-nine PAPs (35%), the lawyer had provided additional comments in the key issues section, with most of these comments consisting of a short statement about what the lawyer intended to do next. Examples of such statements include: 'To apply for residence order'; 'To deal with divorce proceedings once issued'. In some instances, the statement referred to what the lawyer considered the client needed, for example 'She needs a non-molestation and occupation order', or to a future action that may be necessary, for example 'Client may have a potential assault claim', 'May need a PSO under Children Act 1989'. Some lawyers had also written a question in the issues statement: 'What is the best way to achieve ... parental responsibility ...?'; 'How can the [children's] needs and best interests be protected?.'

While these statements were brief, they did clarify the key issues as identified by the lawyer. Sometimes lawyers clarified issues by presenting the client's legal concerns in the form of a list, suggesting that the lawyers were using the PAPs to help clients to prioritise their concerns. This presentation appears to fit well with the intention of clarifying issues and moving clients out of the 'fog', although it again appears that issues are largely confined to legal concerns.

The value of the PAPs in clarifying issues was acknowledged by several lawyers, who told us that clients may find the PAP easier to read and understand than the client care letter:

'The problem is that very few clients read beyond the client care letter, but the Personal Action Plan is nice and simple. I like to keep my Personal Action Plans short and simple. People don't like to read, they don't get their information from reading anymore.'

'I think it clarifies things sometimes, it'll focus their mind on what you're doing. And they probably won't go out as confused as what they may have done before, because you're focusing on certain things, 'you'll do this', 'you'll do that', like to write to the other side's solicitors, to write to social services, to make an application to court. So that might focus their minds on that and they may remember more by you doing that.'

It would appear that the PAPs have had some value for lawyers, who frequently used the PAPs as a tool for encouraging clients to focus on the legal issues involved, communicating their views on what actions needed to be taken next, and as an aide-mémoire. Other aims of FAInS, however, such as lawyers exploring the non-legal issues that their clients face, do not appear to be achieved by lawyers' use of the PAPs.

## Clients' actions

The next section of the PAPs consisted of a section where the lawyer could list the types of actions that the client was to perform. The intention behind this section was to stress to the client that they needed to take active responsibility for resolving issues, rather than passively rely on their lawyer. If

**Table 2** Client actions listed in the Personal Action Plans

Action	Number of PAPs	%
Take no action/blank	49	18
Provide documentation required for public funding application	45	16
Contact another agency	42	15
Provide other documentation	31	11
Other	22	8
Consider their position	16	6
Protect self/children	14	5
Contact police/lawyer if future problems arise	13	5
Collect evidence	12	4
Improve relationship with other party	9	3
Attend court	9	3
Obtain other party's address	9	3
Obtain file from previous lawyer	5	2
<b>Total</b>	<b>276</b>	<b>100</b>

the PAPs are to assist in achieving this aim, it may be reasonable to expect that the types of actions clients are to perform would stress client initiative and ownership. In addition, it could be expected that for the PAPs to fulfil their anticipated role as a form of self-management support, then client actions may also be those decided by the client, rather than those assigned by the lawyer. The client actions recorded in our sample of PAPs are summarised in Table 2.

Most frequently ( $N = 49$ , 18%), the PAPs suggest that clients were assigned 'no action'. In these instances, the lawyer had also made remarks such as 'not applicable', 'none required', 'none required at the moment', or 'nothing at the moment'. Observations of lawyers and their clients, however, suggest that 'no action' is more complicated than it first appears. In a number of our observations, the client did not want the lawyer to take any action, and instead they wanted to go away and think about their options and absorb the advice given. The following remarks from lawyers also highlight that not all clients want action:

'Clients come in for general advice, they want to think about their options. For these clients, it is incredibly patronising to say to them "This is going to be your action".'

'Some clients want to talk. They want advice, information and to know their options. But they don't want action. It is a big decision. You can't force the client – they will act when they are ready, they need time. Maybe the marriage is not over. Maybe they have come to see you to try and shock the other party.'

The action 'consider their position' was only recorded on sixteen of the PAPs (6%), although it is likely that the phrase 'no action' also included other instances when the client wanted to go away and think about the advice they had been given.

