Managing mortgage stress

Evaluation of the Legal Aid NSW and Consumer Credit Legal Centre Mortgage Hardship Service

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

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Suzie Forell and Michael Cain

June 2011

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This report is published by the Law and Justice Foundation of New South Wales. The Foundation seeks to advance the fairness and equity of the justice system, and to improve access to justice, especially for socially and economically disadvantaged people.

This evaluation of the Mortgage Hardship Service was undertaken by the Law and Justice Foundation on behalf of Legal Aid NSW and the Consumer Credit Legal Centre. It was funded by Legal Aid NSW and the Law and Justice Foundation of New South Wales.

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National Library of Australia Cataloguing-in-Publication entry:

Author:	Forell, Suzie.
Title:	Managing mortgage stress: evaluation of the Legal Aid NSW and Consumer Credit Legal Centre Mortgage Hardship Service / Suzie Forell & Michael Cain.
ISBN:	978 0 909136 94 9 (pbk.)
Notes:	Includes bibliographical references.
Subjects:	Legal Aid Commission of New South Wales. Consumer Credit Legal Centre (Redfern, N.S.W.). Mortgage loans—New South Wales. Mortgage loans—Law and legislation—New South Wales. Foreclosure—Prevention.
Other Authors/ Contributors:	Cain, Michael. Law and Justice Foundation of New South Wales.
Dewey Number:	32.72209944

Typesetting: Simon Miller

Printer: Fineline NSW

Cover design: Simon Miller

Cover image: Courtesy of Tony Miller, Over The Horizon Publications

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Acknowledgements

The authors acknowledge the considerable contributions made to this evaluation by the staff of the Consumer Credit Legal Centre (NSW) Inc. and Legal Aid NSW, in particular, Karen Cox, Coordinator CCLC, and Monique Hitter, Director Civil Law, Legal Aid NSW. Other key staff involved in the project and this evaluation include Lynda Johns, Alexandra Kelly, Katherine Lane, Marianna Minhinnick, Claire Shidiak-Khoury, Susan Winfield and other staff at CCLC; Rebekah Doran, Timothy Passfield, Kai Wu and the other civil law solicitors at Legal Aid NSW; Mary Healy-North and James Shand, also from Legal Aid NSW. The authors also acknowledge the considerable assistance of Natalina Nheu in collating and verifying data for this research and copy editor, Penny Mansley.

Abbreviations

ADI	Authorised Deposit-taking Institutions
ADR	Alternative Dispute Resolution (also known as External Dispute Resolution)
CCLC	Consumer Credit Legal Centre (NSW) Inc.
CDH	Credit and Debt Hotline system (an administrative data system used by CCLC)
CLC	Community Legal Centre
CLSIS	Community Legal Service Information System (current administrative data system used by CCLC and other CLCs)
COSL	Credit Ombudsman Service Limited
FOS	Financial Ombudsman Service
GFC	Global Financial Crisis
LGA	Local Government Area
MHS	Mortgage Hardship Service
PPF	Public Purpose Fund

Executive summary

The MHS

The Mortgage Hardship Service (MHS) is a joint initiative of Legal Aid NSW and Consumer Credit Legal Centre (CCLC) providing legal assistance and financial counselling to people experiencing mortgage stress. The MHS aims to assist people in mortgage stress to save their home, or, in situations in which saving the home is not a viable option, to minimise loss and ensure outcomes favourable to the borrower. Key features of the MHS are that it:

- has established new and dedicated positions to supplement existing face-to-face and telephone legal services to homeowners experiencing mortgage hardship
- targets clients *at risk* of mortgage default, in an attempt to reach them at the earliest possible opportunity, before their mortgage problems escalate
- is a flexible, multi-disciplinary, tailored approach to mortgage hardship assistance that may involve financial counselling in addition to the provision of advice, minor legal assistance and/or casework (for definitions of these terms, see Table 1)
- provides a duty service at the Supreme Court for homeowners already subject to repossession proceedings.

The MHS commenced at CCLC on 1 July 2009 and at Legal Aid NSW on 1 October 2009, with the program funded by the Public Purpose Fund (PPF) for a period of two years. This funding provided for two new solicitor positions and a financial counsellor position at CCLC and two new solicitor positions at Legal Aid NSW, one based at the Parramatta Legal Aid office (largely to service clients living in the Greater Western areas of Sydney) and the other at the Gosford Legal Aid office (largely to service the Gosford-Wyong area).

The evaluation of the MHS

Using Legal Aid NSW and CCLC corporate and program data, and the results of follow-up interviews with a modest number of MHS clients, this evaluation of the MHS examined:

- whether the amount of mortgage-related legal assistance provided by Legal Aid NSW and CCLC increased after the MHS commenced
- the characteristics of MHS clients and their mortgage issues, including demographic factors, geographic distribution, reasons for hardship and types of lenders
- the stage of enforcement that clients were at when first assisted by the MHS
- the nature of assistance provided by the MHS
- the outcomes for MHS casework clients.

Findings

In the current economic climate of increasing living costs and the prospect of rising interest rates,[1] the results of this evaluation indicate that the MHS continues to represent a relevant and important legal service to safeguard the interests of people who experience mortgage stress.

Amount of assistance provided

During the period of the evaluation, the first 16 months of the MHS, Legal Aid NSW and CCLC provided over 3000 occasions of service to mortgage hardship clients. Each month, the MHS dealt with an average of 37 mortgage casework and minor assistance matters and over 250 advices.

The evaluation identified a 45 per cent increase in the number of advices and a 116 per cent increase in the number of minor assistances provided by Legal Aid NSW for mortgage matters following the commencement of the MHS. After taking into consideration extraneous factors, the amount of mortgage casework provided by Legal Aid NSW was found to have remained stable. CCLC dealt with 64 per cent more mortgage casework (including minor assistance) matters in the first year of the MHS compared to the year prior to the MHS.[2]

Assistance to clients in mortgage stress hotspots

Both Legal Aid NSW and CCLC MHS clients tended to come from areas previously identified as mortgage stress 'hotspots', that is, areas with high levels of mortgage default.[3] Indeed, 51 per cent of the sample of 287 Legal Aid MHS clients came from the Local Government Areas (LGAs) of Wyong, Gosford, Blacktown and Penrith. The placement of the Legal Aid MHS solicitors at the Legal Aid offices in Gosford and Parramatta, both within the vicinity of these areas of high mortgage stress, may have itself also attracted clients to the MHS.

CCLC offered a statewide service, largely by telephone from its Sydney office, providing advice or assistance to clients living in three-quarters (76%) of all LGAs in NSW. There were similarities in the geographic distribution of CCLC and Legal Aid MHS clients, with the greatest concentration of CCLC MHS clients coming from the LGAs of Blacktown (6% of total), Wyong (4%) and Gosford (4%). Campbelltown, Penrith and Liverpool LGAs also recorded high numbers of CCLC MHS clients.

Characteristics of MHS clients

Loss of employment and under-employment (including reduced income from self-employment and business failure) featured as reasons given by clients for their mortgage hardship. This is consistent with other studies on mortgage hardship issues (Berry, Dalton & Nelson 2010; Urban Research Centre 2010). Other hardships identified by clients included illness and injury (more prominent among casework clients) and family breakdown.

Differences in the ways in which employment and benefits information was recorded by the two agencies made comparisons difficult, but some are possible. Nearly 60 per cent of Legal Aid MHS sample clients were recorded as being 'unemployed', while 48 per cent were receiving a Centrelink

1 In March 2010, the Reserve Bank of Australia estimated that 27 000 households across the country were in mortgage arrears; the number had risen from an estimated 23 000 at the end of 2008 (Berry et al. 2010).

2 Because of changes to administrative systems and recording practices, it was not possible to compare CCLC advices before and after the commencement of the MHS. (See the 'Methodology' section in 'The evaluation' chapter, for more detail.)

3 Mortgage stress hotspots were identified using Fitch Ratings as NSW locations with a high number of mortgage defaults. Legal Aid NSW reported that the September 2008 Fitch Ratings report identified the five worst performing regions for mortgage defaults in NSW as Fairfield-Liverpool, Gosford-Wyong, Outer South Western Sydney, Outer Western Sydney and Newcastle (personal communication July 2009, Legal Aid NSW).

benefit. More than one-third of CCLC MHS clients were on government benefits, including unemployment benefits. Both agencies recorded a higher proportion of casework clients than advice clients (advice or minor assistance clients for Legal Aid NSW) as being on Centrelink benefits.

In our analysis of demographics, and based on their share in the population of NSW homeowners, we noted a higher than expected proportion of people aged 60 years and over among the MHS client groups (17% of CCLC clients and 15% of sampled Legal Aid NSW clients). This was striking because:

> *[i]n the broader population home-purchaser households in the 45–64 age range are typically beginning to experience a decline in the proportion of household income used to meet mortgage payments and are moving into outright home ownership* (Badcock & Beer, cited in Berry et al. 2010, p. 13).

Characteristics of lenders

Overall, 63 per cent of the Legal Aid NSW sample of MHS clients and over 62 per cent of CCLC MHS clients had borrowed money from a bank lender (that is, an Authorised Deposit-taking Institution) rather than from a non-bank lender. However, both agencies recorded that a significantly higher proportion of casework clients than advice clients had a mortgage with a non-bank lender.

These are notable findings for a number of reasons. First, clients who took out a non-bank loan might have been more marginalised than clients who took out a mortgage with a bank, in part because non-bank lenders were more likely to lend to 'riskier' clients (Berry et al. 2010). Second, a number of MHS solicitors reported that while non-bank lenders were relatively more generous in approving loans, they tended to be more stringent in enforcing mortgage repayments. (The reasons for the non-conforming behaviour of non-bank lenders are considered in the 'Discussion' chapter.) This may have had more of an effect on those who had to borrow more, those who may have had greater difficulty in making repayments on time and those who had fewer savings and therefore less in reserve when their income was interrupted (through unemployment, illness or injury). It may also be the case that, as a result of banks referring to the MHS their customers who were experiencing mortgage difficulties, clients with bank lenders were generally receiving assistance at an earlier stage of the process than clients with non-bank lenders.

Referrals to the MHS

More than one-third (35%) of Legal Aid MHS clients sampled were referred to the MHS by an independent financial counsellor, and 15 per cent were referred by a court, the Financial Ombudsman Service (FOS) or the Credit Ombudsman Service Limited (COSL). FOS and COSL are Alternative Dispute Resolution (ADR) bodies. (ADR is also known as External Dispute Resolution, or EDR.)

The most common source of referral to CCLC was the lender or creditor (24%) followed by LawAccess NSW, a triage point for legal issues in NSW (18%). Ten per cent of CCLC MHS clients were referred by a court or ADR. A further eight per cent were referred by an independent financial counsellor. Program publicity was noted as a source of referral for only five per cent of CCLC MHS clients and less than one per cent of Legal Aid MHS clients.

It appears that the relationships built with other relevant agencies — especially lenders, independent financial counsellors, courts/ADR bodies and LawAccess NSW — probably represent even more fruitful ways of putting people experiencing mortgage stress in contact with the MHS than community-wide publicity or marketing strategies. If the aim is to reach clients 'early', then it is a positive sign to see referrals to the MHS from LawAccess NSW and from lenders and local (non-MHS) financial counsellors.

Early intervention

Early intervention is based on the notion that clients who are assisted early (before legal or court processes have commenced) may be helped more efficiently and effectively than clients who do not seek help until the legal process is well underway. Furthermore, research into mortgage stress indicates that, generally, the earlier people act when they fall into arrears, the less debt they accumulate (Berry et al. 2010).

This evaluation sought to identify where clients were in the legal process before they first sought help from the MHS. To explore this, a record was kept of the 'stage of enforcement' that each client's matter had reached when they first contacted the service. The evaluation found that, by the time clients first contacted the MHS:

- nearly 40 per cent of the Legal Aid MHS clients sampled and 37 per cent of all CCLC MHS clients had not been issued with a mortgage default notice (Stage 1)
- 55 per cent of the Legal Aid MHS clients sampled and 60 per cent CCLC MHS clients had not been issued with a statement of claim from their lender (Stages 1 or 2)
- 27 per cent of sampled Legal Aid MHS clients and 24 per cent of the CCLC MHS clients had received a statement of claim from their lender (Stage 3)
- around 11 per cent of sampled Legal Aid MHS and CCLC MHS clients had been given notice to vacate their home (Stage 4)
- around seven per cent of sampled Legal Aid MHS clients and six per cent of CCLC MHS clients had lost their home by repossession (Stages 5 and 6).

Among the clients who did not reach the MHS until late in the enforcement process were those who were first assisted through the Supreme Court duty roster provided by the MHS, which is geared to assist people already facing home repossession.

Types of assistance provided

In the first 16 months of the MHS, 891 CCLC MHS clients (89%) were provided with advice only, while a further 109 clients (11%) were provided with casework (with or without additional advice). Of the casework clients, more than one-third received minor assistance, defined by CCLC as casework of less than five hours. Of the sample of 287 Legal Aid NSW clients examined, 46 per cent were provided with advice, 35 per cent received minor assistance and 19 per cent received casework.

Stage of enforcement by type of assistance given

For both CCLC and Legal Aid MHS clients, we observed differences in the assistance provided to clients depending on when in the enforcement process they first sought help. Clients who first contacted the MHS before they received a statement of claim (Stage 1 or 2) tended to receive advice rather than minor assistance or casework. By contrast, clients who did not seek help until after a statement of claim had been issued (Stage 3 or 4) were more likely to receive minor assistance or casework than advice. However, if clients were already subject to their home being repossessed (Stage 5 or 6) before they contacted the MHS, they were more likely to receive advice than minor assistance or casework. This would appear to be a function of there being less legal assistance that can be gainfully provided by the MHS to help clients whose mortgage matters were well progressed in terms of the repossession process.

Outcomes for MHS clients

For clients who received minor assistance or casework, information was recorded about what had happened to the mortgaged property at the time their file was closed. However, we caution the reader, since this information is not comprehensive and is available only for a small set of both Legal Aid NSW and CCLC MHS clients, that the findings are not necessarily representative of the outcomes for all MHS clients. Nor can we assume that the MHS is the only factor influencing these outcomes.

Of the sample of 62 Legal Aid MHS casework and minor assistance clients with closed files for whom an outcome was recorded: 35 retained their home; nine were able to sell their house prior to the lender repossessing it, or were in the process of doing so; and seven had surrendered their home to their lender or had their home repossessed.[4]

In comparison to the Legal Aid MHS sample, a greater proportion of the CCLC MHS clients for whom an outcome was recorded sought assistance at *later* stages of the enforcement process. This may have affected the outcomes that could have been achieved for these clients. With this in mind, of the 54 CCLC casework (which includes minor assistance) clients with closed files and for whom an outcome was recorded: 26 clients retained their home (generally after negotiation with the lender or following a hearing at court or tribunal); 12 were able to sell their house prior to the lender repossessing it, or were in the process of doing so; and nine had had their home repossessed by the lender.[5]

Notably, all clients whose home was repossessed at the time their file was closed had sought help only after receiving a statement of claim (Stage 3). However, not all clients who first sought help from the MHS at Stage 3 or later of the enforcement process lost their homes. Half of the CCLC and one-third of the Legal Aid MHS minor assistance and casework clients who retained their home at the time their file was closed had not sought help until after they had received a statement of claim.

A small-scale follow-up survey was conducted with 38 MHS clients after their file was closed, with a particular focus on clients who had retained their home at the time their file was closed. While not necessarily representative of all MHS clients, some valuable insights can be drawn from their survey responses.

Twenty-seven respondents said they felt more in control of their financial situation at the time of follow-up, while five said they felt 'about the same' and six said they felt 'less in control'. Of note, some of those who felt more in control no longer owned the mortgaged property. For these clients, the assistance provided by the MHS — to make a realistic assessment of their financial situation and to help them sell their property — may have been the best option in their particular circumstances.

Measuring success

The results of the survey raise the question of what might be the most appropriate measures of success for the MHS. Is a primary indicator of success the number of homes saved, or is it perhaps the number of clients who have achieved greater financial stability? While some clients may be able to retain their home and remain financially stable, the circumstances of other clients may preclude this outcome. This is already recognised in the twin objectives of the MHS: to save homes *or* to achieve the best possible outcome in the circumstances. Other positive outcomes for clients, which could be identified as indicators of the effectiveness of the MHS, may include the client selling their home on their own terms, and the client attaining greater financial stability.

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4 Eleven Legal Aid casework clients and seven CCLC casework clients reported an 'other' outcome — often that the matter had not reached a final resolution.

5 The other seven CCLC casework clients had 'other' as their recorded outcome.

The survey identified some other potential benefits arising from the assistance provided by the MHS and from the resolution of mortgage matters, including client-reported reduced levels of stress and anxiety and increased levels of confidence in their ability to deal with and seek help for their financial problems — rather than 'burying their head in the sand' — should the issue arise again. The potential to change attitudes and empower clients to act more positively should not be dismissed as minor or incidental benefits of the MHS.

Ongoing monitoring of the MHS

This evaluation has not only quantified the considerable amount of work undertaken by CCLC and Legal Aid NSW in providing legal assistance to people experiencing mortgage stress, but has also attempted to examine the impact of the operations of the MHS since its commencement. In the future, monitoring of the MHS by Legal Aid NSW and CCLC should focus on streamlined data collection that can be incorporated into the day-to-day administration of the MHS. This would aid in the measurement of program activities and outcomes. As a result of the evaluation, we offer five recommendations, listed below.

1. Legal Aid NSW and CCLC continue to record stage of enforcement at the time when clients first contact the MHS as well as at each subsequent occasion of service.
2. Assisting clients before their mortgage hardship matter escalates to Stage 3 becomes one of the measurable 'early intervention' goals of the MHS.
3. The MHS retains the capacity to assist clients who are already at later stages of mortgage hardship when first detected, including those with more complex needs.
4. The effectiveness of the MHS be considered *primarily* in terms of achieving the best possible outcome for each client rather than in terms of saving homes. While saving homes remains a legitimate goal, other important but not necessarily compatible outcomes include clients selling their home on their own terms and clients achieving greater financial stability.
5. Consideration be given to the ongoing recording of outcomes for a small selection of clients at regular intervals, as outlined in the 'Discussion' chapter; this would provide a solid basis for better attributing outcomes to the program and for measuring client satisfaction with the legal assistance provided through the MHS.

1. Introduction

The MHS is a joint project of Legal Aid NSW and CCLC.[6] It provides legal assistance and financial counselling to people experiencing mortgage stress with a view to assisting them to save their home, or, in situations in which saving the home is not a viable option, minimising loss and ensuring outcomes favourable to the borrower.

Key features of the MHS are that it:

- has established new and dedicated positions to supplement existing face-to-face and telephone legal services to homeowners experiencing mortgage hardship
- targets clients *at risk* of mortgage default, to reach them at the earliest possible opportunity before their mortgage problems escalate
- provides a flexible, multi-disciplinary, tailored approach to mortgage hardship assistance that may involve financial counselling in addition to the provision of advice, minor legal assistance and/or casework (for definitions of these terms, see Table 1)
- provides a duty service at the Supreme Court for homeowners already subject to repossession proceedings.

The MHS commenced at CCLC on 1 July 2009 and at Legal Aid NSW on 1 October 2009. The program was funded by the PPF for a period of two years.

Before the MHS

Before the commencement of the MHS, mortgage matters in NSW were dealt with by a number of public legal assistances: Legal Aid NSW, as part of its general civil law practice; CCLC; and generalist community legal centres (CLCs) assisting local clients with mortgage hardship issues. In addition, LawAccess NSW,[7] which functions as a legal referral triage service, could refer clients to Legal Aid NSW and CCLC or provide mortgage-related legal information and advice directly.

However, CCLC did, and continues to, specialise in the provision of credit- and debt-related legal services in NSW. This includes the statewide provision of legal assistance and financial counselling on mortgage matters, largely by telephone.

Forming the MHS

Legal Aid NSW and CCLC noticed that, during the mid 2000s, mortgage defaults were on the increase and were accounting for an increasing proportion of their work. Figures from Fitch Ratings,[8]

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6 CCLC, <http://www.cclcnsw.org.au>, is a community legal centre specialising in financial services, particularly matters and policy issues related to consumer credit, banking, insurance and debt recovery. It is the only such centre in NSW, and it has a particular focus on issues that affect low-income and disadvantaged consumers. CCLC provides a statewide service mainly providing telephone advice, and casework including minor assistance.

7 LawAccess NSW, <http://www.lawaccess.nsw.gov.au>, is a free government telephone and internet service that provides legal information, advice and referrals for people who have a legal problem in NSW. LawAccess NSW has been established as a first point of contact and referral for all public legal assistance services in NSW.

8 Fitch Ratings, <http://reports.fitchratings.com>, 'is a global rating agency [that provides] the world's credit markets with independent and prospective credit opinions, research and data … Fitch Ratings is widely recognised by investors, issuers and bankers for its credible, transparent and timely coverage'.

as well as from other independent economic analysts, revealed a large and increasing number of homeowners in default of their home loans, and that number was far greater than the number of people in mortgage stress seeking assistance from the public legal assistance sector. In addition, there were record levels of mortgage repossession applications in the Supreme Court of NSW (2008, p. 58): in 2004 there were 3061 applications; this rose to 5472 in 2008.

In September 2008, the Global Financial Crisis (GFC) struck. Legal Aid NSW and CCLC expected that this would only exacerbate mortgage hardship. It was in this context that the MHS, including a Supreme Court duty roster, was established.

MHS services

In establishing the MHS, it was argued that well-timed but relatively minor legal assistance could help to prevent mortgage hardship from escalating to the point at which homes were lost. With this in mind, the MHS provides face-to-face and telephone legal assistance and financial counselling to people experiencing mortgage hardship. Assistance is given in the form of legal advice, minor assistance and, where necessary, casework. Casework is the most intensive form of assistance offered.

The MHS provides assistance with processes such as hardship variations to loan contracts, or, when borrowers have no capacity to repay their mortgage, by negotiating time to sell the property to avoid a lower sale price and the higher enforcement costs arising from a mortgagee sale. MHS assistance may also include assistance in ADR processes or representation at court when homes are at risk of being repossessed.

The new positions and services provided under the MHS are described below.

The MHS at Legal Aid NSW

Under the MHS, Legal Aid NSW employed two dedicated solicitors to provide specialist mortgage hardship advice, minor assistance and casework support. The bulk of the agency's mortgage hardship work became the responsibility of these solicitors once the program commenced. These solicitors are also responsible for the administration and coordination of the MHS and for building relationships with local financial counsellors, providing them with ongoing training and support, taking and receiving referrals and working together on particular matters when required.

One MHS solicitor is based at the Parramatta Legal Aid office and the other at the Gosford Legal Aid office. These locations were selected for their proximity to areas identified as mortgage stress hotspots[9] — areas with high levels of mortgage default. The placement of solicitors near to mortgage stress hotspots is supported by research indicating that proximity to legal services affects whether or not people access such services and how they do so (Sandbach 2004; Patel, Balmer & Pleasence 2008).[10]

Apart from the two MHS solicitors, other Legal Aid NSW civil law solicitors continue to provide legal services for mortgage-related matters.

[9] Mortgage stress hotspots were identified using Fitch Ratings as NSW locations with a high number of mortgage defaults. Legal Aid NSW reported that the September 2008 Fitch Ratings report identified the five worst performing regions for mortgage defaults in NSW as Fairfield-Liverpool, Gosford-Wyong, Outer South Western Sydney, Outer Western Sydney and Newcastle (personal communication July 2009, Legal Aid NSW).

[10] Patel et al. (2008) noted that people who live at a greater distance from legal assistance services will contact those services, for instance by telephone, but commented that this mode of contact may not always be the most appropriate for those clients.

The MHS at CCLC

Under the MHS, CCLC created two new positions for solicitors to work with the four existing credit solicitors.[11] While any CCLC solicitor may provide legal assistance for a mortgage matter, the new MHS solicitors have taken the largest share of the mortgage files.

CCLC also created an additional financial counsellor position, shared by two staff. This position augments four existing financial counsellor positions. Financial counsellors work closely with CCLC solicitors to determine a client's financial position and to assess their capacity to repay their mortgage in the short, medium and long term. They also undertake negotiations with a range of other non-mortgage creditors to have repayment arrangements put in place.

The role of LawAccess NSW

LawAccess NSW was not provided with additional resources under the MHS; however, the service was an important partner to the project. All material promoting the MHS included the LawAccess NSW telephone number as a principal contact. LawAccess NSW staff were trained by MHS solicitors on referring mortgage hardship matters to the MHS. It is also important to note that LawAccess NSW provided assistance on mortgage matters, and that records of this assistance form part of the Legal Aid NSW corporate data used in this evaluation.

Early intervention strategies

Several strategies were pursued in an attempt to reach as many people as possible who were experiencing mortgage stress, and to reach them at early stages of mortgage hardship. As noted above, Legal Aid MHS solicitors were located in offices close to mortgage stress hotspots. They also liaised with unions and employer groups, and conducted outreach to areas in which large-scale redundancies had occurred or were likely to occur (for example, due to the closure of a factory).

Legal Aid NSW and CCLC MHS solicitors also provided training to and developed working relationships with financial counsellors in local community and welfare services, in order to facilitate the early referral to the MHS of people experiencing mortgage hardship.

Finally, the MHS was promoted statewide through the media and the distribution of program information, including the *Mortgage stress handbook* and DVD, instructing people what to do if they were in default of their mortgage. The services of the MHS were also directly advertised through a letterbox drop in mortgage stress hotspots.

Supreme Court duty lawyer roster

A duty lawyer roster at the Supreme Court of NSW was established under the MHS. The Supreme Court duty roster was staffed by solicitors from CCLC and Legal Aid NSW and commenced in August 2009. Duty solicitors provide advice at court to homeowners involved in repossession proceedings, as well as referrals to the CCLC or Legal Aid MHS for further assistance.

This component of the MHS was established because it was recognised that clients could be provided with valuable assistance even at the stage of losing their home. While this assistance may not always prevent repossession, it assists clients to make sensible choices and to achieve the best possible outcomes in their circumstances. This is also likely to result in savings in time and resources for clients and the court.

[11] In total, there are nine full-time equivalent solicitor positions at CCLC covering insurance (three), general credit (four) and the MHS (two). While the solicitors do more work in their area of responsibility (e.g. the MHS), all CCLC solicitors can provide information, advice and representation services, and conduct community legal education and law reform, across all areas related to credit, debt and banking (personal communication July 2009, CCLC).

2. The evaluation

Key research questions

The aim of the MHS is to assist people to achieve the best possible legal outcome in their circumstances, including, where appropriate, to save people's home. A key strategy of the MHS is to target people at the earliest stages of mortgage hardship.

This evaluation of the MHS focused on the following:

- how far mortgage matters had progressed before clients sought assistance from the MHS
- the characteristics of people assisted under the program
- the nature of clients' mortgage issues
- the types of assistance provided by the MHS
- any differences in assistance provided before and after the MHS commenced
- the outcomes for MHS casework clients (including whether they kept or lost their home).

This study did not evaluate the strategies used to market the MHS or their effectiveness.

Methodology

This evaluation was based on three broad sets of information: Legal Aid NSW MHS program data and more general Legal Aid NSW corporate data (including LawAccess NSW statistics); CCLC MHS program data and more general CCLC corporate data; and a small survey of a selected sample of MHS clients assisted by Legal Aid NSW and CCLC. All data used in this study were de-identified records.

There are key differences in the ways in which CCLC and Legal Aid NSW define and record mortgage matters and in their operational activities. Consequently, Legal Aid NSW and CCLC data are reported separately and are detailed below.

Legal Aid NSW data

Program data

The Legal Aid MHS program data are based on information collected using an evaluation form specially designed to mirror the information routinely collected and reported by CCLC, so that MHS records from both organisations could be as similar as possible. The evaluation forms were completed by Legal Aid NSW solicitors for each MHS client assisted between 1 October 2009 and 31 October 2010 (a period of 13 months) regardless of whether the client had received advice, minor assistance or casework.

Among other things, the program data recorded:

- the demographic characteristics of clients (age, gender, country of birth, Indigenous status, postcode, and employment status)
- the source of referral for the mortgage matter

- details of the mortgage matter (including reasons for hardship and lender type)
- the point in the legal process to which the matter had progressed (called the 'stage of enforcement') at the time when the file was first opened
- the type of assistance provided (advice, minor assistance or casework).

For minor assistance and casework clients, the program data also recorded:

- the legal processes pursued (for example, defence and cross-claim)
- the non-legal (non-court) processes pursued (for example, hardship application to the lender)
- the outcome at the time the file was closed.

Data recorded was provided to the Law and Justice Foundation of NSW as an Excel file and included all mortgage matters dealt with between 1 October 2009 and 31 October 2010.[12]

Corporate data

To assess whether there had been changes in the number and type of mortgage-related matters dealt with by Legal Aid NSW since the MHS commenced, the Legal Aid NSW program data were considered in the broader context of Legal Aid NSW corporate data. The latter come from two different administrative systems: one for recording advice and minor assistance matters (for all legal matters, not just mortgage matters) and one for casework matters (again, for all legal matters, not just mortgage matters). From both systems, the Foundation obtained mortgage data for the 12 months prior to the commencement of the MHS (1 October 2008 to 30 September 2009) and for the first 12 months of the MHS (1 October 2009 to 30 September 2010).

The **advice and minor assistance dataset** contains records of every civil law advice and minor assistance provided by Legal Aid NSW in relation to mortgage matters for the period from 1 October 2008 to 30 September 2010. Legal Aid 'advice' and 'minor assistance' are defined in Table 1.

Table 1. Definitions of work types for Legal Aid NSW and CCLC

	Legal Aid NSW	*CCLC*	*Examples*
Advice	Legal advice provided to clients by Legal Aid NSW solicitors. The client retains carriage of the matter.	Advice provided to clients by CCLC solicitors or financial counsellors. Includes advice given over the telephone. The client retains carriage of the matter.	Advice to a client regarding how to make a hardship application to the lender in order to vary their mortgage repayments.
Minor assistance	Work done following or during an advice session but without a formal legal aid application being submitted.	Casework of less than five hours. Minor assistance differs from advice as CCLC may review documents, draft written advice, complete forms, applications or pleadings and/or may take carriage of the matter.	Following advice to a client that they can make a hardship application to the lender to vary their mortgage repayments, the solicitor drafts the letter/ application to the lender.
Casework	Legal matters for which legal representation is provided through a grant of legal aid.	Legal assistance in which CCLC takes carriage of the matter and in which the assistance in total involves more than five hours' work. CCLC may open multiple cases for one client (e.g. if they are in default of a mortgage and a credit card and action is required in relation to both debts).	Drafting a defence and cross-claim for a mortgage repossession matter; applying for a stay of proceedings pending determination of a hardship application; or representing the client in Supreme Court proceedings.

Source: Definitions provided by Legal Aid NSW and CCLC.

[12] For minor assistance and casework, matters that were still open as at 31 October 2010 were also provided.

As mentioned earlier, the Legal Aid NSW advice data include advices provided by LawAccess NSW, whose operational statistics form part of the Legal Aid NSW corporate dataset. It is appropriate to include LawAccess NSW data on mortgage matters in the evaluation, as the agency has been established as the 'first port of call' for legal information and advice in NSW and also makes many direct referrals of potential MHS clients to Legal Aid NSW and CCLC. Furthermore, LawAccess NSW is listed as a principal point of contact on promotional materials for the MHS.

The **casework dataset** contains records for every Legal Aid NSW civil law casework matter recorded between 1 October 2008 and 30 September 2010. Legal Aid NSW defines 'casework' as matters for which legal representation is provided through a grant of legal aid.

CCLC data

Advice data

MHS program information is routinely collected and reported by CCLC in the CLCs' administrative system, called the Community Legal Service Information System (CLSIS). One major difference between CCLC and Legal Aid NSW data is that minor assistance is recorded with the casework data in the CCLC program data, whereas it is recorded with the advice data in the Legal Aid NSW program data. (Table 1 details how advice, minor assistance and casework are defined by CCLC.)

The CCLC advice dataset examined is the record of mortgage hardship advices for the period of the MHS from 1 July 2009 to 31 October 2010 (a period of 16 months). Among other things, the CCLC advice data recorded:

- the demographic characteristics of clients (age, gender, country of birth, Indigenous status, postcode, and source and level of income[13])
- the source of referral for the mortgage matter
- details of the mortgage matter (including reasons for hardship and lender type)
- the stage of enforcement at the time that the file was first opened.

CCLC used two different administrative systems for recording mortgage advices up to December 2009. After that, and for the remaining period under examination in this study, all relevant mortgage data were recorded on the one current system, CLSIS (see Box 1). This affects the *total* count of mortgage advice matters and clients in the program data for the first five months of the CCLC MHS (1 July 2009 to 30 November 2009), the total count of mortgage advice matters and, more importantly, the total count of mortgage *hardship* advice matters in the year prior to the MHS.

CCLC provided summarised monthly counts of mortgage-related advices for the 12 months prior to the MHS (1 July 2008 to 30 June 2009) and for the first 16 months of the MHS (1 July 2009 to 31 October 2010). However, the aforementioned changes to the ways in which mortgage advices were recorded mean that we cannot confidently use the pre-MHS mortgage advice data in our analyses or, for that matter, compare the number of mortgage hardship advices before and after the CCLC MHS commenced.

[13] 'Source of income' and 'level of income' are recorded in the CCLC program data, whereas Legal Aid NSW record 'employment status'.

Box 1. Changes to recording of CCLC advice data during the evaluation period

Prior to December 2009, CCLC staff could record mortgage-related advices on one of two electronic administrative systems/databases: CCLC's Credit-Debt Hotline (CDH) system and the CLSIS, which is the computerised system currently used by the majority of CLCs across Australia to record operational activities. CLSIS eventually replaced the CDH system; however, before July 2009 (when the MHS commenced), most CCLC mortgage advices were recorded on CDH. During October and November 2009, CCLC solicitors began recording most mortgage matters on CLSIS and, from December 2009, all mortgage matters were recorded on CLSIS.

Prior to May 2009, mortgage hardship matters were recorded on CDH in a general category with all other pre-court hardship matters rather than as mortgage matters. Therefore, mortgage advices, including mortgage hardship advices, are under-counted in the CCLC statistics for the period before May 2009, that is, in the year prior to the MHS.

In order to obtain a total count of the mortgage matters handled by CCLC in the MHS evaluation period, the overall count of CCLC matters was formed from both CDH and CLSIS records. However, CLSIS provides more detailed CCLC program information than CDH.

Casework data

CCLC defines 'casework' as legal assistance in which the agency takes carriage of the matter and provides five or more hours of assistance. 'Minor assistance' is a subcategory of casework in which less than five hours of assistance is provided (see Table 1).

CCLC provided data for each casework (and minor assistance) file opened for a mortgage hardship matter during the period of the MHS evaluation (1 July 2009 to 31 October 2010).

The CCLC casework data recorded:

- the demographic characteristics of clients (age, gender, country of birth, Indigenous status, postcode, and source and level of income[14])
- the source of referral for the mortgage matter
- details of the mortgage matter (including reasons for hardship and lender type)
- the stage of enforcement at the time that the file was first opened
- the number of hours spent working on the case
- the legal processes pursued (for example, defence and cross-claim)
- the non-legal (non-court) processes pursued (for example, hardship application to the lender)
- the outcome at the time the file was closed.

CCLC also provided counts of the total number of mortgage cases opened each month in the 12 months prior to the MHS (1 July 2008 to 30 June 2009) and the first 16 months of the MHS (1 July 2009 to 31 October 2010).

[14] 'Source of income' and 'level of income' are recorded in the CCLC program data, whereas Legal Aid NSW record 'employment status'.

Differences between the Legal Aid NSW and CCLC datasets

CCLC and Legal Aid MHS data are reported separately due to:

- differences in reporting periods
- differences in the ways in which mortgage matters and work types are defined by each agency
- differences in the data available from each agency
- factors that affected the recording of mortgage matters and, in particular, system changes that occurred within CCLC.

Reporting periods

The CCLC MHS commenced in July 2009, four months before it commenced at Legal Aid NSW, in October 2009.

Definition of matters

Mortgage hardship matters dealt with by Legal Aid NSW are categorised under the matter type 'mortgage' in its administrative data. This matter type may also include mortgage matters that are not 'hardship'-related, such as advice on loan exit fees. By contrast, CCLC has a separate matter category called 'mortgage hardship', which includes only those matters that relate to a client defaulting on a home loan and the legal process that follows. This is a 'tighter' category than that used by Legal Aid NSW.

Definition of work types

Both CCLC and Legal Aid NSW provide advice, minor assistance and casework support to clients. For both organisations, advice is the least intensive form of legal assistance, minor assistance is more intensive and casework is the most intensive. However, as detailed in Table 1, advice, minor assistance and casework are each defined somewhat differently by CCLC and Legal Aid NSW. In addition, assistance provided by one agency may not directly equate (in terms of work) to similarly labelled work of the other agency, and the level of assistance provided also will differ from one minor assistance to the next, or from one casework matter to the next, irrespective of which agency assisted the client. There is even greater scope for variation in work provided for casework matters. CCLC MHS assistance also differs from that of Legal Aid NSW in that the work of in-house financial counsellors forms part of the CCLC advice data.[15]

Data available from each agency

The data provided by Legal Aid NSW and CCLC for this study were comprehensive and detailed; however, identical information was not available from each agency. For this reason, treatment of the data and the subsequent analyses varied depending upon the agency examined. While the presentation of material follows a similar order in both the Legal Aid NSW and the CCLC chapters, there are differences in the information reported.

Historical recording of mortgage matters

As detailed in Box 1, there were wholesale changes in the administrative systems of CCLC that impacted upon the recorded counts of mortgage matters and, in particular, the recorded counts of mortgage hardship matters. These differences also need to be kept in mind in attempting to compare the MHS data of the two agencies.

[15] While CCLC financial counsellors also conducted extensive casework, only the main mortgage file conducted by the solicitor with the carriage of the matter was counted for the purposes of this evaluation. The work performed by the financial counsellors may, however, have contributed to the number of case hours recorded for particular clients.

Follow-up interviews with MHS clients

Due to limited resources and time, only a small number of follow-up telephone interviews were conducted with MHS clients. A total of 38 MHS clients agreed to be interviewed: 15 assisted by Legal Aid NSW and 23 assisted by CCLC. The views of this small sample of clients assisted by the MHS, while interesting and perhaps informative, cannot necessarily be taken to be representative. People who could be contacted and agreed to be interviewed may differ in their views and experiences from people who did not. The method used for selecting the sample of MHS clients for interview is described in the chapter 'Client follow-up survey'.

The interview questions were designed by the Foundation with input from MHS staff. The interview tool was pilot-tested by solicitors at CCLC before it was finalised (Appendix A). Respondents were asked:

- whether they still owned their home and, if so, about current mortgage repayments and any other debts or borrowings
- about their current circumstances, including where they were living
- whether they now felt 'more in control' or 'less in control' of their financial situation
- their views of the assistance provided by the MHS, including if and how it may have assisted them
- what they would now do if they faced further mortgage difficulties.

Each agency (Legal Aid NSW and CCLC) conducted the follow-up interviews with its own clients. However, the interviews were conducted by a solicitor other than the one who had provided the original assistance.

The interview questions were made available on Survey Monkey, a secure, password-enabled web-based survey tool. Interviewers were able to record responses directly onto Survey Monkey. Completed surveys were accessed and analysed by the Foundation.

3. Mortgage Hardship Service: Legal Aid NSW

This chapter reports on the operation of the MHS at Legal Aid NSW during the period of evaluation. In particular, it examines:

- the number of mortgage-related advice, minor assistance and casework matters handled
- whether there is any evidence of an increase in legal assistance provided for mortgage matters since the MHS commenced
- the characteristics of MHS clients and their mortgage issues
- whether the Legal Aid MHS was able to reach and assist clients at early stages of mortgage stress
- the outcomes for clients (including whether they kept or lost their home).

The information in this chapter is based on the Legal Aid NSW program data for the MHS as well as more general Legal Aid NSW corporate data. These datasets are described in detail in the 'Methodology' section of 'The evaluation' chapter.

Mortgage matters: first 12 months of the MHS

The MHS commenced operating at Legal Aid NSW on 1 October 2009. Legal Aid NSW corporate data recorded 1069 mortgage matters dealt with during the first 12 months of the MHS (Table 2), which included:

- 142 matters dealt with by casework (an average of around 12 per month)
- 184 matters dealt with by minor assistance (an average of 15 per month)
- 480 matters provided with advice (an average of 40 per month)
- an additional 263 matters assisted by LawAccess NSW through the provision of telephone advice or information (an average of around 22 per month).[16]

[16] For the full 13 months of the Legal Aid MHS evaluation, that agency's corporate data show that 144 mortgage matters were dealt with by casework, 209 were provided with minor assistance and 810 were provided with legal advice.

Table 2. Legal Aid NSW: type of legal assistance provided for mortgage matters in the first 12 months of the MHS (1 October 2009 to 30 September 2010)

Legal Aid NSW mortgage matters	*Oct 2009 to Sept 2010 (12 months)*	
Type of assistance	*N*	*Average per month*
Casework	**142**	**11.8**
Minor assistance[a]	**184**	**15.3**
Advice	**743**	**61.9**
LawAccess NSW	263	21.9
Legal Aid NSW	480	40.0
Total assistance	**1069**	**89.1**

a Twenty-nine mortgage matters provided with minor assistance were recorded as also receiving advice. Each of these matters was counted once as a minor assistance.

Note: Mortgage matters recorded as 'primary' or 'secondary' matters are included in this table. There was no significant difference in the proportion of mortgage matters that were recorded as 'primary' or 'secondary' in the 12-month periods before and after the commencement of the MHS.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

Number of mortgage matters prior to and since the MHS began

Table 3 examines the number of mortgage-related matters by type of assistance provided by Legal Aid NSW (and LawAccess NSW) in the 12-month periods before and after the commencement of the MHS.

Table 3. Legal Aid NSW: type of legal assistance provided for mortgage matters in the 12-month periods before and after the commencement of the MHS

Legal Aid NSW mortgage matters	*Pre-MHS*	*Post-MHS*	
	Oct 08 to Sept 09 (12 months)	*Oct 09 to Sept 10 (12 months)*	
Type of assistance	*N*	*N*	*Difference*
Casework	**193**[a]	**142**	**–26%**
Minor assistance	**85**	**184**	**+116%**
Advice	**644**	**743**	**+15%**
LawAccess NSW	478	263	–45%
Legal Aid NSW	166	480	+189%

a See 'Casework matters' section for an explanation of why the number of mortgage matters assisted by way of casework was higher in the pre-MHS period.

Note: Mortgage matters recorded as 'primary' or 'secondary' matters are included in this table. There was no significant difference in the proportion of mortgage matters that were recorded as 'primary' or 'secondary' in the 12-month periods before and after the commencement of the MHS.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

Regarding the 12 months following the commencement of the MHS, we note the following:

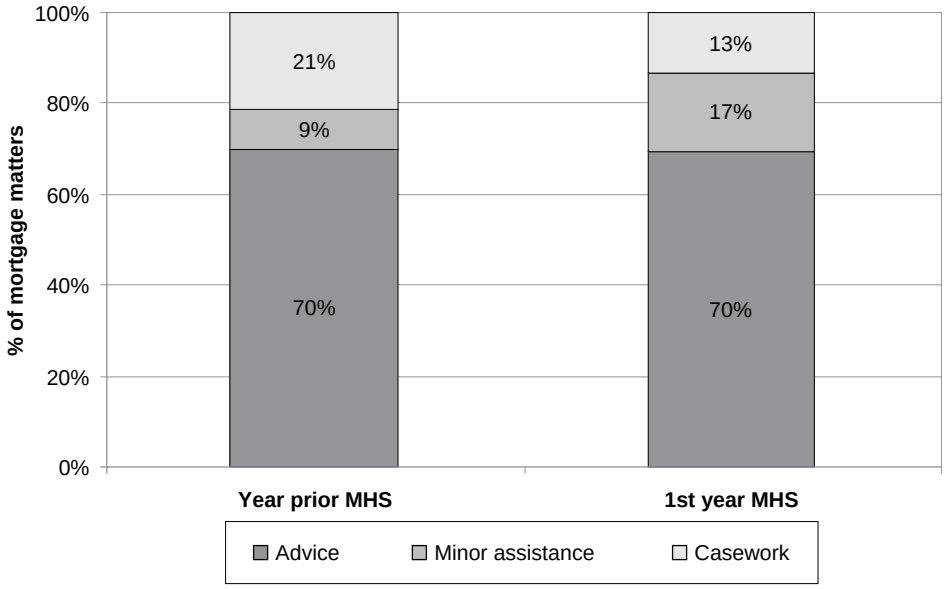
- a 26 per cent reduction in mortgage casework matters (a possible explanation for this finding is given in the following section)
- a 116 per cent increase in minor assistance for mortgage matters
- a 15 per cent increase in mortgage advices provided by Legal Aid NSW and LawAccess NSW
- a 45 per cent decrease in (telephone) advices for mortgage matters provided by LawAccess NSW

- a 189 per cent increase in mortgage advices (telephone, general counter and face-to-face) provided by Legal Aid NSW.[17]

In terms of the different types of assistance provided by Legal Aid NSW (and LawAccess NSW) before and after the commencement of the MHS (Figure 1), it may be noted that advice continued to represent the most common type of assistance provided in relation to mortgage matters (that is, 70% of all assistance both before and after the MHS commenced). In the period following the commencement of the MHS:

- 17 per cent of all mortgage matters received minor assistance — this was up from nine per cent in the pre-MHS period
- the proportion of casework matters dropped from around 21 per cent to 13 per cent of all assistance.

Figure 1. Legal Aid NSW and LawAccess NSW: type of legal assistance for mortgage matters in the 12-month periods before and after the commencement of the MHS



Source: Legal Aid NSW corporate data (October 2008 to September 2010).

Mortgage matters as a proportion of civil law work

Mortgage matters are just one of many legal matter types dealt with under Legal Aid NSW's civil law practice.[18] In broad terms, mortgage matters make up less than three per cent of all civil law matters for which Legal Aid NSW (and LawAccess NSW) provides legal advice or minor assistance and eight per cent of all Legal Aid NSW's civil law casework.[19]

Table 4 shows that the proportion of mortgage-related casework was slightly less in the 12-month period after the MHS commenced (see 'Casework matters' section below for possible reasons). On the other hand, mortgage matters made up a higher proportion of civil law matters aided by minor assistance following the introduction of the MHS; in fact, the percentage almost doubled, rising from around two to around four per cent. For the periods before and during the operation of the

[17] No comment is made on any change in the *quantum sum* of legal services delivered by Legal Aid NSW and LawAccess NSW in relation to mortgage matters given that advice, minor assistance and casework differ in terms of the amount and intensity of legal assistance provided. These also differ in terms of work performed on a case-by-case basis.

[18] Other civil law matter categories include: accidents, injury & compensation, consumer issues, debt & credit, employment, government matters, housing, human rights & discrimination, immigration & refugees, mental health, neighbours, wills, estates & guardianship.

[19] Based on Legal Aid NSW corporate data for July 2008 to October 2010 (includes LawAccess NSW data).

MHS, the proportion of advice work associated with mortgage matters remained roughly the same, at around three per cent of all civil law advice matters.[20]

Table 4. Legal Aid NSW: mortgage matters as a proportion of all civil law matters, by type of legal assistance, in the 12-month periods before and after the commencement of the MHS

Legal Aid NSW mortgage matters as a proportion of all civil law matters	*Pre-MHS*	*Post-MHS*
	Oct 08 to Sept 09 (12 months)	*Oct 09 to Sept 10 (12 months)*
Type of assistance	***%***	***%***
Casework	9.5[a]	7.8
Minor assistance	1.9	3.9
Advice	2.7	3.0

a See 'Casework matters' section for an explanation of why the proportion of mortgage matters assisted by way of casework was higher in the pre-MHS period.

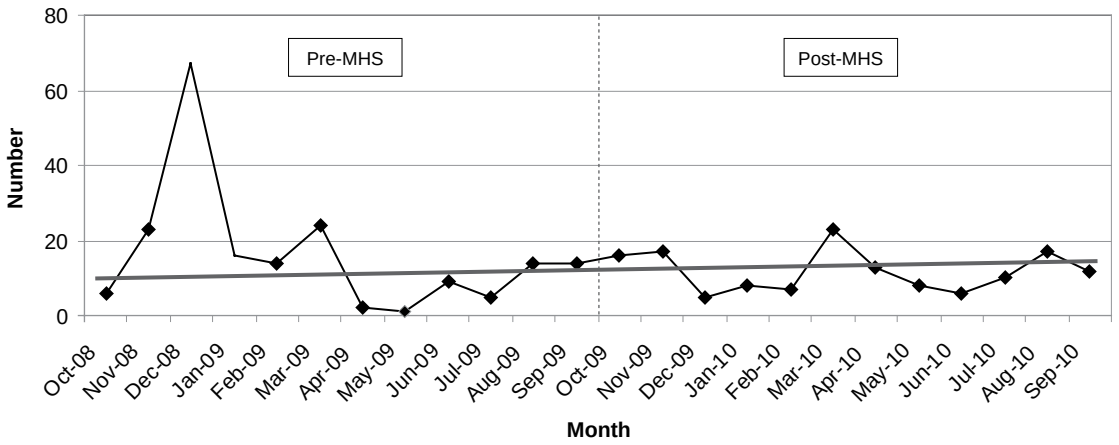
Source: Legal Aid NSW corporate data (October 2008 to September 2010).

Casework matters

Casework involves a grant of legal aid for a solicitor to run a legal matter for a client. Compared to minor assistance and advice, it involves the highest level of legal assistance provided by Legal Aid NSW.

Figure 2 shows the number of mortgage casework matters per month for the 12 months prior to the introduction of the MHS (left of the vertical dotted line) and for the first 12 months of the MHS (right of the vertical dotted line). Legal Aid NSW dealt with 142 mortgage casework matters in the first 12 months of the MHS, 51 matters fewer than in the preceding 12 months. However, Figure 2 also shows a large spike in the number of mortgage casework matters in December 2008 (67 matters), which skews the 12-month total and average monthly figures for the 12 months prior to the MHS. Nonetheless, even given the inordinate number of mortgage casework matters recorded for December 2008, there was *no* statistically significant change (up or down) in the monthly number of mortgage casework matters across the 24-month period.[21]

Figure 2. Legal Aid NSW: casework for mortgage matters in the 12-month periods before and after the commencement of the MHS



Note: The trend line is the Sen's estimate of slope. The trend is not statistically significant.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

[20] The number of advices for all Legal Aid NSW civil law matters dropped by one per cent from the 12 month pre-MHS period to the 12-month post-MHS period.

[21] Sen's slope estimate with Mann-Kendall statistic (test Z = –0.45, not significant at 0.05 level) (*Sen's slope estimator* 2011).

Information provided by Legal Aid NSW suggests that the aberrantly high number of mortgage casework matters in December 2008 was likely the result of a large consumer credit law project undertaken by Legal Aid NSW, introduced in response to a home loan scam affecting borrowers of one particular major bank. The bank helped to identify victims of the scam and referred them to Legal Aid NSW for legal assistance. Legal Aid NSW employed one additional solicitor plus an additional paralegal to attend to these matters. Most cases were recorded in the database in December 2008, as evidenced by the spike. However, as the project ran from late 2008 until April 2010, the number of casework matters recorded for other months in this period may also be elevated.[22]

Were it not for this spike, the figures suggest that the number of mortgage-related casework matters dealt with by Legal Aid NSW in the first 12 months of the MHS would have been similar to that of the 12 months preceding the MHS. In fact, an adjusted figure for the period prior to the MHS that attempts to correct for the aberrant December 2008 number (based on the remaining 11 months) gives an average of 11.5 casework matters per month, which is similar to the MHS average of 11.8. These figures suggest that there was *no change* (increase or decrease) in the number of mortgage casework matters handled by Legal Aid NSW after the MHS commenced.

Minor assistance matters

Minor assistance is additional assistance provided by a Legal Aid NSW solicitor during or following an advice session. It includes the solicitor drafting letters or other documents, or making telephone calls on behalf of clients. Unlike casework, minor assistance does not involve a grant of legal aid, is usually less time intensive and is a form of legal assistance that can aid early intervention.

Table 5 shows that there was a 116 per cent increase in the number of mortgage matters given minor assistance by Legal Aid NSW in the 12 months following the commencement of the MHS compared to the number for the 12 months pre-MHS. A new category of minor assistance was recorded by Legal Aid NSW after the MHS commenced: ADR assistance, which is minor assistance provided in ADR processes, including the preparation of hardship applications to FOS or COSL. Of the 23 instances of ADR assistance, most were provided in the months of July, August and September 2010. Even without counting ADR assistances, the number of mortgage matters given minor assistance by Legal Aid NSW increased by 89 per cent following the introduction of the MHS.