The second most common action recorded consisted of clients being asked to provide documentation in order to prove public funding eligibility.<sup>12</sup> In interviews, most lawyers stated that clients

12 In order for lawyers to provide initial advice to their client or to make a referral to mediation the client needed to be in receipt of 'legal help', in which case the client needed to provide identification and evidence of income. This evidence generally consists of their last month's wage slip, or if the client is in receipt of benefits, then they need to provide either a letter from the benefits agency confirming their income or their benefits book. We observed, however, that the provision of documentation was often quite difficult as some clients could not easily produce the typical types of identification required, such as a passport or driver's

**Table 3** Services and agencies to be contacted by the client

<b>Agencies</b>	<b>No of PAPs</b>	<b>%</b>
Family mediation	10	15
Social services department	8	12
Local authority housing department	7	11
Counselling	7	11
Citizen Advice Bureaux	4	6
General practitioner	4	6
Mortgage advisor	4	6
Child Support Agency	3	5
In-house lawyer (debt, employment issues)	3	5
Police	3	5
Private housing	3	5
Consumer credit/debt management agency	3	5
Other	6	9
<b>Total</b>	<b>65</b>	<b>100</b>

often do not remember to bring in the necessary documentation. Several lawyers also remarked that they find the PAPs useful in emphasising to clients that they need to provide proof of income before any work can commence on the file. In thirty-one instances, clients were asked to bring in other documentation unrelated to their public funding status. This documentation included the marriage certificate, further details required for full financial disclosure, property valuation, birth certificates and copies of court documents from previous proceedings. Overall, bringing in some form of documentation made up over 40 percent of all the client actions recorded in our sample of PAPs.

In forty-two instances, the client was expected to contact another agency. The sixty-five different agencies that were mentioned in these PAPs are listed in Table 3. The most common service mentioned was family mediation, followed by a social services department, usually in relation to concerns about children's care, and the local authority, usually in relation to housing issues. There is a long list of other services that were less frequently called upon, including Citizens Advice Bureaux (generally for debt), services connected with mental health issues, and mortgage advisors. These other services reflect the clustering of issues surrounding family law problems, including housing, debts, mental health, access to benefits, child support and the need to ensure personal safety.

We noted that clients were assigned more actions if the case involved allegations of domestic violence. In thirty-nine instances, clients' actions included contacting the police or lawyer if any problems arose, keeping the children safe, changing the locks on the house, changing telephone numbers, keeping a diary of incidents and contacting women's aid or a refuge. Two lawyers had also recorded that the client should try to not allow themselves to be bullied by the other party.

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licence. The provision of proof of income could also be quite complex, especially if the client's income fluctuated. The next stage of public funding, which would allow the lawyer to represent a client at court, often involved the client providing considerable documentation. At this stage, the LSC requires the client to sign a merit form and to prove their financial eligibility. For clients in receipt of benefits, this involves filling in a two-page document, but for clients in employment, their employer is required to provide documentation and wage slips for a three-month period. The client also needs to provide a form showing that they have attempted mediation, and complete a twelve-page form for the LSC.

**Table 4** Lawyers' actions recorded in the Personal Action Plans

<b>Actions</b>	<b>No of PAPs</b>	<b>%</b>
Send a letter	105	36
Draft/file petition	56	19
Contact another agency	36	12
Apply for public funding	26	9
No action	18	6
Obtain/retrieve previous lawyer's file	13	5
Ring other party's lawyer	11	4
Represent in court	9	3
Conduct further legal research	8	3
Other	8	3
<b>Total</b>	<b>290</b>	<b>100</b>

### Lawyers' actions

Following the section for clients' actions, the PAPs have a separate section for lawyers' actions. The lawyers' actions recorded in our sample of PAPs are summarised in Table 4. Excluding 'no action', the sample recorded a total of 227 different actions to be performed by clients, as against 272 actions to be performed by lawyers.

Whereas clients were commonly required to not take action, lawyers were assigned 'no action' in only eighteen of the PAPs. In some cases, the lawyer had used the PAP to emphasise to the client that they could come back if the case progressed or they needed other advice; for example, 'nothing at this stage, but client is to return if issues change'. Several lawyers explained that they like to describe their service to the client using the analogy of a medical clinic. The client is registered with the firm, and is free to return if they have any other problems, just as a patient registered with a medical practice can visit when necessary.

By far the most common action to be performed by lawyers was the writing of a letter, which was invariably to be directed to the other party (or their lawyer).<sup>13</sup> This action was recorded in over a third of the PAPs. The second most common response was to draft or file a petition. This does not mean that these cases would always proceed to court, as cases are often resolved without court intervention (Hunter, 2002). In addition, some types of cases involve the filing of documents, such as the filing of a petition in a divorce case, but do not necessarily involve contested court action.