Table 5. Legal Aid NSW: minor assistance for mortgage matters in the 12-month periods before and after the commencement of the MHS

Legal Aid NSW mortgage matters	***Pre-MHS***	***Post-MHS***	
	Oct 08 to Sept 09 (12 months)	***Oct 09 to Sept 10 (12 months)***	
Type of minor assistance	***N***	***N***	***Difference***
Minor assistance[a]	85	161	+89%
ADR assistance	0	23	n/a
Total minor assistance	**85**	**184**	**+116%**

a 'Minor assistance' includes 28 matters provided with minor assistance *and* advice, all in the pre-MHS period.

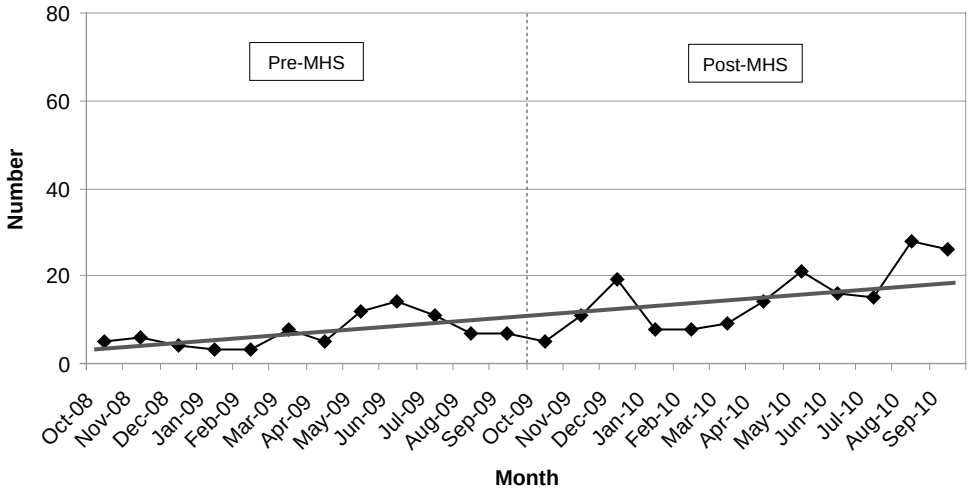
Source: Legal Aid NSW corporate data (October 2008 to September 2010).

Figure 3 shows the monthly pattern of mortgage matters dealt with by minor assistance for the 12-month periods before and after the introduction of the MHS. The trend line indicates a statistically

[22] The project ran from late 2008 to April 2010. There were some 150 applications for grants of legal aid under this project (personal communication 14 February 2011, Legal Aid NSW).

significant increase across the 24-month period,[23] particularly towards the end of the post-MHS period, in which five of the six highest monthly values are found.

Figure 3. Legal Aid NSW: minor assistance for mortgage matters in the 12-month periods before and after the commencement of the MHS



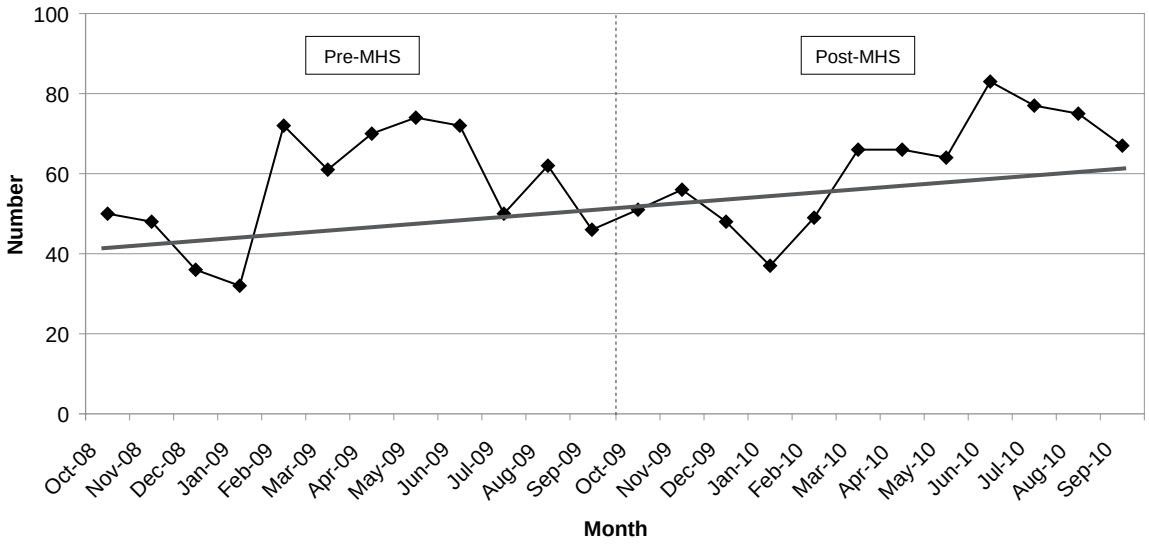
Note: The trend line is the Sen's estimate of slope. The trend is statistically significant at the 0.05 level.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

Advice matters

An advice is legal advice provided to a client by a Legal Aid NSW solicitor (or by LawAccess NSW, as it forms part of this dataset). Advice is the least intensive level of legal assistance provided by Legal Aid NSW. Advices for mortgage matters include telephone and face-to-face advice, and a new category, ADR advice, which includes advice about preparing hardship applications to FOS or COSL.[24] The information displayed in Figure 4 and Table 6 also includes instances of information and advice provided by LawAccess NSW to people with a mortgage problem.

Figure 4. Legal Aid NSW: advice for mortgage matters in the 12-month periods before and after the commencement of the MHS



Note: The trend line is the Sen's estimate of slope. The trend is statistically significant at the 0.05 level.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

[23] Sen's slope estimate with Mann-Kendall statistic (test Z = 4.06, significant at 0.05 level) (*Sen's slope estimator* 2011).

[24] The category 'ADR advice' appears in the statistics only for the latter part of 2010. This may indicate a change in the way matters were recorded rather than a change in the nature of the advice given following the introduction of the MHS.

Table 6. Legal Aid NSW: advice for mortgage matters in the 12-month periods before and after the commencement of the MHS

Legal Aid NSW mortgage matters	*Pre-MHS*	*Post-MHS*	
	Oct 08 to Sept 09 (12 months)	*Oct 09 to Sept 10 (12 months)*	
Type of advice	*N*	*N*	*Difference*
Telephone advice	**501**	**308**	**–38.5%**
LawAccess NSW	478	263	–45%
Legal Aid NSW	23	45	+96%
ADR advice	**0**	**44**	**n/a**
Other[a] advice	**143**	**391**	**+173%**
LawAccess NSW	n/a	n/a	n/a
Legal Aid NSW	143	391	+173%
Total advice	**644**	**743**	**+15%**

a 'Other advice' includes general counter and face-to-face advice for Legal Aid NSW. LawAccess NSW does not provide counter or face-to-face advice or information services.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

Figure 4 shows the number of advices by month for the 12 months prior to the MHS and for the first 12 months of the service. There was a statistically significant increase in the monthly number of mortgage advices across the 24-month period, as indicated by the upward aspect of the trend line.[25]

Table 6 indicates that there was an overall increase of 15 per cent in the number of mortgage advices provided by Legal Aid NSW (and LawAccess NSW) in the 12 months following the commencement of the MHS.[26] It also provides a breakdown of the advice figures for the periods before and during the operation of the MHS by the type of advice provided. Analysed in this way, a number of changes in the provision of advice services under the MHS become evident, including a large decrease (39%) in the total number of telephone advices provided for mortgage matters. Specifically:

- LawAccess NSW telephone advices dropped by close to a half (45%)
- at the same time, Legal Aid NSW telephone advices almost doubled (up 96% to 45 matters)
- there was a large increase (173%) in the number of face-to-face and general counter advices provided by Legal Aid NSW (LawAccess NSW does not provide face-to-face or general counter advice).

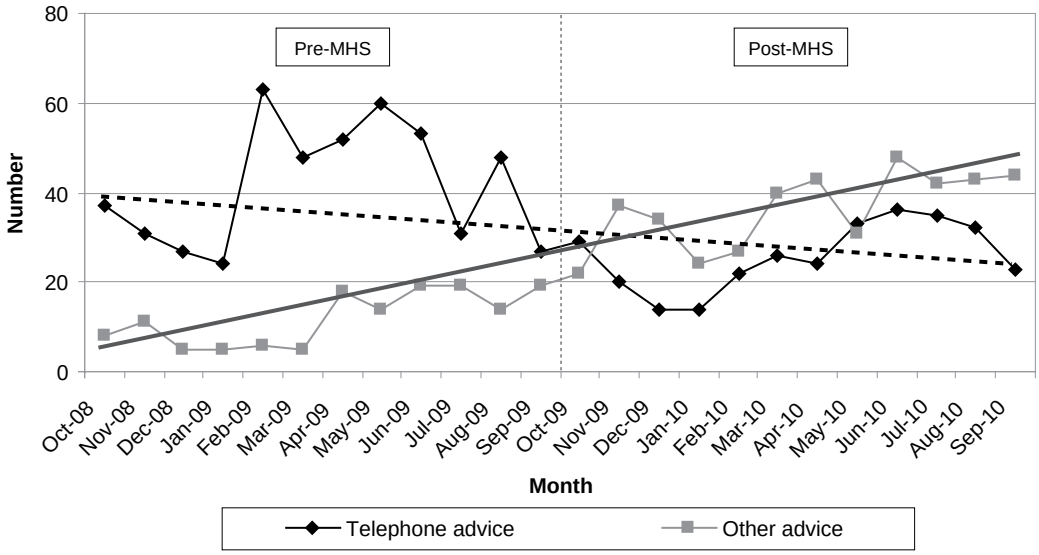
The prominent changes in the nature of mortgage advice services as a result of the introduction of the MHS are evident when the monthly advice figures are plotted, as in Figure 5. The 'scissor' pattern in this graph — more clearly seen in the estimated trend lines — reflects the progressive decrease in telephone advices and the corresponding increase in face-to-face (and other) advices under the MHS. In fact, the increase in the number of non-telephone (that is, other) advices was statistically significant over the 24-month period, whereas the decrease in the number of telephone advices over the same period just failed to reach statistical significance.[27]

25 Sen's slope estimate with Mann-Kendall statistic (test Z = 1.96, significant at 0.05 level) (*Sen's slope estimator* 2011).

26 It should be noted that if a client was assisted first by LawAccess NSW and then a second time by Legal Aid NSW they will be counted twice in these figures.

27 Sen's slope estimate with Mann-Kendall statistic (non-telephone (other) advices: Z = 5.35, significant at 0.05 level; telephone advices: Z = –1.64, not significant at 0.05 level) (*Sen's slope estimator* 2011).

Figure 5. Legal Aid NSW: advice for mortgage matters (telephone and other advice) in the 12-month periods before and after the commencement of the MHS



Note: The dashed trend line is the Sen's estimate of slope for telephone advices; the solid trend line is the Sen's estimate of slope for non-telephone (i.e. other) advices. The trend for telephone advices is not statistically significant; the trend for non-telephone advices is statistically significant at the 0.05 level.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

While there is evidence of this trend taking place even before the MHS began operating, the MHS does appear to have brought about an elevated rise in the monthly number of advices delivered by means other than telephone. In fact, these figures would suggest that, once the MHS was operating and formal referral protocols were in place, LawAccess NSW was providing fewer telephone advices but referring more people to the dedicated mortgage hardship services of Legal Aid NSW; and Legal Aid NSW was providing more face-to-face advices to clients with mortgage problems.

This picture becomes clearer when information concerning the office providing the advice is presented (Table 7). While LawAccess NSW continued to provide telephone information and advices on mortgage matters throughout the operation of the MHS, there was a substantial shift to advices provided by Legal Aid NSW, particularly at its Parramatta and Gosford offices.

Table 7. Legal Aid NSW: advices for mortgage matters, by office location, in the 12-month periods before and after the commencement of the MHS

Legal Aid NSW mortgage matters	***Pre-MHS***	***Post-MHS***
	Oct 08 to Sept 09 (12 months)	***Oct 09 to Sept 10 (12 months)***
Office (advice provider)	***N (%)***	***N (%)***
LawAccess NSW	478 (74.2)	263 (35.4)
MHS Parramatta Legal Aid office	33 (5.1)	160 (21.5)
MHS Gosford Legal Aid office	9 (1.4)	128 (17.2)
All other Legal Aid offices/services[a]	124 (19.3)	192 (25.8)
Total advice	**644 (100.0)**	**743 (100.0)**

a 'All other Legal Aid offices/services' includes 21 mortgage matters whose location (office) was not recorded.

Source: Legal Aid NSW corporate data (October 2008 to September 2010).

As there were two dedicated MHS solicitors at Parramatta and Gosford, it is not surprising to see a considerable increase in the number of mortgage matters advices provided by these two offices across the evaluation period. The increase in mortgage advices was in the order of 400 per cent for the Parramatta office and 1300 per cent for the Gosford office.

An increased number of advices was also noted more generally for Legal Aid NSW across its offices after the MHS commenced. Leaving aside the Gosford and Parramatta offices, there was a 55 per cent increase in mortgage matters advices provided by all other Legal Aid NSW offices and services. In particular, both the Civil Litigation branch (located at head office, Sydney) and the Blacktown office recorded sizeable increases in the number of advices for mortgage matters provided after the commencement of the MHS.

Clients

In this section we consider the characteristics of MHS clients assisted by Legal Aid NSW, examine whether clients were reached at an early stage of mortgage stress and explore the outcomes for clients following MHS assistance.

Legal Aid NSW's program data are drawn from evaluation forms completed for a sample of 287 individual clients provided with legal assistance during the first 13 months of the MHS. These are the clients who were assisted by the two Legal Aid MHS solicitors, as well as by other Legal Aid civil law solicitors who assisted with the Supreme Court duty roster and MHS outreach. An evaluation form was completed for every advice, minor assistance and casework client, even though the amount of work undertaken for each client may have varied considerably.[28] In our sample of 287 MHS clients, 133 clients received advice only (46%), 101 received minor assistance (35%) and 53 received casework (19%).

Referrals to the MHS

The program data indicate that more than one-third (34%) of the Legal Aid MHS clients sampled were referred by external financial counsellors (Table 8). This may reflect the work undertaken by the two MHS solicitors to build relationships with local financial counsellors, to encourage counsellors to refer clients to the MHS and to enable solicitors to refer clients back to financial counsellors. Half of the Gosford and one-fifth of the Parramatta MHS clients in the sample were referred by financial counsellors.

The courts and ADR agencies referred 15 per cent of sampled clients, while LawAccess NSW and other Legal Aid NSW offices each referred seven per cent. Family members and friends were the source of around six per cent of referrals. Few clients came *directly* as a result of seeing publicity about the MHS, although this could mean that mortgage hardship clients came to Legal Aid NSW indirectly, after first seeing publicity about the service and then contacting LawAccess NSW (or another referral source) before being referred on to the MHS of Legal Aid NSW.

[28] While many advice clients were assisted on a single occasion, some casework clients were assisted over many months. The 'Methodology' section in 'The evaluation' chapter details the information collected and the analyses applied to the program records.

Table 8. Legal Aid NSW MHS clients: source of referral (sampled clients n=287)

Legal Aid NSW MHS clients		
Source of referral	***N***	***%***
Financial counsellor	91	34.5
Court/ADR[a]	39	14.8
LawAccess NSW	19	7.2
Other Legal Aid NSW office/service	19	7.2
Family/friend	16	6.1
Community group	7	2.7
Internet/phonebook	7	2.7
CLC	6	2.3
Government other	5	1.9
Lender	4	1.5
Program/service publicity	2	0.8
Other (not specified)	49	18.6
Total clients	**264**	**100.0**

a 'Court/ADR' includes 2 referrals made by court sheriffs.

Note: Source of referral was not recorded for 23 clients (8%).

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Client characteristics

This section provides a demographic profile of the sample of MHS clients assisted by Legal Aid NSW. Differences in the demographic characteristics of clients assisted by way of advice compared to those assisted by minor assistance or casework are reported when the data allowed such a breakdown and when they were found to exist.[29]

Gender

Men and women were equally represented among the Legal Aid MHS clients sampled (51% women and 49% men). When examined by type of assistance, females made up a greater proportion of advice clients (56%) but a smaller proportion of minor assistance (47%) and casework clients (48%).

Age

One-third (34%) of sampled clients was aged 40 to 49, with close to one-third (29%) aged 50 to 59 years at time of first assistance (Table 9). These figures broadly reflect a period of life when people are more likely to own their home. Other Foundation research suggests that people in these age ranges are likely to experience hardships such as relationship breakdowns, employment problems and illness (Coumarelos, Wei & Zhou 2006), which can cause difficulties in paying off a home loan. Notably, the proportion of clients in our sample over the age of 60 (15.3%) appears to be consistent with or higher than the expected proportion of older homeowners in Australia with a mortgage on their property (Kryger 2009, Table 3;[30] Australian Bureau of Statistics 2001).

[29] Breakdowns by type of assistance are less meaningful or useful when there are many response categories, as is the case for recorded variables such as 'country of birth' or 'main language spoken', when there is small recorded number for the majority of response categories, or when there is a high number of missing values.

[30] In Kryger 2009, Table 3, the age categories used for comparison were 55–64, 65–74, and 75 and over. The proportion of Australian householder reference people with a mortgage who were older than 54 years was estimated to be around 15.5 per cent.

Table 9. Legal Aid NSW MHS clients: age profile (sampled clients n=287)

Legal Aid NSW MHS clients			
Age (grouped)	***N***	***%***	***Cum. %***
20 to 29	11	3.9	3.9
30 to 39	51	18.2	22.1
40 to 49	94	33.6	55.7
50 to 59	81	28.9	84.6
60 to 69	37	13.2	97.9
70 and over	6	2.1	100.0
Total clients	**280**	**100.0**	

Note: Date of birth was not recorded or disclosed for 7 clients (2.4%).

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Country of birth (and main language spoken at home)

Nearly 60 per cent of sampled clients were born in Australia, with the remaining 41 per cent born in one of 44 other countries (Table 10). More than one-third (36%) were born in non English-speaking countries. Minor assistance clients were more likely than advice or casework clients to be born in Australia (62% of minor assistance clients compared to 55% of advice clients and 53% of casework clients).

Table 10. Legal Aid NSW MHS clients: most common countries of birth (sampled clients n=287)

Legal Aid NSW MHS clients		
Country of birth	***N***	***%***
Australia	164	59.0
Lebanon	13	4.7
UK	11	4.0
Philippines	9	3.2
India	7	2.5
Fiji	5	1.8
Samoa	6	2.2
Sri Lanka	5	1.8
Egypt	5	1.8
Iran	4	1.4
Other	49	18.2
Total clients	**278**	**100.0**

Note: Country of birth was not recorded for 9 clients (3.1%).

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

One-third of sampled clients indicated that they spoke a language other than English at home (language was not specified). Minor assistance clients were less likely to speak a language other than English at home (27% of minor assistance clients compared to 34% of advice clients and 36% of casework clients).

Indigenous status

There were nine people in our sample (3.1%) recorded as Aboriginal Australians.[31] This is higher than the proportion of people of Aboriginal and Torres Strait Islander backgrounds in the general NSW population (2.2% at the time of the 2006 Census).

[31] Aboriginal and Torres Strait Islander status was not recorded for 22 clients (7.7%).

Employment status

As Table 11 indicates, 58 per cent of sampled clients were recorded as not being employed when they first approached Legal Aid NSW for assistance with their mortgage matter. However, in this sample, unemployment was much higher among casework clients (72%) than it was among advice clients (52%) and minor assistance clients (59%).

Table 11. Legal Aid NSW MHS clients: employment status, by type of assistance (sampled clients n=287)

Legal Aid NSW MHS clients	*Advice only*	*Minor assistance*	*Casework*	*All clients*
Employment status	*N (%)*	*N (%)*	*N (%)*	*N (%)*
Full-time	44 (33.8)	23 (23.0)	10 (18.9)	77 (27.2)
Part-time or casual	18 (13.8)	18 (18.0)	5 (9.4)	41 (14.5)
No employment	68 (52.3)	59 (59.0)	38 (71.7)	165 (58.3)
Total clients	**130 (100.0)**	**100 (100.0)**	**53 (100.0)**	**283 (100.0)**

Note: Employment status was not recorded for 3 advice clients and 1 minor assistance client.

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Forty-eight per cent of these clients were recorded as receiving Centrelink benefits.[32] Around half who received advice (46%) or minor assistance (52%) were on Centrelink benefits, compared to around two-thirds (63%) of clients who received casework. Of the unemployed clients in the sample, 26 per cent indicated that they were not receiving Centrelink benefits, and 67 per cent indicated that they were.[33] Almost one-quarter (23%) of all sample clients engaged in some level of employment were recorded as receiving a Centrelink benefit, presumably a carer's payment, disability pension or similar.

Geographic distribution of clients

To reach people in the early stages of mortgage hardship, the MHS took steps to make sure the service was accessible to people at risk of mortgage default. As we have seen, one strategy used to achieve this was to place the two specialist MHS solicitors in Legal Aid NSW offices that were located in close proximity to mortgage stress hotspots: areas independently identified (by Fitch Ratings) as having high levels of mortgage default. As at September 2008, the top five 'worst performing regions' for mortgage defaults in NSW were identified as Fairfield-Liverpool, Gosford-Wyong, Outer South Western Sydney, Outer Western Sydney and Newcastle (personal communication July 2009, Legal Aid NSW). The two Legal Aid MHS solicitors were based at the Gosford and Parramatta offices.

The Legal Aid MHS clients in our sample came from 47 different LGAs across NSW (Table 12). This information is based on the residential postcode of clients at the time assistance was first sought.[34] The largest number of clients lived in Wyong (17%), with 13 per cent residing in Gosford, 12 per cent in Blacktown and nine per cent in Penrith. Together, these four LGAs accounted for over half (51%) of clients. The high number of clients from these areas may reflect their standing as mortgage stress

[32] Information on benefits was not stated for 16 sampled clients (5.6%).

[33] Information on benefits was not stated for 12 of the clients recorded as being unemployed (7.3%).

[34] For the majority of MHS clients, the property at risk of repossession was also their home. As indicated in the section 'Stage of enforcement by location of MHS service' below, only around seven per cent of Legal Aid MHS clients were at Stage 5 or 6, meaning that they had already lost the property and were no longer living in it.

hotspots, vindicating the placement of the MHS in the Gosford and Parramatta offices. However, as other research has shown, opening a service in a new location can have a 'honey pot' effect, as the service becomes more accessible to people with legal problems living in close proximity to it. This often leads to higher levels of 'expressed' legal need.[35]

Table 12. Legal Aid NSW MHS clients: place of residence — LGAs with five or more clients (sampled clients n=287)

Legal Aid NSW MHS clients				
Place of residence (LGA)	***Rank***	***N***	***%***	***Cum. %***
Wyong	1	50	17.4	17.4
Gosford	2	36	12.5	29.9
Blacktown	3	34	11.8	41.8
Penrith	4	25	8.7	50.5
Parramatta	5	11	3.8	54.3
Baulkham Hills	6	10	3.5	57.8
Greater Taree	eq. 7	9	3.1	61.0
Liverpool	eq. 7	9	3.1	64.1
Campbelltown	eq. 9	8	2.8	66.9
Fairfield	eq. 9	8	2.8	69.7
Holroyd	11	7	2.4	72.1
Bankstown	eq. 12	6	2.1	74.2
Blue Mountains	eq. 12	6	2.1	76.3
Auburn	eq. 14	5	1.7	78.0
Hawkesbury	eq. 14	5	1.7	79.8
32 other LGAs[a]	16–47	58	20.2	100.0
Total clients		**287**	**100.0**	

a Each of these 32 LGAs had 4 or fewer MHS clients.

Note: Postcode was not recorded for 4 clients.

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Type of lender

In addition to information about the clients, solicitors recorded details of their mortgage matter, including the lender type. While only one lender was recorded for each client, some clients may have had legal issues with more than one party (for example, a lender and a mortgage broker).

From Table 13 it can be seen that the majority (63%) of sampled clients had a loan with a bank lender (that is, an Authorised Deposit-taking Institution, or ADI).[36] However, the proportion of advice clients (63%) and minor assistance clients (67%) with a bank lender was noticeably higher than that of casework clients (53%). Forty-seven per cent of sampled casework clients had their mortgage with a non-bank lender. In contrast, only around one-third of sampled advice and minor assistance clients had their mortgage with a non-bank lender.

[35] A good example was the opening of the Far West CLC in 2000 (the most recently opened generalist CLC in NSW). In 1999, residents from this region recorded just 612 legal inquiries to Legal Aid NSW and CLCs for the year. In 2000, when the Far West CLC opened, the combined number of legal inquiries to these agencies rose to 1190 — an increase of 94 per cent. In the following year, the combined number of legal inquiries to these agencies was over 1600 — up by over 170 per cent from the 1999 (pre–Far West CLC) figure (Law and Justice Foundation 2009).

[36] For more information about ADIs, see Australian Prudential Regulation Authority 2001.

Table 13. Legal Aid NSW MHS clients: type of lender (sampled clients n=287)

Legal Aid NSW MHS clients	*Advice only*	*Minor assistance*	*Casework*	*All clients*
Type of lender	*N (%)*	*N (%)*	*N (%)*	*N (%)*
Bank	83 (63.4)	66 (67.3)	28 (52.8)	177 (62.8)
Non-bank[a]	47 (35.9)	32 (32.7)	25 (47.2)	104 (36.9)
Total clients	**131 (100.0)**	**98 (100.0)**	**53 (100.0)**	**282 (100.0)**

a 'Non-bank' includes the category 'mortgage originator'.

Note: Lender type was not recorded for 2 advice clients and 3 minor assistance clients.

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Property value, loan balance and amount in arrears

Information was recorded on the value of the mortgaged property, the loan balance and the amount the client was in arrears.

Advice only clients

The figures here are provided with reservations, because the information was available for only around 75 per cent of the sample of advice only clients. That noted:

- the average value of mortgaged property was about $596 500 (median property value — the 'mid' value, with half of all values above it and half of all values below it — was $400 000)
- the average loan balance was around $470 000 (median: $319 000)
- the average amount in arrears was $11 100 (median: $3000).

Casework and minor assistance clients

Information was recorded for around 84 per cent of the sample of casework and minor assistance clients. That noted:

- the average value of the mortgaged property was about $448 650 (median: $375 000)
- the average loan balance was around $344 000 (median: $299 000)
- the average amount by which casework and minor assistance clients were in arrears was around $89 400 (median: $10 000).

In summary, the average property value was similar for advice only and casework clients. However, casework clients, on average, were more in arrears than advice only clients (that is, $10 000 compared to $3000).

Reasons for hardship

'Hardship' refers to the circumstances experienced by a client (such as job loss, illness or family breakdown) that have contributed to their mortgage problem and that may form the basis of a mortgage hardship application to a lender, the Supreme Court or an ADR body such as FOS or COSL. Hardship reasons were documented for clients who made a formal hardship application. The Foundation also requested that MHS solicitors document client hardships for the purpose of this evaluation.[37]

[37] Up to three hardships could be recorded for each client of the Legal Aid NSW MHS. By contrast, CCLC MHS recorded the 'main reason for hardship' faced by each client.

Table 14 lists the hardship reasons for the sample of Legal Aid MHS clients. It shows that one-third (32%) of clients faced mortgage hardship as a result of unemployment, and nine per cent experienced it through reduced employment. Business failure and reduced income from self-employment were recorded as hardship reasons for almost 30 per cent of clients, while 18 per cent gave family breakdown as a hardship reason, and illness or injury was recorded as a hardship for 29 per cent of clients.

Table 14. Legal Aid NSW MHS clients: reasons for mortgage hardship (sampled clients n=287)

Legal Aid NSW MHS clients	*Advice only*	*Minor assistance*	*Casework*	*All clients*
Reasons for mortgage hardship	*N (%)*	*N (%)*	*N (%)*	*N (%)*
Unemployment	35 (28.9)	34 (36.2)	16 (31.4)	85 (32.0)
Reduced employment	10 (8.3)	6 (6.4)	7 (13.7)	23 (8.6)
Business failure	29 (24.0)	15 (16.0)	2 (3.9)	46 (17.3)
Reduced income from self-employment	14 (11.6)	10 (10.6)	6 (11.8)	30 (11.3)
Family breakdown	22 (18.2)	16 (17.0)	9 (17.6)	47 (17.7)
Illness or injury (accident)	30 (24.8)	25 (26.6)	21 (41.2)	76 (28.6)
Pregnancy, child care or carer role	3 (2.5)	8 (8.5)	1 (2.0)	12 (4.5)
Other	25 (20.7)	17 (18.1)	12 (23.5)	54 (20.3)
Total clients	**121**	**94**	**51**	**266**

Note: Column totals add up to more than 100 per cent as up to 3 hardships may be recorded per client. Thirty-one per cent of MHS clients recorded a second hardship reason and 6 per cent recorded a third hardship reason. No hardship reason was recorded for 21 clients (7.3%).

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

One-third (34%) of clients who gave an income or employment issue (including business failure) as a hardship reason also reported accident or illness as a coexisting hardship, and over a half (57%) of clients who gave accident or illness as a hardship reason also reported an income or employment issue (including business failure) as a coexisting hardship.

The table also records the hardship reasons for MHS clients broken down by the type of assistance provided by Legal Aid NSW. In particular, it shows unemployment as a somewhat more prominent reason for hardship among minor assistance clients (36%) than among advice clients (29%), with casework clients (31%) sitting in between. Relatively speaking, reduced employment was listed more commonly as a hardship reason by casework clients than by advice and minor assistance clients.

The table also shows that nearly one-quarter (24%) of advice clients cited business failure as a hardship reason, compared to just four per cent of casework clients. Illness or injury was listed as a hardship reason by around one-quarter of clients who received advice (25%) or minor assistance (27%); the corresponding figure for casework clients was substantially higher, at 41 per cent.[38]

[38] This difference just failed to reach statistical significance.

Did the MHS reach clients early?

As discussed in the 'Introduction', the MHS aimed to assist clients as early as possible in the legal process, ideally before they had been issued with a default notice on their home loan. In order to ascertain whether clients were reached early, the legal process for home repossession following mortgage default was broken down into six broad 'stages of enforcement', which were defined in the same ways by Legal Aid NSW and CCLC solicitors for the purpose of this evaluation (Table 15). Stage of enforcement information is an indicator of how far a mortgage hardship matter has progressed through the legal process.

Table 15. Definitions of stages of enforcement for mortgage hardship matters

Stage of enforcement	*Legal process(es)*
Stage 1	**No default notice served**
Stage 2	**Default notice served** Default notice served, but not expired Default notice expired
Stage 3	**Statement of claim served** Statement of claim served, but 28 days not expired Statement of claim expired, but no judgment or defence Defence (and/or cross-claim) filed Defence (and/or cross-claim) struck out Default judgment entered Judgment entered after hearing Application for set aside filed Judgment set aside Writ of possession issued
Stage 4	**Notice to vacate served**
Stage 5	**Post-repossession**
Stage 6	**Post-sale**

Source: Definitions provided by Legal Aid NSW and CCLC.

MHS solicitors recorded the stage of enforcement that each client had reached at the time when they were *first* assisted by the service (for instance, when their file was opened); the stage of enforcement record was *not* updated each time the file was revisited. As detailed in Table 15, for some stages of enforcement there are multiple points in the process when legal action is being taken and legal assistance may be provided.

Table 16 shows the stage of enforcement when sampled MHS clients *first* sought assistance from the Legal Aid MHS. We can see that:

- nearly 40 per cent of clients had not been issued with a mortgage default notice (Stage 1)
- 16 per cent had been issued with a default notice but had not received a statement of claim from the lender (Stage 2)
- more than one-quarter (27%) were subject to a court process (that is, a statement of claim had been served by the lender to repossess the home) (Stage 3)
- 10 per cent had been given notice to vacate the home (Stage 4)
- seven per cent (that is, 20 clients) had lost their home by repossession (Stages 5 and 6).

Overall, almost 18 per cent of these clients were at or past Stage 4 and had already lost or were in the process of losing their home when they first sought assistance from Legal Aid NSW.

Table 16. Legal Aid NSW MHS clients: stage of enforcement at time of first assistance (sampled clients n=287)

Legal Aid NSW MHS clients			
Stage of enforcement at first assistance	***N***	***%***	***Cum. %***
Stage 1 (no default notice)	106	38.8	38.8
Stage 2 (default notice)	44	16.1	54.9
Stage 3 (statement of claim)	74	27.1	82.1
Stage 4 (notice to vacate)	29	10.6	92.7
Stage 5 (post-repossession)	13	4.8	97.4
Stage 6 (post-sale)	7	2.6	100.0
Total clients	**273**	**100.0**	

Note: Stage of enforcement was not recorded for 14 clients (4.9%).

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

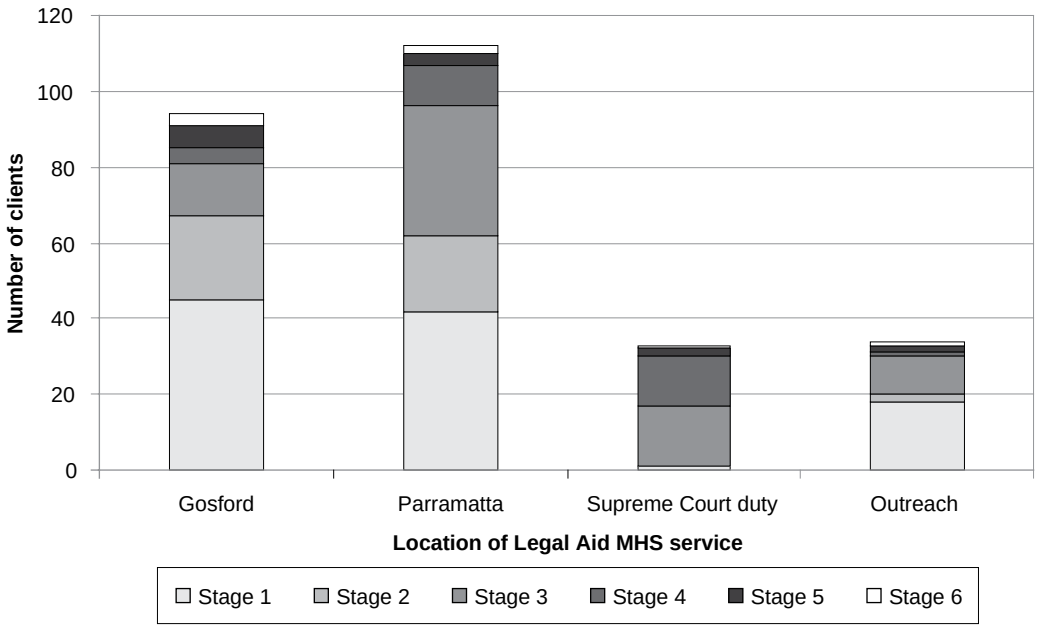
It was argued in establishing the MHS that reaching people experiencing mortgage stress *early* has the benefit of providing more options for resolving mortgage disputes and gives clients a better chance of keeping their home or selling their home themselves for a better financial result. With nearly 40 per cent of Legal Aid MHS clients assisted before a default notice was issued, it would appear that the service has been successful in reaching many clients at the *earliest* stage of enforcement for defaulting on mortgage payments. However, in the absence of any baseline data, we cannot say whether or not Legal Aid NSW was reaching clients any *earlier* in the enforcement process than it would have done had the MHS not been in operation.

One could argue that another potential benefit of assisting clients early in the legal process is that (some) clients may be assisted more efficaciously at an earlier stage, requiring less resource-intensive and less costly legal assistance because of the less advanced nature of their mortgage problem. In such cases, advice or minor assistance may form the basis of appropriate assistance rather than casework. This issue is further examined in the section 'Assistance provided by stage of enforcement' below.

Stage of enforcement by location of MHS service

Aside from the Gosford and Parramatta Legal Aid offices, where MHS solicitors were based, the MHS also involved the Supreme Court duty solicitor roster and an outreach service. Figure 6 provides a breakdown of the number of sampled Legal Aid MHS clients in terms of the location of the service that provided the legal assistance and the stage of enforcement for each mortgage matter dealt with.

Figure 6. Legal Aid NSW MHS: stage of enforcement, by location of service (sampled clients n=287)



Note: The Supreme Court duty roster contained no Stage 2 clients for this sample of clients.

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Gosford and Parramatta offices

The Gosford and Parramatta offices had similar results for the number of clients assisted and their stage of enforcement. While differences between the two offices are relatively small and may be due to the characteristics of the sample selected for this evaluation, it is the case that the Parramatta office appeared to deal with more mortgage hardship matters at Stage 3 and that the Gosford office dealt with more matters at Stages 4 and 5.

Supreme Court duty roster

We have already noted that a substantial proportion of clients were already advanced in the legal process (at Stages 3 and 4) when they first sought assistance from Legal Aid NSW. A number of people who were already subject to court proceedings came to Legal Aid NSW's attention through the MHS duty roster, which operates on specified home repossession list days at the NSW Supreme Court.

Around 12 per cent of MHS clients were first assisted through the Supreme Court duty roster. All except one of these clients were already subject to court proceedings for their mortgage matter (at Stages 3 to 6) when they approached the on-duty MHS solicitor at the Supreme Court.

Outreach

The relatively small number of clients in our sample who were provided with legal assistance through the outreach activities of Legal Aid MHS solicitors had not in the main been issued with a default notice (Stage 1) when first assisted. However, there were 10 sampled clients assisted through the MHS outreach who were already subject to court proceedings (Stage 3).

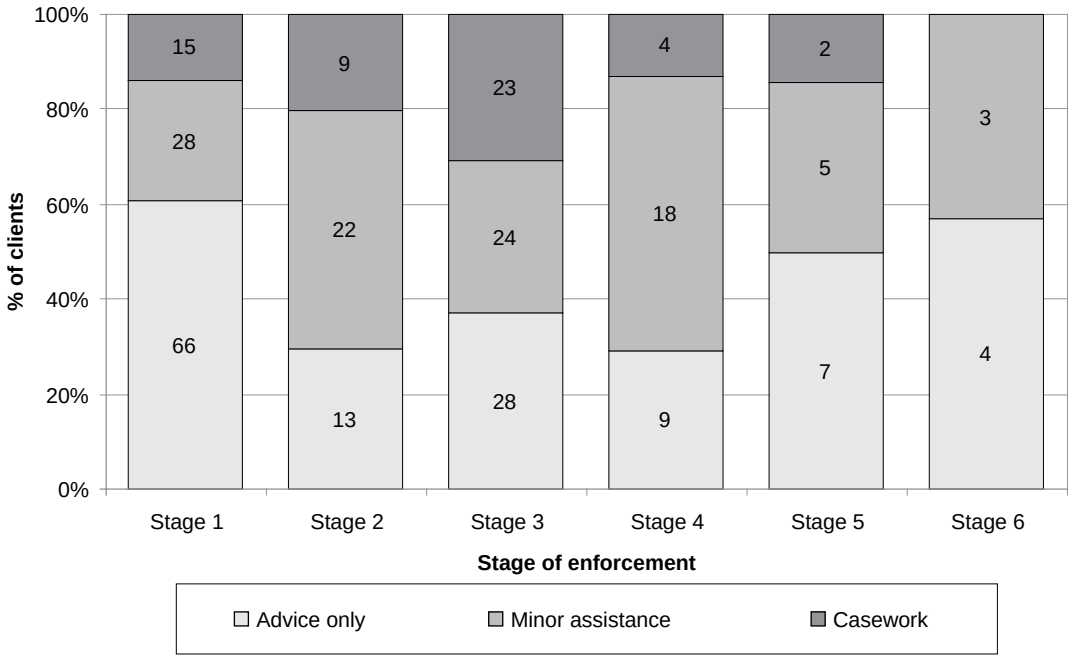
Assistance provided by stage of enforcement

One question of interest is whether clients who are reached by the MHS early in the legal process require less intensive legal assistance. If so, there may be a variety of reasons. For instance, less

intensive assistance may be required because there are more straightforward ways of dealing with mortgage problems at earlier stages of the enforcement process. However, it also may be that the types of clients who first seek assistance early in the process differ from those clients who wait until later. For example, it may be that clients who seek early assistance are more proactive or capable individuals who require only advice and less intensive assistance.

Of the 287 clients in the Legal Aid NSW sample, 133 received advice only (46%), 101 were given minor assistance (35%) and 53 were assisted with casework (19%). However, when the type of assistance provided is examined by clients' stage of enforcement at the time of first assistance, a different pattern emerges, as shown in Figure 7. This figure displays a strong relationship between the stage of enforcement and the type of legal assistance. For example, of the clients whose matters were at Stage 1 when they first contacted the MHS, 61 per cent received advice only, 25 per cent received minor assistance and 14 per cent received casework. By contrast, of the clients whose matters were at Stage 3 when they first contacted the MHS, 37 per cent received advice only, 32 per cent received minor assistance and 31 per cent received casework. By Stage 4, almost 60 per cent of clients received minor assistance and only 29 per cent received advice. In short, this demonstrates that up to Stage 4 at least, those people who came to the Legal Aid MHS at an advanced stage of mortgage stress generally received *more intensive* assistance.

Figure 7. Legal Aid NSW MHS: stage of enforcement when file first opened, by type of assistance (sampled clients n=287)



Note: There were no instances of casework in Stage 6 for this sample of clients.

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

However, by the time clients at Stage 5 (post-repossession) or Stage 6 (post-sale) came to the attention of the MHS, there were fewer legal options and interventions available to them, and, as for Stage 1 clients, advice again became the most prominent type of legal assistance provided by the MHS. Of the 14 sampled clients already at Stage 5 when they first contacted the MHS, seven received advice only. Similarly, of the seven clients already at Stage 6, four received advice only.

While a client's home cannot be saved by the time a mortgage matter has progressed to Stage 5 or 6, MHS solicitors were able to assist Stage 5 and 6 clients in a number of ways, including giving

advice about the lender's conduct of the sale, negotiating with lenders and mortgage insurers about the recovery of any shortfall and providing advice about bankruptcy. Furthermore, in cases in which there may have been unjust or unconscionable conduct by the lender in selling a property, action may be taken post-sale in relation to the recovery of any damages incurred by the borrower.

Court representation and courses of action pursued

Legal Aid MHS solicitors recorded the various courses of action they pursued on behalf of their casework and minor assistance clients. Processes for advice only clients were not recorded, as these clients took carriage of their own matters. Solicitors may have assisted casework and minor assistance clients through one or more different courses of action. Furthermore, each particular course of action may have involved one or more occasions of service by the solicitors. Therefore, multiple courses of action could be recorded for each client in our sample.

It should be noted that in January 2010 (during the period of the MHS evaluation) the FOS changed its terms of reference to allow mortgage hardship matters to be lodged in ADR after a statement of claim had been issued by the lender. This increased the range of legal options available to clients who were at Stage 3 of the enforcement process.

For casework and minor assistance clients for whom a course of action was recorded, it was found that:[39]

- 59 per cent were assisted by their solicitor in negotiating with their lender or creditor
- 43 per cent were assisted in submitting a mortgage hardship application through an ADR process (for example, FOS or COSL)
- 30 per cent were assisted in making a mortgage hardship application to the lender
- 17 per cent were represented at court (or a tribunal) by their solicitor ('representation' including stay applications, hardship applications and defence and cross-claims actions in the Supreme Court).

Casework clients were assisted through an average of 1.9 separate courses of action, while minor assistance clients were assisted through an average of 1.3 separate courses of action.

Client outcomes

The aim of the MHS is to help clients retain their home, or, for cases in which retaining the home is not a viable option, to obtain the best outcome for the client, which may involve advising the client to sell their home before it is repossessed and sold by the lender.

For casework and minor assistance clients, Legal Aid MHS solicitors were asked to record the outcome of matters at the time each file was closed. For these clients, outcomes were recorded for 89 per cent of closed casework files and 61 per cent of closed minor assistance files.[40] Solicitors were not required to record the outcomes of advice sessions, because advice only clients retained the responsibility for dealing with their mortgage matter, and solicitors did not necessarily know whether clients acted on their advice; nor did they necessarily learn of the outcomes clients achieved after receiving their advice.

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[39] Percentages add up to more than 100 per cent because multiple courses of action and occasions of service (e.g. multiple court hearings) are possible. No course of action was recorded for around 25 per cent of sampled clients.

[40] Information was not recorded or was 'unknown' in 43 (39%) minor assistance and seven (11%) casework matters. In addition, 20 minor assistance files and 25 casework files were still open, and, therefore, the final outcome was undetermined.

Two important points need to be made about the information presented on outcomes. First, we do not know whether the outcomes of mortgage hardship clients that were *not* recorded differed significantly (for better or worse) from those that *were* recorded. Second, we cannot necessarily attribute the recorded outcomes in a *causal* way to the MHS. As suggested in the section 'Outcome by stage of enforcement' below, the type of client assisted (for example, a person who seeks help at an early stage of their mortgage issue) may have a bearing on the outcome equal to or greater than the assistance provided by the MHS. Similarly, if a client seeks assistance only after the repossession of their home, there is little that the MHS can do to help the client. We simply do not know, and cannot speculate on, what would have happened to the homes of people in mortgage stress had they not been assisted by the MHS.

Table 17 shows that outcomes were recorded for 62 MHS clients whose files were closed: 21 casework clients and 41 minor assistance clients. Fifty-seven per cent of those clients retained their home, with the greater majority of homes saved after the MHS (and/or the client) negotiated with the lender. Seven clients (11%) surrendered their home to their lender or had their home repossessed, and a further nine (15%) sold or were in the process of selling their home.

Table 17. Legal Aid NSW MHS clients: outcome when file closed (sampled minor assistance and casework matters n=159)

Legal Aid NSW MHS clients	*Minor assistance*	*Casework*	*All clients*	
Outcome when file closed	*N*	*N*	*N*	*%*
Client selling or sold house	**2**	**7**	**9**	**14.5**
House repossessed/surrendered	**5**	**2**	**7**	**11.3**
Retained home	**26**	**9**	**35**	**56.5**
Court/ADR	0	1	1	1.6
Negotiation	26	6	32	51.6
Process not recorded	0	2	2	3.2
Other[a]	**8**	**3**	**11**	**17.7**
Total clients	**41**	**21**	**62**	**100.0**
File still open	21	25	46	

a 'Other' includes outcomes in which the matter was not finalised, such as when the client was granted a stay application to give them time to sell, or the client was still deciding what action to take but Legal Aid NSW MHS was no longer involved.

Note: Information was not recorded or was 'unknown' in 43 minor assistance (39%) and 7 casework matters (11%). In addition, 20 minor assistance files and 25 casework files were still open.

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Some differences in the outcomes for casework and minor assistance clients were observed. The proportion of houses retained following minor assistance (63%) was higher than that retained following casework (43%). Conversely, a higher proportion of casework clients than of minor assistance clients had their home sold.

As suggested, a range of factors may be implicated in these results, including the stage of enforcement the matter had reached when the client first sought assistance (see next section). In addition, the seriousness and urgency of mortgage matters, and the characteristics and needs of clients, will have determined who was selected by solicitors for casework and who was selected for minor assistance and/or advice.

Outcome by stage of enforcement: early intervention?

As discussed earlier, a factor that may affect outcomes is how far a client's mortgage hardship issue has progressed before assistance is sought, in part because the stage that the legal process has

reached before a client first seeks help has a bearing on the type of assistance that the MHS can usefully provide.

To further explore this relationship, information on client outcomes at the time files were closed was cross-tabulated with the stage of enforcement that clients were at when they first contacted the MHS (Table 18). Unfortunately, with few matters with an outcome to report, the following information must be treated with caution and as indicative only. Looking at the sub-sample of Legal Aid MHS clients for whom an outcome was recorded, we found that:

- 86 per cent of clients who sought assistance before being issued with a default notice (Stage 1) retained their home
- 72 per cent of clients who sought assistance before a statement of claim was issued (Stage 1 and 2) retained their home
- 67 per cent of clients who sought assistance before a writ of possession was issued (Stages 1 to 3 combined) retained their home
- one client who had been served with a notice to vacate (Stage 4) retained their home
- no homes were retained by clients who had already had their homes repossessed by the lender (Stage 5 or 6).
- the most common outcome for clients who first sought assistance after a writ of possession had been issued (Stages 4 to 6 combined) was that they did not retain their home; in only one such instance was the house sold by the client.

Table 18. Legal Aid NSW MHS clients: outcome when file closed, by stage of enforcement when file first opened (sampled minor assistance and casework matters n=62)

Legal Aid NSW MHS clients	*Outcome*				
	Retained home	*Selling/sold home*	*Home repossessed*	*Other*	*All outcomes*
Stage of enforcement	*N*	*N*	*N*	*N*	*N*
Stage 1 (no default notice)	18	2	0	1	21
Stage 2 (default notice)	5	2	0	4	11
Stage 3 (statement of claim)	10	4	1	2	17
Stage 4 (notice to vacate)	1	1	4	2	8
Stage 5 (post-repossession)	0	0	2	0	2
Stage 6 (post-sale)	0	0	0	1	1
Total clients	**34**	**9**	**7**	**10**	**60**

Note: Stage of enforcement was not recorded for 2 files.
Shaded cells indicate outcomes that are most unlikely for a client at that stage of the enforcement process (e.g. a Stage 5 or 6 client has already lost their home) or are unlikely if they did not progress past that stage (e.g. a Stage 1 client having their home repossessed).

Source: Legal Aid NSW program evaluation data forms (October 2009 to October 2010).

Homes retained

Of the 34 clients whose home was recorded as being retained, 18 (53%) had sought assistance *before* they received a default notice (Stage 1), five (15%) had contacted the MHS when they had received a default notice but no statement of claim from the lender (Stage 2) and 11 (32%) had already been at court before help was first sought (Stage 3 or 4).

Homes sold or repossessed

By comparison, all seven clients whose home was repossessed were already subject to legal proceedings (Stages 3 to 6) before help was first sought. Of the nine clients who had sold or were in

the process of selling their home, four had first sought assistance at Stage 3 and one at Stage 4; the remaining four clients had contacted the MHS earlier in the enforcement process (Stages 1 and 2).

Conclusion

The major findings drawn from the Legal Aid NSW datasets are summarised here. The findings drawn from the CCLC data are described in the next chapter, and the implications of all findings, including the follow-up survey, are considered together in the 'Discussion' chapter.

Workload

With two additional solicitor positions and a particular focus on mortgage hardship services, there has been an overall increase in the amount of mortgage-related legal assistance provided by Legal Aid NSW since the MHS commenced in October 2009. Of particular note are the considerable increase (173%) in the number of advices, particularly face-to-face advices, provided by Legal Aid NSW (as LawAccess NSW refers more mortgage matters to Legal Aid NSW under the MHS), and the considerable increase (116%) in the number of minor assistances provided for mortgage matters.

While the two new MHS solicitors at Gosford and Parramatta have undertaken the bulk of this work, Legal Aid NSW civil law solicitors in other offices continue to provide mortgage hardship assistance. An identified decrease in the amount of mortgage casework undertaken since the MHS commenced appears to be the result of other mortgage-related projects operating in the year before the MHS commenced.

Clients

Nearly 60 per cent of Legal Aid MHS clients were unemployed and a further 15 per cent were in part-time employment. Fifty per cent were on Centrelink benefits of any kind, which is lower than the 60 per cent who were recorded as being unemployed and therefore potentially eligible for such benefits. The connection between employment/income loss and mortgage stress is highlighted in the reasons for which clients sought assistance. Employment issues (unemployment, under-employment, business failure and loss of income from self-employment) were prominent reasons for hardship. However, for some clients, illness or injury and family breakdown were implicated in the loss of income and mortgage stress. These are the 'perfect storm' conditions noted by Berry et al. (2010) in their report on mortgage default and repossession.

When comparing the profiles of clients by type of assistance, we note that casework clients were more likely to be unemployed, to list illness or injury as a hardship and to have a non-bank lender. Minor assistance clients were more likely than advice or casework clients to be born in Australia and to speak English at home.

The geographic distribution of clients included a cluster around the locations in which the MHS solicitors were based. The fact that these areas were known to be mortgage stress hotspots informed the placement of the MHS solicitors in these locations in the first place. The uptake of their services by residents of those regions may support the findings of previous research that people are more likely to make use of legal services which are close and accessible to them. The distribution of clients may also reflect the efforts made by the MHS solicitors to liaise with local financial counsellors and have clients directed to them through these sources. The proportion of clients referred to Legal Aid NSW by financial counsellors, particularly in the Gosford area, would appear to support this proposition.

Reaching clients early

A key aim of the MHS is to reach clients as early as possible, before their mortgage matter escalates. While we have no baseline figures (that is, figures indicating the stage of enforcement at which people sought help for mortgage matters from Legal Aid NSW before the MHS existed), we note that more than half of all MHS clients (55%) had not received a statement of claim when they first sought help. Indeed, 40 per cent had not even received a default notice.

We observed a strong relationship between the type of assistance provided by the MHS and the stage of enforcement that clients had reached before they first sought assistance. Clients whose matters were at Stage 1 when they first contacted the MHS were more likely to receive just advice rather than minor assistance or casework. Those who were at Stage 3 (after a statement of claim) when they contacted the MHS were more evenly distributed in terms of the type of assistance received: 37 per cent received advice only, 32 per cent received minor assistance and 31 per cent received casework. Less than one-third of clients who were at Stage 4 (after a notice to vacate) received advice only. However, by the time clients at Stage 5 (post-repossession) or Stage 6 (post-sale) came to the attention of the MHS, there were fewer legal options and interventions available, and, as for Stage 1 clients, advice became a more prominent feature of the legal assistance provided.