Thirty-six of the PAPs recorded that the lawyer was to refer the client to another agency. This number is somewhat lower than the number of clients who were to contact another agency themselves, suggesting that lawyers often leave making the referral up to the client. It was also noted during observations that lawyers often asked the client to make a self-referral, and while they provided the client with the necessary contact information they rarely contacted services themselves. Lawyers felt that the relative lack of lawyer referral again discounted the use of PAPs as travelling documents. Comments from lawyers included the following:

'The referral forms are useful, but only if we refer. We largely only refer to mediation, and so we don't use the PAP, as we don't really refer.'

'It [the PAP] isn't based on commonsense, especially if no action is needed. It is a complete waste of time, most of the time. It is fine if you find you need to make a referral, or if you need to take

13 This category only included letters that were directed to other parties, and not correspondence, such as the client care letter, that was sent to the client.

**Table 5** Services and agencies to be contacted by the lawyer

<b>Agencies</b>	<b>Number of PAPs</b>	<b>%</b>
Family mediation	12	33
Social services department	6	17
Local authority	4	11
Unspecified 'other' organisations	3	8
Police	2	6
Other	9	25
<b>Total</b>	<b>36</b>	<b>100</b>

major action, but that isn't the typical case. You need to write not applicable in most cases. If it is not meant to be a check that lawyers are doing their job, but to assist with referrals, then why do we need to do it if we are not referring? If I need any more information or documentation from the client then I put that down in the client care letter, so there is too much duplication and it can be distracting. The clients don't read the client care letter as it is, and this just distracts them further.'

Some lawyers explained that, in cases where clients were referred to family mediation, the mediation service had its own pro-forma referral letters. As one lawyer stated:

'In the right case they [the PAPs] would be useful. If the client was going to go to an agency, it would be useful. But only if you were sending them somewhere other than mediation, as they already have a referral form. And also it makes it unfair, as only one party for mediation has the form. And also it isn't really relevant to them. [Mediators have] their own requirements, what information they need, and their own intake process. So it is only in very, very few cases that the Personal Action Plans might be useful.'

Of the thirty-six PAPs in which the lawyer action consisted of referring the client to another agency, fifteen had not provided detailed background statements. Of the forty-two PAPs in which the client action was recorded as self-referral to another agency, seventeen lacked detailed background statements. Presumably these PAPs would not have saved the client from having to repeat their story, since they contained no details about why the client was seeking assistance. The agencies mentioned in the lawyers' actions are summarised in Table 5, and are broadly similar to those recorded in the client actions. The highest number of referrals was made to family mediation, which accounts for approximately one-third of referrals, followed by the social services department and the local authority.

Not all the clients involved in FAInS had contacted their lawyer at the onset of their problems. In some instances, the case had already progressed considerably, to the extent that it might already have reached court. This was also reflected in the lawyers' actions, and in nine instances the lawyer had recorded that they were to represent the client in court. Other lawyers' actions included the need to arrange a private investigator to serve papers, enquiring as to the costs of making a will, preparing a pension forecast and obtaining a marriage certificate for the client.

Not surprisingly, the types of actions lawyers recorded varied according to the key presenting issues. Lawyers were more likely to refer to another agency or send a letter and less likely to draft a petition if the issues involved contact with children. Lawyers also tended to mention other agencies (generally the Child Support Agency) if the issues involved child maintenance, and to have the client go home to consider their position.<sup>14</sup> If the issues involved divorce or property issues, the lawyer was more likely to indicate that their next action would be to obtain public funding and to draft a petition.

<sup>14</sup> If a marital order is not in place and there is a dispute over the payment of child support, lawyers can rarely do anything other than refer their client back to the Child Support Agency.

In cases where domestic violence had been identified as an issue lawyers tended to take on a more directive role, stating what they thought the client needed rather than what they thought they wanted. There were also several cases in which the lawyer seems to have considered that the client required counselling, or another form of support, and again these concerns were stated in terms of client 'needs'. For example, in one case where the client had allegedly suffered sexual abuse as a child and further abuse as an adult from her ex-partner, the lawyer stated that the client 'needs referral for counselling', and that she 'needs advice, counselling and periodical support regarding the baby'.

Our analysis of the Record of First Meeting forms showed that clients who presented their lawyer with issues connected with domestic violence were somewhat less likely to have had a PAP completed.<sup>15</sup> This was especially true if the lawyer had stated that they were not expecting to see that client again, or did not know if the client would come back, and these differences tended to be most salient in the case of those clients where issues concerning children or divorce were not identified. Many of the lawyers explained that, for some clients, discussing these issues with a lawyer for the first time is a major step. Some victims of domestic violence are never able to exit from the relationship, or it may take several attempts before they are finally successful in leaving (Bell, Goodman and Dutton, 2007). It may be that lawyers who are aware that clients are in a violent relationship, but are not considering divorce, are reluctant to fill in additional paperwork if they feel the client will not return. Our observations of initial meetings also revealed that in cases involving domestic violence, lawyers were often reluctant to give the client paperwork, or to send paperwork to the client's address, if there was a likelihood that documents would end up in the hands of the other party and aggravate the client's domestic situation.

## Discussion: do self-management initiatives work in publicly funded legal services?

Our analysis suggests that the PAPs used by the FAInS practitioners did not achieve their expressed aims: to promote client responsibility and self-management of their family law case and to produce a travelling document. In addition, lawyers do not appear to have produced the PAPs in conjunction with their clients. Nevertheless, PAPs appear to have been useful in clarifying issues, albeit focusing primarily on legal concerns.

There appears to be several reasons for the limited success of the PAPs. First, one of the main grievances expressed by lawyers who take on publicly-funded cases is that they are being overwhelmed by paperwork. This was a consistent complaint from lawyers that we spoke to, and has also been noted in other research conducted with publicly funded lawyers in England and Wales (The Law Society, 2003, p. 47; Moorhead, 2004, pp. 181–182; Sommerlad, 2001). This problem also appears to be present in other jurisdictions, including Canada (Fleming and Daly, 2007) and Australia (Dewar, Giddings and Parker, 1998, p. 79; Hunter *et al.*, 2000, p. 244). These studies stress that one of the reasons behind the withdrawal of many lawyers from legal aid work appears to be the perception that publicly funded work is too bureaucratic.

For many of the lawyers involved in FAInS, the PAPs represented yet one more piece of paperwork that needed to be completed. Lawyers were being paid additional funding to conduct a longer initial interview; nevertheless, many felt that they could hardly spare the extra time needed to complete the PAP while the client was still in their office. Lawyers complained of excessive duplication between the PAPs and other paperwork required by the LSC (such as the client care letter). In some instances, it would appear that lawyers' perceptions that the PAPs represented further

<sup>15</sup> 91% of those presenting with issues of domestic violence had a PAP, as against 96% of those who did not,  $p < 0.006$ .



accumulation of LSC paperwork meant that they attempted to minimise the role of the PAP in client meetings rather than considering the underlying purpose of the form. It was obviously unclear to these lawyers how completing a form would improve the quality of legal services offered to their clients.

Second, for PAPs to be successful they need to be used within the context of a diagnostic interview. They need to set out goals that have been collaboratively agreed, determine ways in which the client can assist in achieving these goals, identify barriers and supports, and ensure follow-up support. PAPs should be seen to be part of a broader SMS framework which involves multilevel changes as well as facilitating the client to take a central role in their case management. Our research suggests that some lawyers viewed the PAPs as stand-alone documents and did not consider how the forms were to be used as an element of SMS, or the ways in which they fitted into the overall framework of FAInS. Nor could we see any evidence that the PAPs promoted a client-centred practice. Instead lawyers appeared to use the PAPs to encourage their clients to focus on the legal issues, to identify the next steps needed to advance a client's legal case and as a means of turning their clients' emotional narratives into legal problems. The PAPs appear to have done very little to encourage lawyers to relinquish control to their clients.

While supporters of self-management within legal services, such as Mosten (1995), criticise this approach as being paternalistic and out of step with client expectations, for the lawyers involved in FAInS, a move towards a more client-centred approach was clearly not desirable. Lawyers consistently told us that while they are willing to listen to and acknowledge their client's emotions, they also needed to get their client to 'move on'. For lawyers, this management of client expectations is directed towards helping their clients to resolve their problems in the long term, and to prevent future problems from arising. Our observations confirmed that lawyers, right from the very first interview, encourage their client to step away from thinking about the emotional turmoil associated with separation and divorce, and consider the children's best interests, to try to take a 'bigger picture', and to appreciate the need to compromise. For lawyers, a client-centred approach is not necessarily what clients want from lawyers, and such an approach would not achieve the best outcomes for their clients or protect their children's best interests.