There are several reasons why people who sought assistance at Stages 1 or 2 may have received less intensive assistance. One may be that there are more and more straightforward ways to deal with mortgage stress at earlier stages of the enforcement process. There also may be differences between the types of clients who first seek assistance early in the process and those who leave seeking help until later. This issue is considered in more depth in the 'Discussion' chapter.

Client outcomes

Outcomes were recorded for a sample of Legal Aid MHS casework and minor assistance clients whose files were closed. Fifty-seven per cent of these clients had retained their home at the time the file was closed; 11 per cent had surrendered their home to their lender or had their home repossessed; 15 per cent had sold or were in the process of selling their home. One factor that may have a bearing on the outcome of a mortgage matter is the stage of enforcement that a client is at when they first seek MHS assistance. Certainly, in this sample, clients who sought help at Stage 1 were more likely to keep their home than those who contacted the MHS later in the legal process. Other factors that may affect outcomes — the nature of the mortgage matter, the legal options available to clients and the types of clients who seek assistance, early or late — are all considered in the 'Discussion' chapter.

4. Mortgage Hardship Service: Consumer Credit Legal Centre (NSW)

This chapter reports on the MHS as operated by CCLC during the period of evaluation. In particular, it examines:

- the number of mortgage-related advices and casework matters handled
- whether there is any evidence of an increase in legal assistance provided for mortgage matters since the MHS commenced
- the characteristics of MHS clients and their mortgage issues
- whether the CCLC MHS was able to reach and assist clients at early stages of mortgage stress
- the outcomes for clients (including whether they kept or lost their home).

The information in this chapter is based on the CCLC program data for the MHS as well as more general CCLC corporate data. These datasets are described in detail in the 'Methodology' section of 'The evaluation' chapter.

CCLC is staffed by solicitors and financial counsellors. An MHS client may be assisted by a solicitor, a financial counsellor or both, although the matter is still counted and discussed in this chapter as an occasion of *legal* assistance. In broad terms, 62 per cent of CCLC MHS advices during the evaluation period were provided by a solicitor and 38 per cent by a financial counsellor. Casework undertaken by CCLC regularly involves work by both a solicitor and a financial counsellor.

Mortgage matters: first 16 months of the MHS

The MHS commenced operating at CCLC on 1 July 2009. CCLC recorded 2783 mortgage matters dealt with during the first 16 months of the MHS (Table 19), which included:

- 162 mortgage matters dealt with by casework (an average of around 10 per month)
- 2157 mortgage matters provided with advice (an average of around 164 per month)
- an additional 464 advices relating to other mortgage-related matters (an average of around 29 per month).

Table 19. CCLC: type of legal assistance provided for mortgage matters in the first 16 months of the MHS (1 July 2009 to 31 October 2010)

CCLC MHS mortgage matters	*July 2009 to Oct 2010 (16 months)*	
Type of assistance	***N***	***Average per month***
Casework[a]	**162**	**10.1**
Advice	**2621**	**163.8**
Mortgage hardship matters	2157	134.8
Other mortgage matters[b]	464	29.0
Total assistance	**2783**	**173.9**
Other casework for MHS clients[c]	75	4.7

a 'Casework' includes minor assistance.

b Advice: 'other mortgage matters' includes a range of other mortgage matters, such as complaints about mortgage brokers; unsuitable loans and settlement issues; advice post-bankruptcy (e.g. negotiations with trustees over sale of home, purchase back of equity at end of bankruptcy); advice regarding a loan post-family/relationship breakdown; rights when a lender sold the loan; negotiating with lender/mortgage insurer about the shortfall post-sale; a borrower's rights in relation to a mortgagee sale; and advice regarding fees and charges.

c 'Other casework for MHS clients' includes casework files opened for MHS clients for legal matters in addition to their mortgage matters, such as those in which the client was not able to pay council rates, credit card, telephone and energy bills, or traffic fines.

Source: CCLC data (CLSIS and CDH databases, July 2009 to October 2010).

Number of mortgage matters prior to and since the MHS began

As discussed in detail in the 'Methodology' section in 'The evaluation' chapter, it is not possible to provide accurate data on CCLC mortgage hardship and other mortgage *advices* before December 2009 or to make comparisons between pre- and post-MHS mortgage hardship *advices*. On the other hand, CCLC records were able to be used to make valid comparisons of *casework* for mortgage hardship and other mortgage matters before and after the MHS commenced.[41]

Casework matters

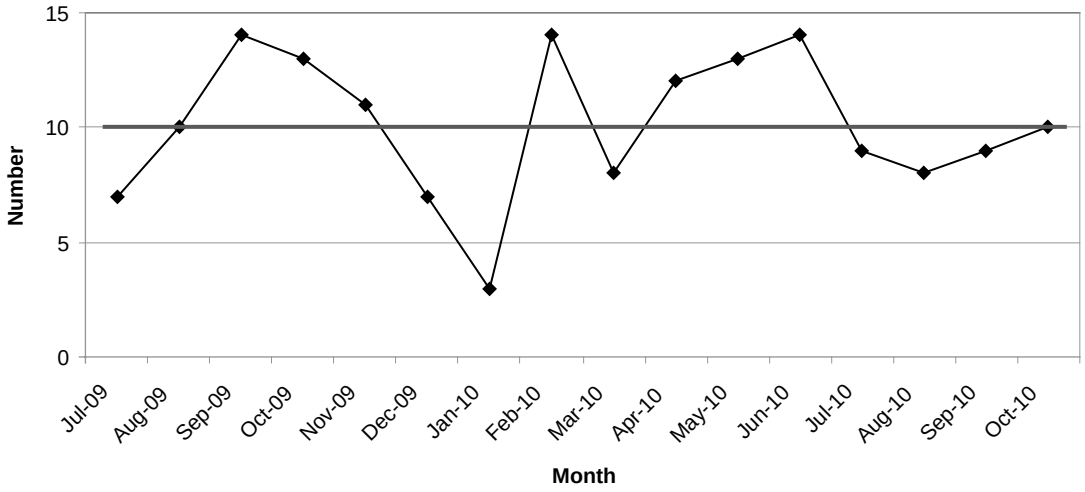
CCLC defines 'casework' as legal assistance in which the solicitor takes carriage of the legal matter (in contrast to 'advice', in which the client retains carriage of the matter). Casework is the most intensive form of assistance provided by CCLC and regularly involves more than 20 hours of assistance.[42] 'Minor assistance' is casework which involves less than five hours of assistance by CCLC and is included in the casework data. In some cases, minor assistance may not involve the solicitor taking carriage of the matter (for instance, a solicitor drafting and lodging an ADR application but the client pursuing the matter from thereon). Casework (including minor assistance) may also involve additional work by a financial counsellor.

During the first 16 months of the CCLC MHS, the 162 mortgage casework files opened included both mortgage hardship matters and other mortgage matters. Figure 8 shows that the monthly number of new mortgage casework matters varied greatly across the 16-month period — from a low of three in January 2010 to a high of 14 recorded in four separate months (September 2009 and February, May and June 2010).

41 For the whole pre- and post-MHS period examined (1 July 2008 to October 2010), CCLC casework matters were recorded on CLSIS in the same systematic and standardised way. By contrast, the recording of mortgage hardship and other mortgage advice matters was subject to a number of system changes. See the 'Methodology' section in 'The evaluation' chapter.

42 As will be discussed later in this chapter, 41 per cent of the mortgage hardship cases closed by CCLC in the first 16 months of the MHS involved more than 20 hours of assistance.

Figure 8. CCLC: casework[a] for mortgage matters in the first 16 months of the MHS



a Casework includes minor assistance in mortgage hardship cases and other mortgage cases.

Note: The trend line is the Sen's estimate of slope. The trend is not statistically significant.

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

In addition to their mortgage matters, clients often had other debt-related legal issues. When necessary, the CCLC MHS opened one or more separate casework files to deal with these other matters. The non-mortgage casework files opened for clients involved matters such as the inability to pay credit cards, other non-mortgage loans and council rates. CCLC opened 75 cases for MHS clients for issues other than, and in addition to, their mortgage hardship matter.

To provide an indication of possible changes in the amount of casework undertaken by CCLC after the MHS commenced, we have provided the pre- and post-MHS casework data based on the 12-month periods before and after CCLC started operating the program. Table 20 shows that there were 128 mortgage casework files opened by CCLC during the first 12 months of the MHS. This figure is 64 per cent higher than the 78 mortgage casework files opened in the 12 months prior to the commencement of the MHS. The average monthly number of mortgage casework files opened increased from 6.5 to 10.7 after the MHS commenced.

Table 20. CCLC: mortgage casework files opened in the 12-month periods before and after the commencement of the MHS

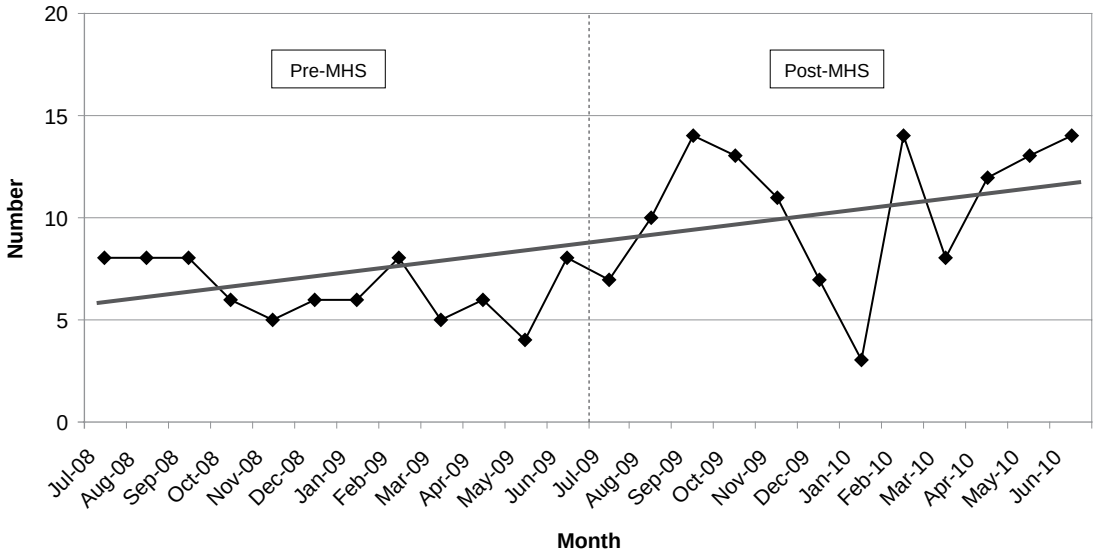
CCLC mortgage matters	*Pre-MHS July 2008 to June 2009 (12 months)*		*Post-MHS July 2009 to June 2010 (12 months)*		
Type of assistance	*N*	*Average per month*	*N*	*Average per month*	*Difference*
Casework[a]	78	6.5	128	10.7	+64%

a 'Casework' includes minor assistance in mortgage hardship cases and other mortgage cases.

Source: CCLC data (CLSIS database only, July 2008 to June 2010).

Figure 9 shows the monthly number of mortgage casework files opened by CCLC during the 12-month period before the commencement of the MHS and during the first 12 months of the MHS. It indicates that *prior* to the MHS there were between three and eight new casework matters per month and (if anything) a general decline in the monthly number of files opened. However, after the MHS commenced, there was more variability in the monthly number of new casework matters.

Figure 9. CCLC: casework[a] for mortgage matters in the 12-month periods before and after the commencement of the MHS



a Casework includes minor assistance in mortgage hardship and other mortgage cases.

Note: The trend line is the Sen's estimate of slope. The trend is statistically significant at the 0.05 level.

Source: CCLC data (CLSIS database only, July 2008 to June 2010).

Across the periods before and during the operation of the MHS, there was an upward trend in mortgage casework matters that is statistically significant.[43]

Advice matters

CCLC defines 'advice' as legal assistance provided to a client by one of its solicitors or financial counsellors but in which the client retains carriage of the matter. As will be discussed in more detail later in this chapter, CCLC may advise a client on a number of occasions as their mortgage hardship matter progresses.

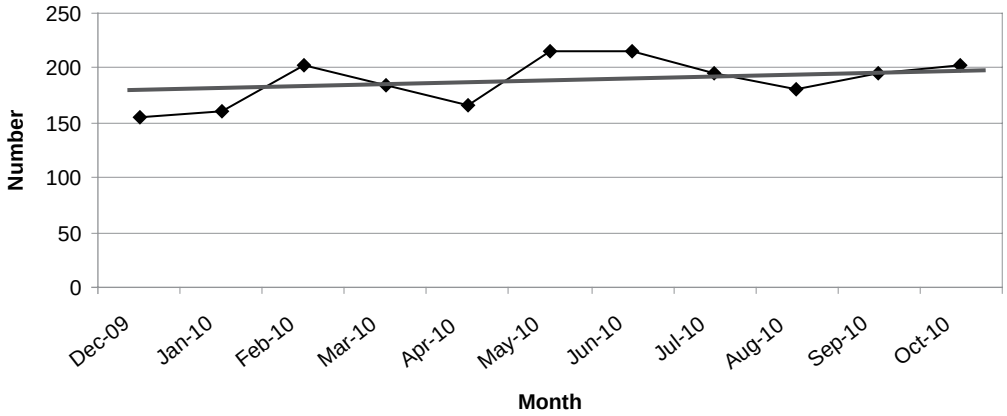
Ideally, we would present data to indicate whether there was any increase in the number of mortgage matters advices provided by CCLC after the introduction of the MHS as we did in the previous section on casework matters, by giving advices figures for the 12-month periods before and after the commencement. Unfortunately, as we have identified, during the period of this evaluation some important changes were made to the ways in which CCLC defined, categorised and recorded mortgage advices (see the 'Methodology' section in 'The evaluation' chapter). These changes had a major impact on the number of mortgage advices *recorded* between July 2008 and December 2009, which makes comparing the number of advices before and after the commencement of the MHS both difficult and problematic. This particularly applies to obtaining comparable counts of mortgage *hardship* advices. A further complication is that some of the changes occurred five months into the operation of the MHS. A graph showing the recorded number of mortgage advices for the whole pre- and post-MHS period (July 2008 to October 2010) is presented in Appendix B. It also flags the various points of administrative change with additional explanatory notes.

Therefore, we cannot with confidence present an accurate picture of the number of mortgage and mortgage hardship advices prior to December 2009, which includes the first five months of CCLC's MHS operations. Consequently, the following analyses examine only those mortgage advices for the 11 months from December 2009 to October 2010.

[43] Sen's slope estimate with Mann-Kendall statistic (test Z = 2.34, significant at 0.05 level) (*Sen's slope estimator* 2011).

A total of 2029 mortgage matters advices were provided by CCLC in this period, including 1606 mortgage *hardship* advices and 423 advices for other mortgage matters. Figure 10 shows a small but not statistically significant upward trend in the monthly number of mortgage advices: advices increased from around 150 in December 2009 to around 200 by the end of the period examined.[44] The monthly number of CCLC mortgage advices was at its highest in May and June 2010, at 205 advices.

Figure 10. CCLC: advices for mortgage matters in the 11-month period (December 2009 to October 2010) when advices were recorded consistently

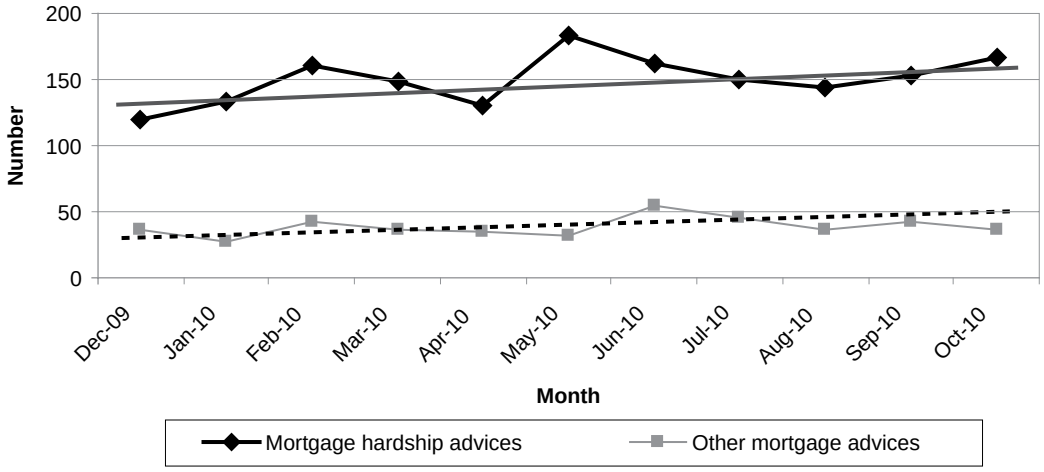


Notes: Due to earlier systems and recording practices, mortgage advice data were not consistently or reliably recorded on CLSIS prior to this period of operation of the MHS.
The trend line is the Sen's estimate of slope. The trend is not statistically significant.

Source: CCLC data (CLSIS database, December 2009 to October 2010).

There was an average of 184 mortgage advices per month across the 11 months of the MHS when advice data were recorded consistently. The average number of mortgage *hardship* advices per month during this period was 146. In addition, CCLC provided an average of 38 advices each month for other mortgage-related matters.

Figure 11. CCLC: advices for mortgage hardship and other mortgage matters (December 2009 to October 2010)



Notes: The graph shows numbers for months when advices were recorded consistently. Due to earlier systems and recording practices, mortgage advice data were not consistently or reliably recorded on CLSIS prior to this period of operation of the MHS.
The solid trend line is the Sen's estimate of slope for mortgage hardship advices; the dashed trend line is the Sen's estimate of slope for other mortgage advices. Neither trend is statistically significant.

Source: CCLC data (CLSIS and CDH databases, December 2009 to October 2010).

[44] Sen's slope estimate with Mann-Kendall statistic (test Z = 1.48, not significant at 0.05 level) (*Sen's slope estimator* 2011).

Figure 11 shows the trend in mortgage hardship advices separated from other mortgage advices. The number of mortgage hardship advices peaked at 173 in May 2010. In the last month of the period examined, CCLC provided 167 mortgage hardship advices, up from 117 in the first month. While there appears to be a general upward trend in the monthly number of mortgage hardship advices, the increase was found not to be statistically significant.[45] The provision of advices in relation to other mortgage-related issues appears to have remained reasonably steady across this period.[46]

Clients

This section examines specifically those clients assisted by CCLC through advice and casework who had mortgage *hardship* problems. While the first 16 months of the MHS are covered, only information recorded on the current administrative system (CLSIS) and thus considered reliable was used for these analyses.[47]

Each client has been counted only once, regardless of whether they received advice or casework assistance or a combination of both, or whether they received assistance on more than one occasion. This avoids over-counting, as would be the case if all instances of assistance provided by CCLC were examined.[48] In addition, demographic characteristics, including the age of the individuals assisted, are examined at each client's *first* occasion of assistance.

Exactly 1000 individual MHS clients with a mortgage hardship matter received assistance from CCLC between 1 July 2009 and 31 October 2010. Table 21 shows that 891 (89%) clients received one or more occasions of advice only, and 109 (11%) received casework, of whom 84 (three-quarters of all casework clients) received a combination of advice (at least one advice) and casework[49] and 25 (one-quarter of casework clients) received only casework (or minor assistance).

Table 21. CCLC MHS mortgage hardship clients: type of assistance provided in the first 16 months of the MHS (1 July 2009 to 31 October 2010)

CCLC MHS mortgage hardship clients		
Type of assistance	***N***	***%***
Advice only	**891**	**89.1**
Casework[a]	**109**	**10.9**
Casework and advice	84	-
Casework only	25	-
Total clients	**1000**	**100.0**

a 'Casework' includes minor assistance in mortgage hardship cases only.

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

45 Sen's slope estimate with Mann-Kendall statistic (test Z = 1.33, not significant at 0.05 level) (*Sen's slope estimator* 2011).

46 Sen's slope estimate with Mann-Kendall statistic (test Z = 0.79, not significant at 0.05 level) (*Sen's slope estimator* 2011).

47 Clients whose matters were recorded on the superseded administrative system (CDH) in the early part of the MHS are not included in these analyses.

48 Legal Aid NSW and the CCLC provided de-identified records. Therefore, there is still the possibility that some individuals who sought assistance from both agencies are counted in both agencies' statistics.

49 The advice could have been provided before a casework file was opened or after a casework file was closed.

Advice clients

CCLC solicitors and financial counsellors provided advice to 975 mortgage hardship clients[50] (Table 22), including the 84 individuals who received a combination of advice and casework. These 975 clients received 1817 separate advices,[51] an average of 1.9 separate advices each.

Table 22. CCLC MHS mortgage hardship advice clients: initial and subsequent advice (n=975)

CCLC MHS mortgage hardship advice clients	*N*
Number of clients	**975**
Number of advices	**1817**
Initial advice	975
Subsequent advice	842

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

As can be seen in Table 23, over half (52%) of the advice clients received a single session of advice. However, almost one-third (31%) received two separate advices, while eight per cent received three advices and nine per cent received four or more. One client received 13 separate advices, the highest number of advices for an individual in the period examined.

Table 23. CCLC MHS mortgage hardship advice clients: count of advices per individual client (n=975)

CCLC MHS mortgage hardship advice clients			
Number of advices per individual client	*N*	*%*	*Cum. %*
1	506	51.9	51.9
2	301	30.9	82.8
3	81	8.3	91.1
4	36	3.7	94.8
5	21	2.2	97.0
6	16	1.6	98.6
7	4	0.4	99.0
8	4	0.4	99.4
9	3	0.3	99.7
10	1	0.1	99.8
11	1	0.1	99.9
12	0	0.0	99.9
13	1	0.1	100.0
Total clients	**975**	**100.0**	

Note: This table includes the 891 CCLC MHS clients who received only advice and 84 who received a combination of advice and casework (including minor assistance).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Casework clients

As we have seen, for the period of the MHS examined in this study, there were 109 individual clients recorded on CLSIS who were assisted by way of casework (or minor assistance) specifically for mortgage hardship matters. This number includes the 84 casework clients who also received advice. The majority of the 109 casework clients had one mortgage hardship matter, although six

[50] Remembering that only 25 of the 1000 clients received casework or minor assistance *without* also receiving an advice session.

[51] The CDH advices are missing, accounting for the difference between the 1817 advice matters reported here and the 2157 advice matters reported in Table 19.

had more than one mortgage hardship casework file opened (for example, when there were two mortgages on the same property).

Hours of assistance provided

CCLC solicitors recorded the total number of hours of assistance provided to MHS casework clients at the time each file was closed. This is another measure of the volume of work undertaken by CCLC staff, given that mortgage hardship casework matters may vary considerably in the resources required to deal with them. The hours of assistance were not recorded for 15 casework clients, as their files were still open when the evaluation period ended.

Table 24 shows that over one-third (37%) of casework clients were provided with less than five hours of casework (which is defined by CCLC as minor assistance). Twenty-one per cent were provided with between six and 20 hours, and around 41 per cent were recorded as receiving more than 20 hours of casework.[52]

Table 24. CCLC MHS mortgage hardship casework clients: hours of assistance

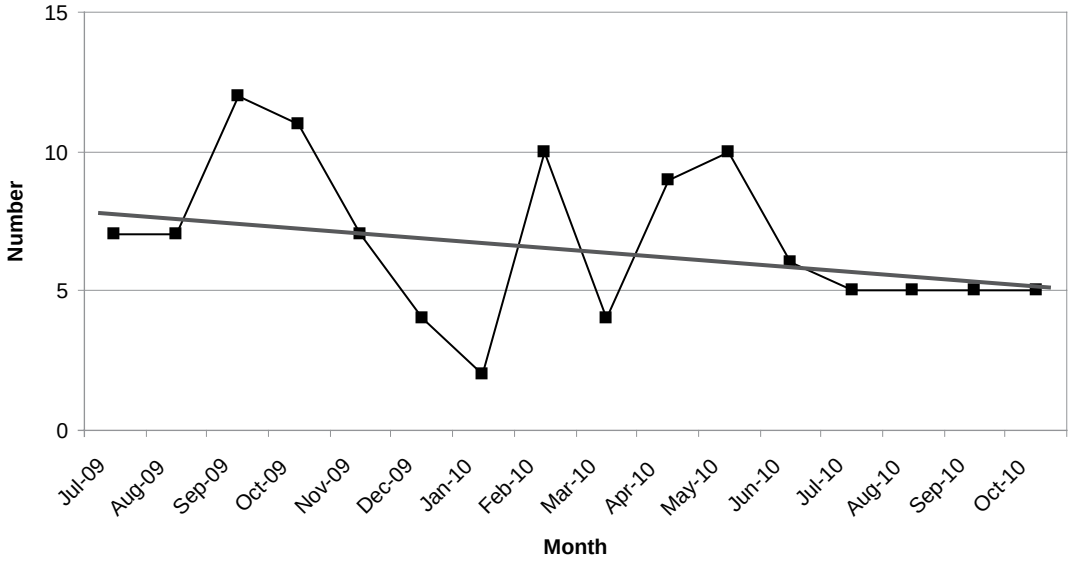
CCLC MHS mortgage hardship casework[a] clients			
Hours of assistance[b]	***N***	***%***	***Valid %***
0 to 5 hours ('minor assistance')	35	32.1	37.2
6 to 20 hours	20	18.3	21.3
Over 20 hours	39	35.8	41.5
File still open: total hours not as yet recorded	15	13.8	-
Total clients	**109**	**100.0**	**100.0**

a Casework includes minor assistance. Clients who received a combination of advice and casework (including minor assistance) are also included in this table.

b These are default categories available to CCLC solicitors for recording hours of assistance. Other categories include 'over 20 hours of casework', 'over 100 hours of casework' and 'between 51 and 100 hours of casework'. Exact numbers of hours are not usually recorded.

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Figure 12. CCLC: casework[a] for mortgage hardship matters in the first 16 months of the MHS



a Casework includes minor assistance in mortgage hardship cases only.

Note: The trend line is the Sen's estimate of slope. The trend is not statistically significant.

Source: CCLC data (CLSIS database, July 2009 to October 2010).

[52] Of the 39 clients with over 20 hours of casework, two clients were recorded as receiving over 100 hours, three received between 51 and 100 hours, and eight received between 21 and 50 hours of casework.

Mortgage hardship casework trends

Figure 12 shows that the monthly number of mortgage hardship cases opened between July 2009 and October 2010 fluctuated widely, from a low of one to a high of 12 cases in a month. The average monthly number of casework files opened across the 16-month period was 6.4.