Applying Moorhead *et al.*'s (2003) conception of the relationship between family lawyers and their clients, our research suggests that lawyers adopt a client-aligned, rather than a client-centred approach. To lawyers, this is the most appropriate approach in that it allows them to take their clients' needs and concerns into consideration, but at the same time allows them to assist clients to move beyond the emotional pain. To suggest that lawyers would do otherwise is to ask lawyers to act against the dominant way in which ethical practice is constituted within family law. While lawyers were provided with training which covered the aims of the PAPs, it is clear that it would take more than further lawyer education to achieve client self-management in family law, and instead there would need to be a more fundamental reconceptualisation of the professional role and ethical obligations of lawyers towards their clients.

While a client-aligned approach may be directed towards getting clients to act in a way that is reasonable and realistic, it raised several issues. It would appear that a client-aligned approach does not necessarily connect the client's immediate presenting legal issues to the underlying cause of their problems. One of the aims of FAInS was to encourage lawyers to see that the presenting legal 'symptoms' are possibly connected to other problems in the client's life. The PAPs have not clearly contributed to achieving this aim, and instead are being used to narrowly define the issues involved. Our analysis suggests that the client's role in family law cases is restricted to considering their solicitor's advice and providing documentation, and this finding is in line with other research (Robertson and Corbin, 2005; Haavisto, 2002). While the PAPs may achieve the goal of clarifying the role of the lawyer, this role is (rightly or wrongly) constructed in a manner that leaves little scope for client independence, responsibility and empowerment.

## Conclusion

Considering the PAPs in a narrow sense, the forms appear to have achieved some of their aims, in that they defined the roles of lawyers and clients and assisted in identifying key issues, although use of the PAPs may serve to construct this role in a way that fails to support a client-centred approach. While issues may be clarified, the process of identifying issues often narrows the client's problems into a legalistic, rather than a holistic, framework. Many of the PAPs were not jointly written by lawyers and clients, lawyers did not use the PAPs to encourage clients to take actions that would facilitate active involvement in their own case, and the documents would have limited utility as travelling documents.

In a broader sense, as one tool within the framework of FAInS, the PAPs do not appear to be particularly well conceived and lawyers did not appreciate how the PAPs fitted in with the overall goals of FAInS. Instead, lawyers appeared to think of the PAPs as yet more paperwork imposed by the LSC. The lawyers appear to have adapted their use of the PAPs in order to reduce the amount of time they spent filling in the forms and to avoid needless duplication. Their use of the PAPs appears to be due more to a sense of resignation and the need to comply with requirements set out by the LSC, than to an enthusiasm for the goals of FAInS.

For lawyers, the most positive features of the PAPs were that they could be used to clarify legal issues, to assist in managing their client's expectations and to act as an aide-mémoire, with lawyers producing a list of the actions to be performed by themselves, and sometimes the client, in the period immediately following the first meeting. It remains unclear how the PAPs were to provide a more comprehensive plan that would identify the client's underlying issues and concerns and address their longer-term needs. Whereas other researchers (Giddings and Robertson, 2002, 2003) have identified problems with SMS initiatives in family law leaving vulnerable clients feeling isolated and confused, we have identified further problems. These include lawyer resistance due to their desire to maintain a client-aligned rather than client-centred approach, which involves the active management of client expectations and the restriction of client involvement within their legal cases. For the PAPs to be successful as a self-management tool, lawyers would need to radically alter their practice, and lawyers may not consider that such a change would be in their clients' best interests (or the best interests of the clients' children).

In conclusion, it would appear that while SMS initiatives can have positive benefits within the field of healthcare, similar initiatives have limited potential within the current framework of legal services. While it is common to draw analogies between healthcare and legal services, these comparisons fail to appreciate the very different nature of the relationship between service provider and consumer within each sphere. It may be appropriate for healthcare professionals, who have faced sustained critique that a doctor-centred provision of healthcare hampers long-term health, to embrace SMS. While family lawyers have also been critiqued for taking a lawyer-centred approach that undermines client power (e.g. Mosten, 1995), this critique is not based on an empirical understanding of the provision of legal services in family law. Family lawyers largely conceive of their role as involving shaping clients' expectations, rather than necessarily accepting their client's point of view. It seems likely that lawyers will strongly resist initiatives aimed at changing the nature of the relationship with their clients, and that as SMS does not fit well within family lawyers' conceptions of professional ethics, such initiatives have very limited potential in family law.

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