The last six months of the period examined seemed to show that mortgage hardship cases had stabilised at around five cases per month. A trends test, however, indicated no significant upward or downward change across the 16-month period.[53]

Referrals to the MHS

Over one-third (36%) of all CCLC MHS client records did not contain information on the source of referral of mortgage clients to CCLC. For clients whose referral source was indicated (Table 25), the creditor or lender was the main source of referral (24%), followed by LawAccess NSW (18%) and the court or ADR (10%). Just under nine per cent of clients self-referred or were referred by a family member or friend. Seven per cent were referred by an independent financial counsellor. Five per cent indicated that they contacted CCLC after seeing publicity on the MHS, while Legal Aid NSW offices and other CLCs together were responsible for referring seven per cent of MHS clients to CCLC.

Table 25. CCLC MHS mortgage hardship clients: source of referral

CCLC MHS mortgage hardship clients		
Source of referral	***N***	***%***
Creditor (lender)	152	23.8
LawAccess NSW	112	17.6
Court/ADR[a]	61	9.6
Self/family/friend	54	8.5
Financial counsellor	47	7.4
Debt relief agencies[b]	33	5.2
Internet/phonebook	33	5.2
Program/service publicity	29	4.5
Legal Aid	28	4.4
Community group	24	3.8
CLC other	16	2.5
Government other	21	3.3
Other[c]	28	4.4
Total clients	**638**	**100.0**

a 'Court/ADR' includes 32 clients referred by FOS and 6 clients referred by COSL.

b 'Debt relief agencies' are commercial agencies that offer either Part IX agreements under the *Bankruptcy Act 1996* (Cwlth), or debt consolidation.

c 'Other' includes clients referred from the following sources: Insolvency Trustee Service (5), Mortgage Assistance Scheme (2), the Sheriff's Office (2) and private lawyers (2).

Note: Source of referral was not recorded for 362 clients (36.2%).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Of the 1000 CCLC MHS clients who received assistance during the evaluation period, only 26 first came to the attention of CCLC through the Supreme Court duty roster: eight advice only clients and 18 casework clients. Otherwise, the vast majority (97%) of clients first contacted CCLC by telephoning its office.

53 Sen's slope estimate with Mann-Kendall statistic (test Z = –1.46, not significant at 0.05 level) (*Sen's slope estimator* 2011).

Client characteristics

This section provides a demographic profile of MHS clients assisted by CCLC. We report any differences in the characteristics of advice clients compared only to those assisted by casework when the data allowed such a breakdown and when such differences were found to exist.[54]

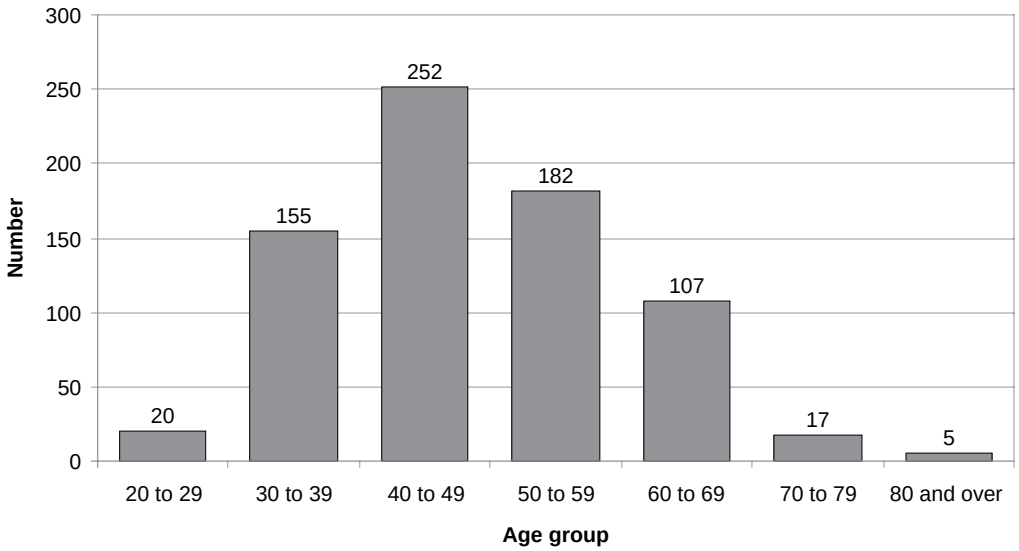
Gender

Men and women were equally represented (51% women and 49% men). The gender breakdown was similar for both casework and advice only clients.

Age

CCLC recorded a year of birth for 76 per cent of advice clients and 79 per cent of casework clients. The age data (Figure 13 and Table 26) show that no client was younger than 20 years of age and that 34 per cent of clients were in their 40s at time of first assistance. People below 50 years of age made up 58 per cent of clients. The 17 per cent of clients who were 60 years or older represented a higher than expected figure given the proportion of people in this age group in the Australian population who still have a mortgage on their property (Kryger 2009, Table 3;[55] Australian Bureau of Statistics 2001).

Figure 13. CCLC mortgage hardship clients:[a] age profile (July 2009 to October 2010)



a Mortgage hardship clients includes individual clients for both mortgage hardship casework and advices. Casework includes minor assistance.

Note: Year of birth information was not recorded or disclosed for 23 MHS casework clients (21%) and 239 MHS advice clients (24%).

Source: CCLC data (CLSIS database, July 2009 to October 2010).

[54] Breakdowns by type of assistance are less meaningful or useful when there are many response categories, as is the case for recorded variables such as 'country of birth' or 'language spoken', when there is a small recorded number for the majority of response categories, or when there is a large number of missing values.

[55] In Kryger 2009, Table 3, the age categories used for comparison were 55–64, 65–74, and 75 and over. The proportion of Australian householder reference persons with a mortgage who were older than 54 years was estimated to be around 15.5 per cent.

Table 26. CCLC MHS mortgage hardship clients: age profile (July 2009 to October 2010)

CCLC MHS mortgage hardship clients			
Age (grouped)	***N***	***%***	***Cum. %***
20 to 29	20	2.7	2.7
30 to 39	155	21.0	23.7
40 to 49	252	34.1	57.8
50 to 59	182	24.7	82.5
60 to 69	107	14.5	97.0
70 to 79	17	2.3	99.3
80 and over	5	0.7	100.0
Total clients	**738**	**100.0**	

Note: Year of birth was not recorded or disclosed for 23 MHS casework clients (21%) and 239 MHS advice clients (24%).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Country of birth (and main language spoken at home)

Country of birth was not recorded for almost 82 per cent of CCLC MHS advice and casework clients. Clients whose country of birth information was recorded were more likely to have been born in Australia (50%); seven per cent were born in the English-speaking countries of New Zealand, the UK and the USA, and 43 per cent were born in countries in which English is not the main language spoken.

Overall, almost 95 per cent of all clients whose country of birth information was recorded (including 95% of advice only clients) spoke English at home. Of the remainder, Arabic and Chinese dialects (for example, Cantonese and Mandarin) were relatively more common than other languages. Nine community languages were represented among the 12 casework clients who did not speak English at home, with three casework clients speaking Arabic at home.

Indigenous status

Aboriginal and Torres Strait Islander people made up 1.4 per cent of all CCLC MHS advice and casework clients. Less than one per cent of advice only clients identified themselves as Aboriginal Australian or Torres Strait Islander; on the other hand, over eight per cent of casework clients identified themselves as such — four times the expected number based on NSW population statistics from the 2006 Census. Indigenous status was not disclosed or was missing for a very small proportion (1.5%) of CCLC MHS clients.

Income source and income level

To capture client income and employment information, CCLC recorded 'income source' (earned, government benefits or other) and 'level of income' (high, medium, low or no income). This differs from the way in which Legal Aid NSW recorded similar information.[56]

The income source was not recorded for 24 per cent of CCLC MHS clients. Table 27 shows that 60 per cent of clients whose income source was recorded indicated that their income was earned (from salaried employment or self-employment), 36 per cent were receiving a government benefit and three per cent received income from rent, bank interest, share dividends, superannuation and/or workers' compensation payments. Proportionally fewer casework clients than advice clients were

[56] Legal Aid NSW recorded 'employment status' and Centrelink benefits received.

earning an income (54% compared to 61%) and proportionally more casework clients than advice clients were on government benefits (44% compared to 35%). However, it should be noted that these observed differences were found *not* to be statistically significant.[57]

Table 27. CCLC MHS mortgage hardship clients: source of income

CCLC MHS mortgage hardship clients	*Advice only clients*		*Casework clients*[a]		*All clients*	
Source of income	***N***	***%***	***N***	***%***	***N***	***%***
Earned (includes salary and self-employed)	407	61.2	51	53.7	458	60.3
Government benefit	235	35.3	42	44.2	277	36.4
Other (includes rent, interest, dividends, superannuation and workers' compensation)	23	3.5	2	2.1	25	3.3
Total clients	**665**	**100.0**	**95**	**100.0**	**760**	**100.0**

a Casework includes minor assistance. Clients who received a combination of advice and casework (including minor assistance) are categorised in this table as casework clients.

Note: Income source was not recorded for 226 advice clients (25%) and 14 casework clients (13%).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Income level was recorded for around three-quarters of all advice and casework clients (Table 28). The results show that almost six per cent of clients whose income level was recorded had no substantive income, 52 per cent had a low income (defined as less than $26 000 per annum), 38 per cent had a medium income (between $26 000 and $52 000) and five per cent had a high income (more than $52 000).

Table 28. CCLC MHS mortgage hardship clients: level of income

CCLC MHS mortgage hardship clients	*Advice only clients*		*Casework clients*[a]		*All clients*	
Level of income	***N***	***%***	***N***	***%***	***N***	***%***
No income	41	6.3	1	1.1	42	5.7
Low (less than $26 000 p.a.)	330	50.3	55	62.1	385	51.8
Medium ($26 000 to $52 000 p.a.)	251	38.3	30	34.5	281	37.8
High (more than $52 000 p.a.)	34	5.2	2	2.3	36	4.8
Total clients	**656**	**100.0**	**88**	**100.0**	**744**	**100.0**

a Casework includes minor assistance. Clients who received a combination of advice and casework (including minor assistance) are categorised in this table as casework clients.

Note: Income level was not recorded for 235 advice clients (26%) and 21 casework clients (19%).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

There was no statistically significant difference between advice only clients and casework clients in terms of the proportion within each income scale category,[58] although a low level of income was recorded for 50 per cent of advice only clients compared to 62 per cent of casework clients.

Geographic distribution of clients

For reasons detailed in the 'Legal Aid' chapter, the two Legal Aid MHS solicitors were based at the Gosford and Parramatta offices, whereas CCLC is a statewide service that operates largely by way of telephone assistance from its Sydney office.[59]

57 Pearson Chi-square=3.04, df=2, p=0.22 (not significant). One cell in the cross-tabulation (17%) had an expected count of less than five.

58 Pearson Chi-square=7.2, df=3, p=0.07 (not significant). Two cells in the cross-tabulation (25%) had expected counts of less than five.

59 While CCLC conducts its intake and the majority of its work by telephone, it offers face-to-face appointments where necessary and feasible for the client at its Sydney office or in another suitable location.

CCLC MHS clients came from 116 different LGAs in NSW,[60] which represent around three-quarters of all LGAs in the state (Table 29). The largest number of clients lived in Blacktown (6%), with Wyong and Gosford each having four per cent and Campbelltown, Penrith and Liverpool with over three per cent each.

Table 29. CCLC MHS mortgage hardship clients: place of residence, 'top 25' LGAs

CCLC MHS mortgage hardship clients				
Place of residence (LGA)	***Rank***	***N***	***%***	***Cum. %***
Blacktown	1	59	5.9	5.9
Gosford	2	41	4.1	10.0
Wyong	3	41	4.1	14.1
Campbelltown	4	35	3.5	17.6
Penrith	5	32	3.2	20.8
Liverpool	6	31	3.1	23.9
Bankstown	eq. 7	26	2.6	26.5
Tweed	eq. 7	26	2.6	29.1
Shoalhaven	9	23	2.3	31.4
Canterbury	eq. 10	22	2.2	33.6
Fairfield	eq. 10	22	2.2	35.8
Baulkham Hills	eq. 12	21	2.1	37.9
Wollongong	eq. 12	21	2.1	40.0
Sutherland Shire	14	20	2.0	42.0
Holroyd	eq. 15	19	1.9	43.9
Lake Macquarie	eq. 15	19	1.9	45.8
Hawkesbury	eq. 17	18	1.8	47.6
Rockdale	eq. 17	18	1.8	49.4
Camden	eq. 19	17	1.7	51.1
Sydney	eq. 19	17	1.7	52.8
Blue Mountains	eq. 21	16	1.6	54.4
Newcastle	eq. 21	16	1.6	56.0
Parramatta	23	16	1.6	57.6
Auburn	eq. 24	15	1.5	59.1
Hornsby	eq. 24	15	1.5	60.6
91 other LGAs[a]	21 to 116	394	39.4	100.0
Total clients		**1000**	**100.0**	

a Each of these 91 other LGAs was the place of residence of between 1 and 14 MHS clients.

Note: Nine of the top 10 LGAs in the Legal Aid NSW MHS list appear in the above CCLC MHS list. Greater Taree was ranked 7 in the Legal Aid NSW top 10 list and 41 in the CCLC ranks.

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

[60] This information is based on the residential postcode of the MHS clients at the time assistance was first sought. In addition, four clients gave a Sydney PO box as their residential address. Interstate postcodes were recorded for 13 clients in Queensland (six), Australian Capital Territory (five) and Victoria (two). Under its broad funding agreement with the Commonwealth, CCLC provides mortgage hardship services to clients in the Australian Capital Territory. Interstate clients may have moved from NSW or simply telephoned for advice if there was no relevant service in their area.

While CCLC provided assistance to mortgage hardship clients across NSW, it is interesting to note that:

- Blacktown, Gosford and Wyong were the top three LGAs for both CCLC and Legal Aid MHS clients (although not ranked in the same order)
- seven of the top 10 LGAs for Legal Aid MHS clients also appeared in the top 10 list for CCLC
- nine of the top 10 LGAs for Legal Aid MHS clients also appeared in the top 25 for CCLC (the only exception being Greater Taree, which ranked at number 41 for CCLC).

Over 36 per cent of CCLC MHS clients lived in country areas (that is, outside the cities of Sydney, Newcastle and Wollongong). This is slightly higher than the 32 per cent of the general population that live in country NSW, according to the most recent Census of 2006.

Various reasons, as outlined below, may be posited for these observed patterns.

- They provide further evidence of areas in NSW that really are 'worst performing' in terms of residents experiencing mortgage stress. High levels of mortgage defaults in these areas mean that there are simply more clients in these areas accessing the available mortgage hardship services.
- The standing of these areas as mortgage stress hotspots vindicates the placement of the Legal Aid MHS in its Gosford office (to service the Gosford-Wyong area) and its Parramatta office (to service clients in Greater Western Sydney).
- As other research has shown, the placement of a service in a new location can have a 'honey pot' effect, as the service becomes more accessible to people with legal problems living in close proximity to that service. This often leads to higher levels of 'expressed' legal need.[61]
- Locating the Legal Aid MHS solicitors in Gosford and Parramatta may have resulted in referrals being made by Legal Aid NSW to CCLC. Local independent financial counsellors may have also made referrals to CCLC from these areas.
- Whatever the reasons, the demand for MHS services in the Gosford-Wyong and Greater Western areas of Sydney consumed a large amount of the available legal services of both CCLC and Legal Aid NSW.

Clients with mortgage stress from the Gosford, Wyong, Blacktown and other areas may have sought legal assistance from *both* CCLC and Legal Aid NSW, and will therefore appear in the advice statistics of both agencies. For instance, a client may have telephoned CCLC and then been referred to the Legal Aid MHS in these localities for face-to-face advice. Alternatively, a client may have sought advice from both the CCLC and the Legal Aid MHS in their attempt to resolve their mortgage hardship issue. There is no easy way of establishing how many MHS clients appear in the *advice* data of both CCLC and Legal Aid NSW, although, if an overlap did occur, then we might expect that their geographic profiles would be different from those of CCLC *casework* clients. This is because, once CCLC is providing casework, there is less need to refer a client to Legal Aid NSW for additional assistance. Table 30 shows this to be the case, at least in part. There is far more 'spread' in terms of the place of residence of CCLC MHS clients who received assistance by way of casework. Blacktown still appears at number one on the list, but Gosford is displaced from the top three, while Wyong becomes equal third with two other LGAs. Shoalhaven, Hawkesbury, Shellharbour and

[61] A good example was the opening of the Far West CLC in 2000 (the most recently opened generalist CLC in NSW). In 1999, residents from this region recorded just 612 legal inquiries to Legal Aid NSW and CLCs for the year. In 2000, when the Far West CLC opened, the combined number of legal inquiries to these agencies rose to 1190 — an increase of 94 per cent. In the following year, the combined number of legal inquiries to these agencies was over 1600 — up by over 170 per cent from the 1999 (pre–Far West CLC) figure (Law and Justice Foundation 2009).

Sutherland become more prominent. This broader regional distribution of CCLC MHS casework clients (in particular) is evidence of its operational status as a statewide service and of its role as a statewide arm of the MHS.

Table 30. CCLC MHS mortgage hardship casework clients: place of residence, 'top 10' LGAs

CCLC MHS mortgage hardship casework clients				
Place of residence (LGA)	***Rank***	***N***	***%***	***Cum. %***
Blacktown	1	8	7.3	7.3
Campbelltown	2	7	6.4	13.8
Penrith	eq. 3	4	3.7	17.4
Shoalhaven	eq. 3	4	3.7	21.1
Wyong	eq. 3	4	3.7	24.8
Bankstown	eq. 6	3	2.8	27.5
Gosford	eq. 6	3	2.8	30.3
Hawkesbury	eq. 6	3	2.8	33.0
Liverpool	eq. 6	3	2.8	35.8
Shellharbour	eq. 6	3	2.8	38.5
Sutherland Shire	eq. 6	3	2.8	41.3
45 other LGAs[a]	12 to 56	64	58.7	100.0
Total clients		**109**	**100.0**	

a Each of these 45 other LGAs was the place of residence for 1 or 2 MHS clients.

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Type of lender

In addition to information about the clients themselves, CCLC staff recorded details of their mortgage matter, including the lender type. Up to three lenders or 'other parties' (for example, a mortgage broker) were recorded for each client,[62] and the type of lender data are based on this information.

Table 31. CCLC MHS mortgage hardship clients: type of lender

CCLC MHS mortgage hardship clients	*Advice only*	*Casework*	*All clients*
Type of lender	***N (%)***	***N (%)***	***N (%)***
Bank[a]	489 (64.7)	49 (45.4)	538 (62.3)
Non-bank[b]	267 (35.3)	59 (54.6)	326 (37.7)
Total clients	**756 (100.0)**	**8 (100.0)**	**864 (100.0)**

a 'Bank' includes a small number of clients (17) for whom the lender was a credit union or building society. All are ADIs.

b 'Non-bank' includes the category 'mortgage originator'. All are non-ADIs.

Note: Type of lender was based on the variable 'party role'. Party role was missing for 11 advice only clients (1.2%). Records for 124 advice only clients (14.1%) and 1 casework client (0.9%) were not included in this table because the party role did not correspond to the lender type categories of 'bank', 'non-bank' or 'mortgage originator'. The party role values for such records include 'community/welfare agency', 'CLC (other)', 'company', etc. A second related field, the party type description (i.e. party name) was checked for all such records and, where appropriate, the party role was recoded to one of the three lender types (e.g. 'Company' — 'Perpetual Trustee' recoded as 'non-bank lender'). For 360 advice only clients where party role and party name identified an 'individual' (i.e. the mortgagee), their primary advice records were matched back to (any) secondary advice records in order to obtain additional party role information that could assist in identifying the type of lender.

Source: CCLC data (CLSIS database only, July 2009 to October 2010) based on 'party role' and 'party name'.

[62] Where more than one party was recorded, identification of the main lender was made difficult.

Over 62 per cent of CCLC mortgage hardship clients had a loan with a bank lender (that is, an ADI).[63] The remaining 38 per cent reported that their mortgage was with a non-bank lender (for example, GE Money or Perpetual Trustees). When advice only and casework clients were examined separately, significant differences in the type of lender for these two groups became apparent (Table 31). While almost two-thirds (65%) of advice only clients were recorded as having a bank as their lender, less than half (45%) of all casework clients had their loan with a bank. Fifty-five per cent of casework clients had their mortgage with a non-bank lender, compared to 35 per cent of advice only clients. These differences are statistically significant.[64]

Property value, loan size and amount in arrears

Information on the value of clients' mortgaged property, their loan balance and the amount by which they were in arrears was available only for a minority of CCLC MHS clients.

Advice only clients

The figures here are provided with reservations, because the information was available for only 16 per cent of advice only clients. The average value of advice only clients' mortgaged property was about $518 000 (median property value — the 'mid' value, with half of all values above it and half of all values below it — was $425 000). The average loan balance was around $404 000 (median: $330 000), and the average amount in arrears was $18 500 (median: $10 000).

Casework clients

Information was recorded for no more than 58 per cent of casework clients and again should be treated with caution. The average value of the mortgaged property (recorded for 44 of the 109 casework clients) was about $450 000 (median: $402 500), the average loan balance (recorded for 63 clients) was around $305 000 (median: $250 000) and the average amount by which casework clients were in arrears (recorded for 41 clients) was almost $14 000 (median: $11 000).

In summary, the average property value and average amount in arrears were similar for both advice only and casework clients. However, advice only clients, generally, had higher outstanding loan balances than casework clients (that is, a median of $330 000 compared to $250 000).

Main reason for hardship

CCLC reported the 'main reason for hardship' of each MHS client:[65] the basis of a mortgage hardship application to a lender, court or ADR process for special consideration. For all clients for whom a main reason for hardship was recorded, just under two-thirds (62%) reported it to be an employment- or income-related issue (Table 32). Illness or injury was the second most common reason (14%), business failure was reported by eight per cent, and a similar proportion listed family breakdown.

In separating advice only clients from casework clients, there appears to be a number of differences between the two groups.[66] Just over half (53%) of the casework clients recorded an employment- or income-related issue as the main hardship reason, compared to almost two-thirds (64%) of

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[63] 'Bank' includes the lender type of building society and credit union, both of which are ADIs. There were 17 CCLC advice clients and no CCLC casework clients with a building society or credit union recorded as their lender.

[64] A Pearson Chi-square test indicated that there was a statistically significant bi-variate relationship between the 'type' of MHS client (i.e. advice only clients and casework clients) and the type of lender. Pearson Chi-square=15.0, df=1, p=0.001 (statistically significant).

[65] By contrast, Legal Aid NSW recorded up to three hardship reasons per client.

[66] A Pearson Chi-square test indicated that there was a statistically significant bi-variate relationship between the 'type' of MHS client (i.e. advice only clients and casework clients) and the main reason for hardship. Pearson Chi-square=15.85, df=4, p=0.03 (statistically significant).

advice only clients; in particular, reduced employment, reduced income from self-employment (for example, sub-contractors not getting as much work) and business failure were relatively more common for advice only clients than for casework clients. Double the proportion of advice only clients than of casework clients listed family breakdown as their main reason, while illness or injury was noted for 16 per cent of casework clients compared to 13 per cent of advice only clients. Finally, 17 per cent of casework clients listed 'other' as their main hardship reason, compared to 6.5 per cent of advice only clients. ('Other' reasons include being sent to prison and the death or imprisonment of a spouse or partner.) Of these identified differences, the higher proportion of casework clients giving 'other' hardship reasons was the main contributor to the statistical difference between the advice only and the casework client groups in terms of recorded main hardship reasons.

Table 32. CCLC MHS mortgage hardship clients: main reason for mortgage hardship

CCLC MHS mortgage hardship clients	*Advice only clients*		*Casework clients*		*All clients*	
Main reason for mortgage hardship	***N***	***%***	***N***	***%***	***N***	***%***
Employment/income-related	**362**	**63.8**	**56**	**52.8**	**418**	**62.1**
Unemployment	147	25.9	34	32.1	181	26.9
Reduced employment	94	16.6	10	9.4	104	15.5
Reduced income from self-employment	70	12.3	9	8.5	79	11.7
Business failure	51	9.0	3	2.8	54	8.0
Family breakdown	**53**	**9.3**	**6**	**5.7**	**59**	**8.8**
Illness or injury (accident)	**76**	**13.4**	**17**	**16.0**	**93**	**13.8**
Pregnancy, child care or carer role	**39**	**6.9**	**9**	**8.5**	**48**	**7.1**
Other	**37**	**6.5**	**18**	**17.0**	**55**	**8.2**
Total clients	**567**	**100.0**	**106**	**100.0**	**673**	**100.0**

Note: CCLC recorded only the main reason for hardship. Main reason for hardship was not recorded or disclosed for 324 advice only clients (36.4%) and 3 casework clients (2.8%).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Did the MHS reach clients early?

As discussed in the 'Introduction' chapter, the MHS aimed to assist clients as early as possible in the legal process, ideally before they had even been issued with a default notice on their home loan. In order to ascertain whether clients were reached early, the legal process for home repossession following mortgage default was broken down into six broad 'stages of enforcement', which were defined in the same ways by Legal Aid NSW and CCLC solicitors for the purpose of this evaluation (Table 33). Stage of enforcement information is an indicator of how far a mortgage hardship matter has progressed through the legal process.

CCLC recorded the stage of enforcement that each client had reached at the time when they were *first* assisted by the service (for instance, when their file was opened); the stage of enforcement record was *not* updated each time the file was revisited. As detailed in Table 33 (also presented as Table 15 in the 'Legal Aid' chapter), for some stages of enforcement there are multiple points in the process when legal action is being taken and legal assistance may be provided.

Table 33. Definitions of stages of enforcement for mortgage hardship matters

Stage of enforcement	*Legal process(es)*
Stage 1	**No default notice served**
Stage 2	**Default notice served** Default notice served, but not expired Default notice expired
Stage 3	**Statement of claim served** Statement of claim served, but 28 days not expired Statement of claim expired, but no judgment or defence Defence (and/or cross-claim) filed Defence (and/or cross-claim) struck out Default judgment entered Judgment entered after hearing Application for set aside filed Judgment set aside Writ of possession issued
Stage 4	**Notice to vacate served**
Stage 5	**Post-repossession**
Stage 6	**Post-sale**

Source: Definitions provided by Legal Aid NSW and CCLC.

Nearly all CCLC casework files contained information on stage of enforcement, whereas 25 per cent of CCLC advice records did not contain this information. Table 34 shows the stage of enforcement when clients for whom the information was noted first sought assistance from the CCLC MHS. We can see that:

- 37 per cent of clients had not been issued with a mortgage default notice (Stage 1)
- 22 per cent had been issued with a default notice but had not received a statement of claim from the lender (Stage 2)
- around one-quarter (24%) were subject to a court process (that is, a statement of claim had been served by the lender to repossess the home) (Stage 3)
- 10 per cent had been given notice to vacate the home (Stage 4)
- six per cent had lost their home by repossession (Stages 5 and 6).

Table 34. CCLC MHS mortgage hardship clients: stage of enforcement at time of first assistance

CCLC MHS mortgage hardship clients	*Advice only*		*Casework*		*All clients*		
Stage of enforcement at first assistance	*N*	*%*	*N*	*%*	*N*	*%*	*Cum. %*
Stage 1 (no default notice)	269	40.3	15	14.0	284	36.7	36.7
Stage 2 (default notice)	157	23.5	17	15.9	174	22.5	59.2
Stage 3 (statement of claim)	147	22.0	39	36.4	186	24.0	83.2
Stage 4 (notice to vacate)	53	7.9	30	28.0	83	10.7	93.9
Stage 5 (post-repossession)	21	3.1	3	2.8	24	3.1	97.0
Stage 6 (post-sale)	20	3.0	3	2.8	23	3.0	100.0
Total clients	**667**	**100.0**	**107**	**100.0**	**774**	**100.0**	

Note: Stage of enforcement was not recorded for 224 advice only clients (25.1%) and 2 casework clients (1.8%).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Around 17 per cent of clients for whom the information was recorded were at or past Stage 4 and had already lost or were in the process of losing their home when they first sought CCLC's assistance.

Some clear differences were observed in terms of the stage of enforcement for advice only and casework clients. In particular, a higher proportion of advice only clients than casework clients

were at Stage 1 (40% compared to 14%), a higher proportion of casework clients than advice only clients were at Stage 3 (36% compared to 22%) and a much higher proportion of casework clients than advice only clients were at Stage 4 (28% compared to 8%). These differences were found to be statistically significant.[67]

It was argued in establishing the MHS that reaching people experiencing mortgage stress *early* has the benefit of providing more options for resolving mortgage disputes and gives clients a better chance of keeping their home or selling their home themselves for a better financial result. With 37 per cent of CCLC MHS clients assisted before a default notice had been issued, it would appear that the service was successful in reaching many clients at the *earliest* stage of enforcement for defaulting on mortgage payments. However, in the absence of any baseline data, we cannot say whether or not CCLC was reaching clients any *earlier* in the enforcement process than would have been the case had the MHS not been in operation.

One could argue that another potential benefit of assisting clients early in the legal process is that (some) clients may be assisted more efficaciously at an earlier stage, requiring a less resource-intensive and less costly level of legal assistance because of the less advanced nature of their mortgage problem. In such cases, advice or minor assistance may form the basis of appropriate assistance rather than casework. This issue is further examined in the section 'Assistance provided by stage of enforcement' below.

Stage of enforcement by location of the MHS service

While only 26 MHS clients were first assisted by CCLC at the Supreme Court, 11 (42%) of those clients were at Stage 3, while 14 (54%) were at Stage 4 (with one client missing information on stage of enforcement). This indicates that when CCLC acquired MHS clients through the Supreme Court duty roster scheme, those clients were well advanced in terms of the risk of losing their home through repossession.

Assistance provided by stage of enforcement

Figure 14 shows that the majority of CCLC MHS advice only clients were still at an early stage of enforcement (Stages 1 to 3) when they first contacted CCLC. By contrast, most CCLC casework clients had already advanced to Stages 3 or 4 when they were *first* assisted by the service, meaning that they were already subject to a statement of claim or a notice to vacate their home. The graph also indicates that, at all stages of enforcement, there were more occasions of advice than of casework.

Through Stages 1 to 6 there was a progressive decrease in the number of advices provided; there was also a corresponding increase in casework up to and including Stage 4. For instance, at Stage 1, the split was 95 per cent advices to five per cent casework, but by Stage 4 the split was 64 per cent advices to 36 per cent casework.

Stages 3 and 4 had the highest level of assistance provided through casework, reflecting the need for CCLC MHS to take carriage of matters once they had proceeded to the Supreme Court but while there was still the chance of saving homes from repossession.

By Stage 5, clients were again typically assisted by advice rather than by casework, indicating that once clients had lost their home, CCLC solicitors were more restricted in what they could do, aside from supporting and advising clients on any remaining post-sale matters.

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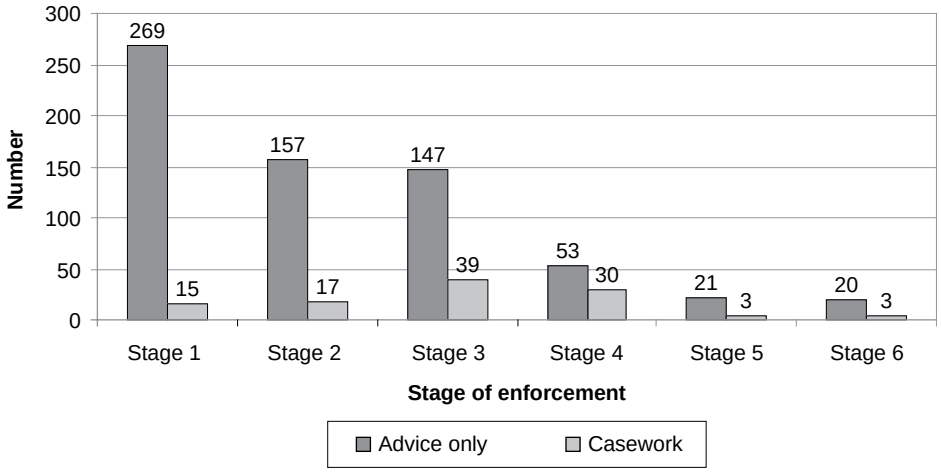
[67] A Pearson Chi-square test indicated that there was a statistically significant bi-variate relationship between the 'type' of MHS client (i.e. advice only clients and casework clients) and the stage of enforcement. Pearson Chi-square=62.52, df=5, p=0.001 (statistically significant).

Figure 14. CCLC: stage of enforcement at time of first assistance, by type of assistance (July 2009 to October 2010)



Note: Stage of enforcement was not recorded for 224 advice only clients (25.1%) and 2 casework clients (1.8%).

Source: CCLC data (CLSIS database, July 2009 to October 2010).

Court representation and courses of action pursued

CCLC MHS solicitors recorded the various courses of action they pursued on behalf of their casework (and minor assistance) clients. Processes for advice only clients were not recorded, as these clients took carriage of their own matters. Solicitors may have assisted casework (and minor assistance) clients through one or more different courses of action. Furthermore, each particular course of action may have involved one or more occasions of service by the solicitors.

It should be noted that in January 2010 (during the period of the MHS evaluation) the FOS changed its terms of reference to allow mortgage hardship matters to be lodged in ADR after a statement of claim had been issued by the lender. This increased the range of legal options available to clients who were at Stage 3 of the enforcement process.

For those CCLC MHS casework (and minor assistance) clients for whom a course of action was recorded (Table 35), it was found that 43 per cent were assisted by their solicitor or financial counsellor in negotiating with their lender or creditor, 33 per cent were assisted in submitting a mortgage hardship application through an ADR process (for example, FOS or COSL), 27 per cent had their financial situation formally assessed and/or received financial counselling (including in some cases negotiations with non-mortgage creditors), 24 per cent were assisted in the drafting of an application to the relevant court or tribunal and 12 per cent were represented at court (or a tribunal) by their solicitor.[68] ('Representation' included stay applications, hardship applications and defence and cross-claims actions in the Supreme Court.)

[68] Percentages add up to more than 100 per cent because multiple courses of action and occasions of service (e.g. multiple court hearings) are possible. No course of action was recorded for around 25 per cent of clients.

Table 35. CCLC MHS mortgage hardship casework clients: courses of action (casework clients n=109)

CCLC MHS mortgage hardship casework clients		
Courses of action	***N of unique actions***[a]	***% of clients***[b]
Negotiation with lender/creditor (including drafting correspondence)	47	43.1
Drafting/submitting ADR applications	36	33.0
Financial assessment/counselling	29	26.6
Drafting/submitting court/tribunal applications	26	23.9
Representation	13	11.9
Case review/advice	12	11.0
Assistance with evidence/submissions	10	9.2
Drafting defence/cross-claims	7	6.4
Other	4	3.7
Total actions	**184**	

a Up to two 'courses of action' could be recorded for each CCLC client. For this reason the total is greater than the number (109) of CCLC casework clients. Each unique course of action is counted once per client; there may have been multiple actions of the same kind for any individual client (e.g. representation in court on multiple occasions).

b Percentages reflect the number of individual clients for whom that particular course of action was taken. The total percentage for this column adds up to more than 100 per cent because up to two different courses of action may have been recorded for any 1 CCLC casework client.

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Client outcomes

The aim of the MHS is to help clients retain their home, or, if that is not possible, to help them achieve the best possible outcome in the circumstances. For some clients, keeping their home may not be a viable option or the 'best' outcome; a better result may be for such clients to sell their home before it is repossessed by the lender. This could involve solicitors negotiating with the lender and other parties to allow more time for repayments.

For casework clients, CCLC solicitors were asked to record the outcome of matters at the time each file was closed. Unfortunately, an outcome was not recorded for 35 per cent of casework clients. In some cases, this was because the file was still open. In other cases, CCLC had ceased to act for the client before the matter was resolved. This may occur when, for instance, CCLC assists a client with a stay application (for example, to allow for more time to move, sell the house or refinance) but does not subsequently hear from the client.

Two further points need to be made on recorded case outcomes. First, it is not possible to tell whether the outcomes of casework clients that were *not* recorded differed (for better or worse) from those that *were* recorded. Second, as previously mentioned in the discussion on stage of enforcement, the outcomes of mortgage hardship matters are likely to be influenced by a diverse range of factors, many of which are beyond the control or influence of the MHS. It was beyond the scope of this study to conclusively attribute any outcome, good or bad, to the MHS.

Table 36 indicates that around half (48%) of the CCLC MHS casework clients for whom an outcome was recorded retained their home, generally after the CCLC solicitor had negotiated with the lender or represented the client at court or tribunal. One in every six casework clients (17%) had their home

repossessed. A further one in eight (12.5%) was in the process of selling their home or had sold their home prior to repossession. For the remaining 13 per cent of casework clients, whose outcome was recorded as 'other', the documented result involved being referred to ADR (two clients), being granted a temporary stay (two), the loan being set aside (one) and damages being paid to the client (one).[69]

Table 36. CCLC MHS mortgage hardship casework clients: outcome when file closed (casework clients n=109)

CCLC MHS mortgage hardship casework clients		
Outcome when file closed	***N***	***%***
Retained home	**26**	**48.1**
Court/ADR	7	13.0
Negotiation	13	24.1
Process not stated	6	11.1
Home repossessed	**9**	**16.7**
Client selling or sold home	**12**	**22.2**
Other	**7**	**13.0**
Total clients	**54**	**100.0**

Note: Files were still open for 17 casework clients (15.6%). No outcome was recorded for an additional 38 casework clients (34.9%).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

Outcome by stage of enforcement: early intervention?

As discussed earlier, a factor that may affect outcomes is how far a client's mortgage hardship issue has progressed before assistance is sought, in part because the stage that the legal process has reached before a client seeks help has a bearing on the type of assistance that the MHS can usefully provide.

To further explore this relationship, information on client outcomes at the time files were closed was cross-tabulated with the stage of enforcement that clients were at when they first contacted the MHS (Table 37). With few cases with an outcome to report, the following information must be treated with caution and as indicative only.

Table 37. CCLC MHS mortgage hardship casework clients: outcome when file closed, by stage of enforcement when file first opened (casework clients n=109)

CCLC MHS mortgage hardship casework clients	*Outcome*				
	Retained home	***Selling/sold home***	***Home repossessed***	***Other***	***All outcomes***
Stage of enforcement	***N***	***N***	***N***	***N***	***N***
Stage 1 (no default notice)	5	3	0	1	9
Stage 2 (default notice)	6	0	0	0	6
Stage 3 (statement of claim)	13	2	2	4	21
Stage 4 (notice to vacate)	2	7	5	2	16
Stage 5 (post-repossession)	0	0	1	0	1
Stage 6 (post-sale)	0	0	1	0	1
Total clients	**26**	**12**	**9**	**7**	**54**

Note: Shaded cells indicate outcomes that are most unlikely for a client at that stage of the enforcement process (e.g. a Stage 5 or 6 client has already lost their home) or are unlikely if they did not progress past that stage (e.g. a Stage 1 client having their home repossessed).

Source: CCLC data (CLSIS database only, July 2009 to October 2010).

[69] For one casework client, the outcome of their case was recorded as a move interstate.

Stages 3 and 4 require particular attention, because at later stages of the enforcement process the client had already lost their home and at earlier stages the possibility of the client losing their home was much lower, because no default notice had been issued or a default notice had been issued but no claim on the house made by the lender.

Only two (9.5%) of the 21 CCLC MHS casework clients who were first seen at Stage 3 had their home repossessed; a further two (9.5%) clients sold their home or were in the process of selling their home when their file was closed. That is, the majority (81%) of casework clients at Stage 3 retained their home.

On the other hand, only two (12.5%) of the 16 casework clients who were first seen at Stage 4 retained their home, although an additional two (12.5%) clients with 'other' recorded as their outcome also retained their home at the time their file was closed (but they were still engaged in a legal process). Five (31%) Stage 4 clients had their home repossessed and a further seven (44%) were in the process of selling or had sold their home as a result of their mortgage hardship.

There are important differences between Stage 3 and Stage 4 clients. Stage 4 clients no longer have the option to take their case to an ADR (such as FOS or COSL). Furthermore, they cannot apply for a hardship variation,[70] leaving negotiation with the lender as their only remaining option.[71]

One factor that may have a real bearing on the capacity of any legal service to assist clients (or to assist clients efficiently) is how early in the legal process a client seeks assistance. All of the nine casework clients who had their homes repossessed came to the CCLC MHS at relatively late stages of mortgage stress: two were in the court process (Stage 3), five had received a notice to vacate their home (Stage 4) and four had had their home repossessed (Stages 5 and 6). Of the 12 clients who were selling or had sold their home, seven had received a notice to vacate (Stage 4) and two were in a court process (Stage 3). Perhaps having recognised the gravity of their financial situation, three casework clients who were selling or had sold their home had not received a default notice from their lender (Stage 1).

Homes retained

Of the 26 CCLC MHS clients whose home was recorded as being retained, five (19%) had sought assistance *before* they received a default notice (Stage 1), six (23%) had contacted the MHS when they had received a default notice but no statement of claim from the lender (Stage 2) and 15 (58%) had already been at court before help was first sought (Stage 3 or 4).

Homes sold or repossessed

By comparison, all nine CCLC MHS clients whose home was repossessed were already subject to legal proceedings (Stages 3 to 6) before help was first sought. Of the 12 clients who had sold or were in the process of selling their home, two had first sought assistance at Stage 3 and seven at Stage 4; the remaining three clients had contacted the MHS earlier in the enforcement process (Stages 1 and 2).

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70 In the case of *Permanent Custodians Limited v. Carolyn Joy Upston* [2007] NSWSC 223 (16 March 2007), the NSW Supreme Court held that a hardship variation could be made at any time before judgment has been entered.

71 Although it is more difficult to save houses at Stage 4, CCLC indicates that there is still very valuable work to be done in ensuring people have the time to either sell or otherwise make arrangements for a dignified departure from their property.

Conclusion

The major findings drawn from the CCLC datasets are summarised here. The implications of findings from the Legal Aid NSW data, the CCLC data and the follow-up survey are considered together in the 'Discussion' chapter.

Workload

The type of work that CCLC does for MHS clients is quite detailed and complex. It can involve, possibly on multiple occasions, negotiations with the lender, hardship applications, preparing matters for ADR and representation at court. Clients may also receive financial assessment and counselling.

There is evidence of a substantial amount of mortgage-related work being done by CCLC under the MHS, with around 174 separate assistances per month, of which an average of 10 were casework matters and 164 were advices. On average, every second mortgage casework matter required an additional file to be opened by CCLC to deal with extra debt-related issues.

Since the introduction of the MHS, CCLC has dealt with 60 per cent more mortgage cases and has provided an average of 146 mortgage *hardship* advices per month (based on the 11-month period from December 2009 to October 2010). While the number of mortgage hardship advices was higher in the latter months of the evaluation period, there was not a significant increase overall.

Between July 2009 and October 2010, CCLC provided legal assistance to 1000 individual MHS clients, with 25 receiving casework only, 84 receiving both advice and casework and 891 receiving advice only. On average, advice clients received two separate occasions of advice; however, nine per cent received four or more separate advices.

Individual CCLC MHS casework clients numbered 109. Around 40 per cent of these clients received more than 20 hours of casework.

A substantial proportion of clients (24%) were referred by the mortgage lender or creditor. LawAccess NSW referred 18 per cent, the court or ADR 10 per cent and independent financial counsellors seven per cent. Nine per cent of clients self-referred.

Clients

While almost 60 per cent of CCLC MHS clients were under 50 years, those over 60 years of age were disproportionately represented, based on all people who still have a mortgage on their home in the Australian population.

Nearly all (95%) CCLC advice clients spoke English at home. A higher proportion of casework clients (11%) than advice clients (5%) did *not* speak English at home, with Arabic and Chinese dialects prominent in homes in which English was not spoken. Four times the expected number of MHS *casework* clients were of Aboriginal or Torres Strait Islander descent.

Thirty-six per cent of clients were receiving a government benefit (for example, unemployment, disability or aged pension). Fewer casework than advice clients were earning an income (54% compared to 61%), with more casework clients on government benefits (44% compared to 35%). Where recorded, half of all CCLC MHS clients had a low level of income (less than $26 000 per annum), with 38 per cent in the 'medium' income bracket ($26 000 to $52 000).

The connection between employment/income loss and mortgage stress is highlighted in the reasons that CCLC MHS clients sought assistance. (This was also found for Legal Aid MHS clients.) Almost

two-thirds of the CCLC clients experienced employment- or income-related hardship. One in eight clients (12.5%) listed illness or injury as the main reason for mortgage hardship, while family- and carer-related issues together were cited by 15 per cent.

Clients came from 116 different LGAs, which is around three-quarters of all LGAs in NSW. The largest number of clients was recorded as living in Blacktown, Wyong and Gosford LGAs (also the top three areas for Legal Aid MHS clients). Campbelltown, Penrith and Liverpool LGAs also recorded a large number of CCLC MHS clients.

Overall, clients were more likely to have a bank as their lender (62%). However, casework clients had a higher proportion of non-bank lenders than advice only clients (55% compared to 36%). Differences between bank and non-bank lenders that could influence the type of assistance provided to MHS clients are considered in more detail in the 'Discussion' chapter.

Reaching clients early

A key aim of the MHS is to reach clients as early as possible, before their mortgage matter escalates. We noted that almost 60 per cent of all CCLC MHS clients had not received a statement of claim when they first sought help. Indeed, 37 per cent had not been issued a default notice.

A strong relationship was observed between clients' stage of enforcement when they first contacted CCLC and the type of legal assistance they received. Stage 1 clients (no default notice) and Stage 2 clients (default notice received but before statement of claim) were more likely to receive advice than casework (40% compared to 14% for Stage 1; 24% compared to 16% for Stage 2). On the other hand, Stage 3 clients (statement of claim served) and Stage 4 clients (notice to vacate served) were more likely to receive casework than advice (36% compared to 22% for Stage 3; 28% compared to 8% for Stage 4). Once a client had had their home repossessed or sold by the lender (Stage 5 or 6), there was less that the MHS could do to assist. Again, advice became the more prominent form of legal assistance.

Client outcomes

Around 50 per cent of CCLC MHS casework clients retained their home, generally after negotiation with the lender or a hearing at court or tribunal. Seventeen per cent had their home repossessed, and 12.5 per cent were in the process of selling their home or had sold their home prior to repossession at the time their file was closed.

Obviously, clients are at elevated risk of a negative outcome if they first seek assistance at Stages 3 and 4, and consequently they are more likely to receive casework at these stages. This explains the diverse outcomes recorded for clients at these two stages: of the 37 clients in this category, 20 (54%) retained their home, nine (24%) were in the process of selling or had sold their home and eight (22%) lost their home to repossession. By contrast, at Stages 1 and 2 the outcomes for clients were more positive: clients in this category almost always retained their home or had carriage for selling their home on their own terms. At Stages 5 and 6, the outcomes were always negative: a consequence of the home having been already repossessed.

Other factors that may affect outcomes — the nature of the mortgage matter, the legal options available to clients and the types of clients who seek assistance, early or late — are all considered in the 'Discussion' chapter.

5. Client follow-up survey

In this chapter we examine what happened to a small group of people interviewed after they were provided with assistance from the MHS. We particularly focused on clients who had retained their homes at the time their MHS file was closed, to assess whether they were able to sustain repayments under any new arrangements. An outcome to be avoided is one in which the home is saved in the short term but it remains at risk because repayments cannot be sustained in the medium to long term. However, we also interviewed some clients who did not keep their homes. Both groups were asked for their views about the assistance provided by the MHS.

The results provided some valuable observations about the MHS and about client outcomes. However, we cannot, on the basis of these interviews, necessarily attribute any client's legal or other outcomes to the MHS over and above any other factors. Factors such as clients' willingness and capacity to seek assistance, the stage of the legal process at which clients first sought assistance, the decisions of the court or ADR body, and other aspects of clients' lives may all have affected the outcomes described here.

The interviews

Interviews were conducted by telephone. Each agency (Legal Aid NSW and CCLC) conducted the follow-up survey with their own clients, though interviews were not carried out by the solicitor who had provided the original assistance. In broad terms, the clients were asked about their current circumstances, including whether they still own the mortgaged property, whether they now felt 'more in control' or 'less in control' of their financial situations, their views of the assistance provided to them by the MHS and what they would now do if they faced further mortgage difficulties. A full copy of the interview schedule is provided at Appendix A.

Sample selection

The criteria used for selecting clients to be contacted for follow-up were that they had been assisted with minor assistance or casework by an MHS solicitor, that their files had been closed before 30 June 2010 (preferably more than six months prior to the interview) and that they had agreed to be contacted for follow-up at the time their file was closed. We also aimed to make two-thirds of the sample comprise clients who had retained their homes at file closure, to examine whether they were able to sustain new repayment arrangements that arose from the assistance provided by the MHS.

In the end, 38 people took part in the survey. Twenty of the 70 Legal Aid NSW clients who were eligible for the follow-up survey[72] had, at time of file closure, agreed to a follow-up interview but of these, only 11 could be contacted even after multiple attempts. The final group of Legal Aid NSW clients interviewed was supplemented with four people who had been assisted with advice only.

Of the 80 CCLC MHS clients eligible for a follow-up interview,[73] five could not be contacted because their telephone was disconnected, four did not answer calls and two refused to participate. One client was excluded due to serious mental health issues. The remaining clients were sorted

[72] That is, casework or minor assistance clients whose file was recorded as closed before 30 June 2010.

[73] That is, casework or minor assistance clients whose file was recorded as closed before 30 June 2010.

into two groups: those whose homes had been retained when their file was closed, and those whose homes had been lost. Two-thirds of the sample were randomly selected from the first group and one-third from the second.

Several features of the interviewee selection process mean that the views and experiences of the 38 MHS clients interviewed should not be taken as representative of the views and experiences of all MHS clients. This is because the people who participated may systematically differ from those who could not be contacted for, or did not consent to, an interview. Further, the fact that the homes of two-thirds of the interviewed clients had been saved may also affect the representativeness of the responses given, because this group, in general, had a favourable outcome, which was not the experience of all MHS clients. The following information should be considered with these caveats in mind. As this is a qualitative survey of a small number of clients, percentages are not reported.

Interviewees

As Table 38 shows, the final sample included 38 MHS clients, 15 who were assisted by Legal Aid NSW and 23 who were assisted by CCLC. The original intention was to interview clients 12 months after their file had been closed. However, due to the small number of clients who agreed to be followed up and the timeframe in which the evaluation report was required, most were interviewed between three and 12 months after their file was closed. Of the 38 respondents, 22 were followed up less than six months after their files were closed, 12 at between six and 12 months, and four more than a year after. Most (34) respondents had received casework or minor assistance. Four Legal Aid NSW clients had received advice only.

Table 38. Sample of follow-up clients: MHS service provider, by type of assistance (n=38)

Sample of follow-up clients	*Advice*	*Minor assistance*	*Casework*	*All clients*
MHS service provider	***N***	***N***	***N***	***N***
Legal Aid NSW	4	7	4	15
CCLC	0	5	18	23
Total clients	**4**	**12**	**22**	**38**

Source: Follow-up survey of sample of Legal Aid NSW and CCLC MHS clients (November 2010).

As shown in Table 39, of the clients who were interviewed, 25 had retained their home at the time their file was closed, although six of these still had ongoing legal processes. Seven clients had sold their home or had their home repossessed, and the outcome at the time of file closure was unknown for six clients.

Table 39. Sample of follow-up clients: outcome when file closed (n=38)

Sample of follow-up clients	
Outcome when file closed	***N***
Client sold home	5
Home repossessed	2
Retained home: negotiation	14
Retained home: ADR/court	5
Retained home: other/matter ongoing	6
Unknown	6
Total clients	**38**

Source: Follow-up survey of sample of Legal Aid NSW and CCLC MHS clients (November 2010).

It is important to note that the number of homes retained at the time the files were closed among the follow-up sample does not reflect the overall proportion of homes that were saved under the MHS. Those clients whose homes were saved were deliberately over-sampled in the follow-up survey, to explore whether they were able to sustain the new repayment arrangements and keep their homes.

Results

The follow-up interviews examined a diverse range of issues, including whether or not the client was still in possession of their home, whether the client now felt more or less in control of their financial situation, and whether the assistance they received through the MHS had made a difference or not. The following sections detail the results of these areas of inquiry.

Homeownership status

Nineteen of the 25 survey respondents who had retained their home when their file was closed still owned the property at the time of the follow-up interview. Three were in the process of selling their home, and three no longer owned the property (Table 40). Of the six for whom an outcome was unknown at the time that their file was closed, three still owned the property, one was currently selling and two no longer owned the property.

Table 40. Sample of follow-up clients: homeownership status at follow-up, by outcome when file closed (n=38)

Sample of follow-up clients	*Homeownership status at follow-up*			
	Still own home	*Selling home*	*No longer own home*	*All outcomes*
Outcome when file closed	*N*	*N*	*N*	*N*
Client sold home[a]	-	-	(5)	5
Home repossessed	-	-	(2)	2
Retained home: negotiation	12	1	1	14
Retained home: ADR/court	3	-	2	5
Retained home: other/matter ongoing	4	2	-	6
Unknown	3	1	2	6
Total clients	**22**	**4**	**5**[b]	**38**

a 'Client sold home' includes 1 client whose dispute related to mortgage exit fees when they sold their home.

b Five clients who had retained their home at the time when the file was closed or whose outcome was not recorded, and who no longer owned the property.

Note: Shaded cells indicate that currently 'selling (their) home' or 'no longer (owning their) home' are not possible options for clients who had already sold their home or had their home repossesed.

Source: Follow-up survey of sample of Legal Aid NSW and CCLC MHS clients (November 2010).

Other circumstances

Twenty of the 22 respondents who still owned their home at the time of the follow-up interview still lived in the property. Most of those who no longer owned their home were living in private rental accommodation, although one had moved to a retirement village and one (whose home had been repossessed) was homeless.

Respondents were asked if there had been any major changes in their circumstances since they had been assisted by the MHS. Ten had increased their hours of employment or had found employment, three had lost their job, three had experienced a relationship breakdown, one had been subject to rent increases, one's health had deteriorated and one had a new baby in the family. These various life events are among the many variables (apart from the legal assistance provided) that may have

positively or negatively affected the capacity of clients to maintain their mortgages under new arrangements negotiated through the MHS.

How in control clients felt of their financial situation

Given the variety of circumstances that clients face and the varying stage of enforcement at which clients first seek assistance, not every client can be assisted to save their home. For some, the best outcome is to sell their property and gain greater control of their financial situation. Respondents were asked whether they now felt that they were more in control of their financial situation, less in control or about the same, compared to when their MHS file was closed. Twenty-seven respondents said that they felt more in control of their finances, five said that they felt about the same and six said that they felt less in control (including one who went bankrupt). The following comments made by respondents illustrate their views.

More in control

It has taken the pressure off, [now I] don't have the house. Much happier as no threat or pressure (Interviewee no. 12).

Legal Aid gave me more insight about the whole financing process and provided more information on how to manage money (no. 11).

Financial counsellor was very good. Went through everything very thoroughly and gave me options and advice (no. 18).

About the same

I'm still trying to pay all my bills but at least I have a break [of three months]. I'm hoping to get back to work (no. 15).

Less in control

[Interviewer notes:] *Has given up on everything, just pays the mortgage. Relying on daughter to work and pay a higher share of the mortgage* (no. 8).

Due to the lack of work in the building trade, it is still a struggle (no. 13).

I don't know. I need a financial manager to manage my affairs. I have never managed my finances by myself (no. 25).

Clients who still owned or were selling their home

Those surveyed clients who still owned or were in the process of selling their home when they were followed up were asked a further series of questions to ascertain how they were coping financially. These questions reflect previous research that identifies common responses to managing accumulating debt and the threat of mortgage default, including taking on more debt by borrowing from family and friends, and borrowing on credit cards (Berry et al. 2010).

Eighteen of the 26 respondents in this group said they were up to date with their mortgage repayments, and two further clients were selling their home and were therefore no longer making payments.

Two respondents who were still behind in their payments said they had a moratorium on them and had just started or were due to start making repayments again. Of the four who were behind in their mortgage payments, two had missed one payment and two had missed three or more.

We also asked respondents about any other debts they currently had. Fourteen of the 26 respondents who still owned their home said that they were *not* up to date with their other debts, including three

of the four who were currently selling their home. Respondents reported being behind in paying council rates, and water and electricity bills, and several had hardship arrangements in place for these debts. Two reported considerable credit card debts.

Nineteen of 25 respondents said that they had not borrowed any more money since being assisted by the MHS. Four said that they had borrowed money from family or friends, and two that they had arranged a loan from a non-bank lender. Only one respondent (who was selling their property) said they had used their credit card to pay the mortgage since their file was closed by the MHS.

The responses above suggest that, although clients may be assisted to retain their homes, it remains a struggle for some to keep up with other financial obligations.

Assistance provided by the MHS

Respondents were asked about the type of help that they had hoped to receive from the MHS, the types of assistance that they did receive, whether they felt that the assistance had helped them with their mortgage situation and how it had helped.

Expected assistance

> *I was almost caught up with all my other debt repayments and wanted some help dealing with my mortgage problems. I wanted some room to breathe. It was very difficult for me to deal with the lender on my own and I wanted some help* (no. 7).

Most respondents indicated in general terms that they wanted 'advice' and 'help to save their house'. More specifically, they were looking for help in negotiating with the lender (20 clients), drafting letters and other documents (12 clients) and assistance or representation in a court process (nine clients).[74]

Actual assistance

When asked what type of help they actually received, again many responded only in general terms.

> *[CCLC] helped me to write letters to the lender to freeze the mortgage repayments giving us time to get back on our feet* (no. 17).
>
> *[The solicitor] … helped draft our defence, and told us what to do and what not to do. [The solicitor] pulled it all together and got us through. She let me know once the Statement of Claim had been dismissed six months later* (no. 22).
>
> *Got legal advice. Found out our avenues. Was informed about hardship options. Received a mortgage book which I still use* (no. 29).
>
> *Was advised to sell my house ASAP, before the bank foreclosed, so that I could get a better price* (no. 26).

Impact of assistance

When asked whether they felt that the assistance given by the MHS had helped them to resolve their mortgage issues, 30 respondents said that it had and eight said that it had made no difference. No respondents said that it had made the issues worse. The comments below further illustrate the respondents' views.

[74] Respondents could give more than one answer.

Helped to resolve the situation

The lenders gave us a hardship variation. I wouldn't have known what to say or how to ask if you hadn't helped us (no. 20).

I still have an outcome where I am in control of my property. Thank you for that (no. 28).

Legal Aid helped a bit. I was given a path to follow that was in line with what I was personally considering. The advice gave me the assurance needed to take a clear approach in relation to my mortgage (no. 30).

Definitely. Without [the solicitor] and CCLC we would have lost the house (no. 37).

Notably, 'resolving the situation' did not necessarily mean that the house was saved.

Everything you did helped, it took a load off our shoulders during a stressful time. The realistic advice that we could not afford the mortgage no matter what variations were done was helpful (no. 2).

The assistance was successful in buying me time, which was what I was looking for. The home was repossessed, but I had the time to arrange my affairs (no. 10).

Made little or no difference

Some clients felt that the assistance provided made no difference to their mortgage issues. In these cases, as their comments suggest, there may have been little in the way of legal assistance that could have helped them at the point at which they sought help.

I got to you too late. And since then I was made bankrupt by one of the other loans I had that I couldn't pay (no. 18).

It helped a little but I still don't have any money and my husband has left me in a huge mess (no. 21).

One client was frustrated that they could not receive assistance from the MHS with legal issues not related to the mortgage problem, including bankruptcy.

Didn't help at all. [The solicitor] told me what I could and couldn't do. He could only offer mortgage assistance. Could not tell me about how I could do anything else, as he wasn't qualified to give that advice and could only help me with the house (no. 31).

Other benefits

Respondents were asked whether the assistance provided helped them in any other ways. Twenty-five of the 38 respondents described a positive impact on their stress level; this outcome was also repeatedly raised in response to other questions.

[We] were going through hell, couldn't sleep. Trying to be positive for the kids. CCLC helped reduce the stress (no. 23).

Having someone to discuss my situation with reduced stress, especially dealing with experienced people who knew what I could do (no. 9).

It was amazing the amount of relief; could sleep at night and not be absolutely out of [my] head wondering what to do and being scared of being kicked out of the house (no. 17).

Respondents also reported having increased confidence and capacity to deal with their mortgage and other financial issues.

The assistance gave us options to go on with (no. 33).

The assistance put me at a better place and gave me an understanding of what to do … The help provided settled me down and allowed me to focus. I was not stressing as much as a result (no. 12).

It also taught me a really good lesson. I also learnt about how to keep other things in control. The whole situation was in many ways life changing. We had nowhere to go and [the solicitor] helped pick us up (no. 26).

I am now opening my bank statements and seeing where all my money goes. I am also trying to save a bit (no. 18).

[Now] prioritising debts and spending (no. 2).

What clients would do in the future

Finally, respondents were asked, 'If you were to experience any further difficulties with your mortgage now, what do you think you would do about it?' In response, none of the respondents said that they would do nothing (although it should be kept in mind that clients were speaking with representatives from the legal service that assisted them and therefore may have been more inclined to give positive responses). Of the 34 respondents who answered this question, 31 said they would seek help — usually by returning to the person or service who provided the original assistance.

I would run to [the financial counsellor] (no. 22).

Phone and ask for help (no. 16).

I would speak to Legal Aid, but if I couldn't find someone like [the solicitor], I would be discouraged with the service and wouldn't stay. She was on top of everything. She did all the research and spoke to everyone, including the other solicitors. It was very helpful (no. 14).

Ten respondents said they would take action themselves, such as negotiating with the lender.[75] One response was summarised as follows:

Definitely contact the lender and if I could not solve it, I would seek help. But realise that through the advice CCLC gave the best way is to get in touch with lender as soon as any issues come up and not let it drag on or avoid the issue. If problems with the lender, [then I'd] get advice (no. 17).

The idea of seeking help *earlier* was also indicated by some respondents.

I would try to resolve it straight away, instead of sitting on the issue. I would also speak to Legal Aid or a legal advice service to make sure I was okay with the law (no. 12).

[Interviewer notes:] *Seek the right help. Last time client 'buried my head in the sand' then got wrong and ineffectual help* (no. 4).

I would make sure I got things in writing from the bank rather than take someone's word for it. If it got to a point where I could not handle it I would seek help straight away from CCLC. I would not be embarrassed about it like I was previously (no. 26).

Other client observations

Respondents were given an open opportunity to make comments about the MHS and the assistance that they received. An analysis was undertaken of the types of features and attributes that clients valued in the MHS. Valued qualities in the MHS were that it was 'effective', 'practical', 'professional', 'free', 'helpful', 'reassuring' and dealt with matters quickly. Respondents also appreciated the availability and regular contact of the solicitors and financial counsellors, their compassion and their lack of judgment.

[75] Respondents could give more than one answer.

Comments included:

> *There is not enough I could say for someone to understand how fantastic [the solicitor] was. She knew what she was doing, she knew how to handle people who were emotional. CCLC was fantastic. [The solicitor] was always available and compassionate. She was professional and really cared ... [The solicitor] backed us up: she wasn't afraid to take on the other solicitors acting for the bank* (no. 26).

> *Legal Aid staff were extremely professional. They did exactly what I was hoping for. Very grateful. I couldn't afford the legal help and had nowhere else to turn. At one stage I was paying for legal advice and the help I received was not as good as the specialist advice provided by Legal Aid* (no. 10).

> *... effective, sympathetic without being judgmental. [They were] torrid times and the advice was practical and timely and what I needed* (no. 4).

In other comments, one CCLC client said they would have preferred face-to-face rather than telephone contact.

> *[I] would have liked to have come in and gotten a bit more advice about what to do, would have preferred to have come in face to face rather than over the phone is the only criticism* (no. 14).

Others said they would have liked more assistance and more options. Comments included:

> [Solicitor notes:] *He found CCLC a little restricted [limited representation] in being able to take his matter on in terms of the centre's guidelines as to what they are there to do and who they are there to help* (no. 23).

The Legal Aid NSW respondents who said that they wanted more assistance had been advice only clients.

> *Legal Aid could have done more ... I would like Legal Aid to do more follow-up with the client. To consider more options, especially out of the box thinking. I would also like them to do more collaborative working with clients* (no. 22).

> *[The solicitor] was very helpful. He did everything he could, there just weren't many options in my situation ... Legal Aid did not do a bad job; the system prevented the Legal Aid service from being available to us. I think Legal Aid needs to factor realities into account. We are a family of four children, who do not receive government payments and would have been on the street if we could not find some help. The system needs to factor realities into account* (no. 29).

Two clients suggested greater marketing of the program.

> *You need to advertise your services more so that people know who they can turn to when they are in trouble. We were in a big mess and you helped us get out of it* (no. 20).

Conclusion

A small sample of clients was followed up, most between three and 12 months after their mortgage file was closed by the MHS. We cannot claim that the experiences and views of these respondents are representative of, or may be generalised as, the views of all clients who were offered assistance by the MHS. These are clients who agreed to be followed up and who were able to be contacted some months after their file had been closed. We also over-sampled people who retained their home. However, some valuable themes have emerged from the analysis of the survey.

A key question was whether people whose home was retained following assistance by the MHS were able to sustain this outcome — to keep their home in the longer term. Three-quarters of the

respondents whose home had been retained when their file was closed still owned their home at the time of follow-up. This group had been able to sustain the repayment scheme that had been agreed through the negotiation or ADR/court process. However, it is also evident that for some respondents who retained their homes it remained a struggle to keep up with other financial obligations while servicing their mortgage. Six respondents who had retained their home when their file was closed had sold or were in the process of selling their home at the time of interview. Of these six, two still had matters ongoing at the time their file was closed.

Whether their home was retained or lost, respondents generally reported feeling that the legal assistance and financial counselling provided by the MHS had helped them to achieve more financial control of their situation. Indeed, some clients had to lose their home in order to achieve this financial stability. This goes to the heart of what the MHS aims to achieve: to save homes *or* attain the best possible outcome in the circumstances. It may be that saving a home is not the best possible outcome if it means that a client is left in an unstable financial situation. This point is considered in more detail in the 'Discussion' chapter.

While this information is not conclusive, the interviews suggested some additional benefits to some clients arising from the assistance provided by the MHS. To begin with, a strong theme throughout the interviews was that the assistance provided by the MHS, together with the resolution of mortgage issues, had helped to ease the considerable stress that respondents had been under prior to seeking assistance. Furthermore, some clients spoke of their increased confidence and capacity to manage their financial issues, attributing this to the assistance that was provided to them by the MHS.

Finally, respondents indicated that if they faced mortgage difficulties in the future, they would be prepared to take action about it. Some said that they would negotiate directly with the lender, while others felt confident to contact the MHS again, or another legal service provider. Notably, some respondents also spoke of the need to deal with their mortgage issues *early*, rather than 'burying their head in the sand'. This represents a positive attitudinal change, although what people say in an interview may differ from the action they eventually take. But this attitude may challenge one of the considerable barriers to seeking legal assistance identified in earlier Foundation research (for example, Coumarelos et al. 2006): the feeling that nothing can be done about one's legal problems and that consequently there is no point in seeking help.

It was apparent from the interviews that certain features of the MHS were particularly valued by clients, in particular, the timely, active, practical, professional, compassionate and reassuring nature of the services provided by the MHS solicitors and financial counsellors. If there was a criticism of the service, it concerned the desire for *more* assistance from the MHS, particularly in dealing with other debt-related issues.

This small-scale follow-up survey highlights possibilities for capturing information on client outcomes over the longer term. To overcome the limitations of selection biases, agencies could conduct follow-up interviews with a small but random selection of clients on a regular basis, six to 12 months after their file is closed. Over time, this would provide the MHS with a larger, more representative sample of client-centred outcomes, to more reliably assess the impact of the assistance provided by the MHS through Legal Aid NSW and CCLC.

6. Discussion

The MHS was developed in direct response to clear evidence of a growing number of defaults on home loans during the GFC, as economic conditions worsened and people lost their jobs, had their work hours reduced or received less income from other sources (that is, self-employment or investments) (Fujitsu Consulting 2008; 2010).[76] It was estimated that there would be 469 000 households across Australia in some degree of mortgage stress by December 2010, with as many as 267 000 households in severe stress (Fujitsu Consulting 2010). This would translate to around 32 000 mortgage defaults annually. Higher interest rates coupled with rising costs of living were listed as risk factors contributing to mortgage default. In the current economic climate of increasing living costs and prospects of rising interest rates, there is little doubt that the MHS remains a relevant and important service.

There are several features of the MHS which distinguish it from the legal assistance provided by Legal Aid NSW and the CCLC before the program was established. These include that the MHS:

- is a dedicated and specialised service to assist people in mortgage hardship
- represents an increased capacity to deal with mortgage hardship problems, notably with the addition of four full-time solicitor positions and one financial counsellor position
- provides a flexible, multi-disciplinary, tailored approach to mortgage assistance that may involve the provision of advice, minor legal assistance, casework and/or financial counselling
- involves additional efforts to reach people as early as possible, before their mortgage hardship problems worsen.

This evaluation has relied upon a number of sources of corporate and program information and follow-up interviews with a modest number of MHS clients.

The following discussion focuses on five broad areas of interest:

1. the continuing need for the additional capacity provided by the MHS
2. the MHS as an early intervention strategy
3. the benefits of the MHS's flexible, multi-disciplinary approach
4. the outcomes of the MHS and its intended aims
5. future monitoring and evaluation.

The continuing need for the MHS

As at June 2011, the MHS is nearing the end of its planned two-year trial period. In the first 16 months of the program, over 3000 occasions of service were provided by Legal Aid NSW and CCLC. Each month, it has dealt with an average of 37 casework and minor assistance matters and over 250 advices. Some of the indicators of the continuing need for the MHS are:

[76] Fujitsu Consulting is a consulting firm that has monitored and reported on mortgage stress in a series of reports (see Fujitsu Australia 2011).

- a 45 per cent increase in the number of advices and a 116 per cent increase in the number of minor assistances provided by Legal Aid NSW for mortgage matters since the MHS commenced
- a 64 per cent increase in the number of mortgage casework matters dealt with by CCLC[77]
- its provision of mortgage hardship assistance to people across most of NSW (in fact, to clients living in three-quarters of all NSW LGAs)
- that around half of all MHS clients were assisted well before their mortgage problem had advanced (Stages 1 or 2: before a statement of claim was issued by the lender)
- that none of the casework clients who sought help from the MHS at Stages 1 or 2 had lost their home at the time their MHS file was closed
- the small number of home repossessions experienced even when clients' mortgage problems had advanced (Stage 3: court proceedings) before they sought assistance
- the responses of more than two-thirds of the follow-up survey clients, including some who had lost their home, who felt that the MHS had helped them to achieve more control of their financial situation.

The MHS as an early intervention strategy

A basis tenet of the MHS is that well-timed but relatively minor legal assistance helps to prevent mortgage hardship problems from escalating to the point at which homes are lost. The MHS aimed to assist clients at early stages of mortgage hardship, ideally before a default notice was issued by the lender. The goal of helping people at the earliest stages of a legal problem's development, or 'early intervention', is based on the notion that it is both more efficient and more effective to assist people before legal problems escalate and become more difficult, costly and time-consuming to resolve. Furthermore, research into mortgage stress indicates that, generally, the earlier people act when they fall into arrears, the less debt they will accumulate (Berry et al. 2010). Looking forward, the MHS may be able to use the stages of enforcement to identify a measurable early intervention goal, such as trying to reach clients before their mortgage hardship matter advances to Stage 3.

Strategies used by the MHS to reach people before their mortgage matters worsened included:

- placing Legal Aid NSW solicitors in offices within and close to mortgage stress hotspots
- engaging with LawAccess NSW to act as a key point of referral to the MHS
- conducting outreach services to areas of high need (for instance, where there had been large-scale redundancies that could result in additional people experiencing mortgage hardship)
- liaising with unions, employer groups and lenders to increase awareness of the MHS and to facilitate the early referral of people in mortgage hardship to the service
- providing training and developing working relationships with financial counsellors in local communities, again to promote early referral to the MHS
- promoting the MHS through a range of media, the distribution of electronic and hardcopy information, including the *Mortgage stress handbook*, and a letterbox drop in mortgage stress hotspots.

The question that needs to be answered is whether these attempts to reach people early were effective. The evaluation found that nearly 60 per cent of all CCLC MHS clients and 55 per cent of the sample of Legal Aid MHS clients had not received a statement of claim (Stages 1 and 2) when they first

[77] It was not possible to compare CCLC advices before and after the commencement of the MHS.

sought assistance from the MHS. Furthermore, the majority of these clients (37% of all CCLC MHS clients and 39% of the sampled Legal Aid MHS clients) had not received a default notice (Stage 1).

Other evidence of the impact of these strategies includes the high proportion of referrals made to the MHS by financial counsellors (35% of referrals to Legal Aid NSW), lenders (24% of referrals to CCLC) and LawAccess NSW (18% of referrals to CCLC).

Based on the results of this evaluation, the benefits of assisting clients at Stages 1 or 2 appear to be a lower risk of people losing their homes; less intensive assistance needed to resolve mortgage hardship issues, especially with regard to casework and representation at court; and fewer mortgage hardship matters proceeding to court. However, a number of points need to be kept in mind when considering the impact of the MHS's intention to intervene early.

First, for all the efforts mentioned above, the MHS has no direct control over when a client first seeks assistance. There are always going to be some people who do not contact the MHS until their matters have progressed to court or beyond. They may have done nothing about the matter until that point, they may have tried to deal with it themselves or they may have sought assistance elsewhere before hearing about and contacting the MHS. In some cases, clients will come to the attention of the MHS after they have had their home repossessed. In fact, as we have seen, within the group of clients who were examined in this evaluation were some who had already reached the later stages of mortgage hardship before the MHS commenced operation. This cannot be seen to reflect poorly on the MHS; indeed, even at that point, the MHS can still provide valuable assistance to clients, including the recovery of damages post-sale arising from unjust or unconscionable conduct by the lender. But with the continuation of the service, we may see a decrease in the proportion of clients coming to the MHS late in the process, which may indicate the effectiveness of the early intervention strategies.

Second, the capacity of individual clients to manage their own mortgage issues is an important variable when deciding how to target and structure legal services, including attempts to reach clients early. Legal needs research has clearly demonstrated that socially and economically disadvantaged people and other at-risk groups — such as Indigenous people, people from non-English-speaking backgrounds and people with disabilities — are among those who, for a range of reasons, may not seek legal assistance promptly, or, for that matter, seek assistance at all (Coumarelos et al. 2006; Grunseit, Forell & McCarron 2008; Forell, McCarron & Schetzer 2005). These people may feature more prominently in the group of MHS clients who seek assistance only once a problem has escalated to a level at which it cannot be ignored.[78] We found, for instance, that many MHS casework clients were at Stages 3 or 4 and that illness or injury featured more prominently as a reason for hardship among casework clients than advice clients. Also over-represented in this group were people on government benefits and, among CCLC casework clients, Indigenous Australians.

Trying to 'detect' people in mortgage stress through lenders, financial counsellors, LawAccess NSW and other sources should continue as a key referral strategy, in order to put as many people as possible experiencing mortgage hardship in contact with the MHS as early as possible. However, we also stress the importance of the MHS retaining the capacity to assist clients who seek help later, even though the level of assistance required for such clients is likely to be more intensive.

[78] Indeed, both Legal Aid NSW and CCLC identify these as target groups for their services because of the difficulties they experience in accessing justice and legal services (Consumer Credit Legal Centre (NSW) Inc. n.d.; Legal Aid NSW n.d.).

Benefits of the MHS's approach

An attractive feature of the MHS is that it responds to the specific needs of each individual client, providing advice, minor assistance or casework, and/or financial counselling as appropriate. CCLC has financial counsellors as part of the MHS team, while Legal Aid NSW has built strong working relationships with local financial counsellors, as evidenced through the high number of MHS referrals coming from this source. Bundling legal services together with financial counselling appears to result in positive outcomes for clients experiencing mortgage hardship. Future research may examine the particular impact of having financial counsellors as part of the MHS, especially as mortgage issues are rarely experienced in isolation from other financial problems.

The type of assistance provided to each individual client depends upon the circumstances of the loan, the complexity of the matter (including the type of lender and the stage that the matter has progressed to) and the client's personal capacity (for example, their ability to act in accordance with their solicitor's advice or their ability to manage their finances).

In this evaluation we observed a strong relationship between the stage of enforcement that clients were at when they first sought assistance and the type of legal assistance that the MHS provided. Clients at Stage 1 when they first sought help from the MHS were more likely to receive advice than minor assistance or casework. In contrast, a relatively higher proportion of Stage 3 and 4 clients were assisted through casework. For example, CCLC MHS Stage 3 clients were more likely to receive casework than advice (36% compared to 22%). By Stage 4, the need for casework was even higher, with only eight per cent of CCLC clients receiving advice rather than casework. It is interesting to note that by the time a client is at Stage 5 (post-repossession) or Stage 6 (post-sale) there appear to be fewer legal options that the MHS can pursue. Again, advice — rather than casework or even minor assistance — is a more prominent type of legal help for Stages 5 and 6 clients.

These findings point to the flexibility of the MHS: its solicitors and financial counsellors can vary the assistance provided according to each client's needs and the options available at each particular stage of mortgage stress. This flexibility extends to some Stage 1 clients receiving casework rather than advice, and some Stage 3 clients receiving advice rather than casework. The increased use of minor assistance and multiple occasions of advice in responding to the needs of clients is further evidence of the MHS's tailored services.

Minor assistance, such as a solicitor drafting a letter to the lender, can supplement advice, while leaving the client in control of their matter. The value of minor assistance as an option for Legal Aid NSW, in particular, is that it enables solicitors to provide more assistance than advice only. This may be preferable to providing casework, especially for matters in which it is not essential that the solicitor take carriage of the matter. In this regard, the evaluation noted an increase in the use of minor assistance by Legal Aid NSW without any corresponding rise in casework. Similarly, the majority of CCLC MHS clients received only advice, albeit typically on more than one occasion. These clients retained carriage of the matter but continued to have access to advice from the MHS as their matter progressed.

A range of factors affect the type of assistance provided to MHS clients. As previously discussed, the personal capacity of the client is one such factor. Another is the nature of the mortgage issue itself. For instance, in exploring the types of assistance provided by the MHS, we observed that a higher proportion of casework clients than advice clients had a non-bank lender. Conversely, advice clients had a higher proportion of bank lenders. This was the case for both Legal Aid MHS and CCLC MHS clients.

There are several potential reasons for the above finding. First, it may be that clients who access non-bank loans are more marginalised than those who access bank loans. This is because non-conforming, non-bank lenders may be more willing to lend to 'riskier' customers. However, it also needs to be noted that marginalised clients are more likely to have entrenched rather than temporary financial difficulties. Second, MHS solicitors report that while non-bank lenders tend to be more generous in granting loans, they tend to be more stringent in enforcing mortgage repayments and may have higher interest rates.[79] This is likely to have more of an effect on those who have to borrow more, may have more trouble making repayments on time, have fewer savings and, therefore, have less in reserve when their income is interrupted (through unemployment, illness or injury). This group of clients would appear to need more, rather than less, latitude from their lender when things go wrong.[80]

Outcomes and aims

The MHS was established to assist people in mortgage hardship with a view to saving their home or, in situations where saving a person's home is not viable, to minimise their loss and to ensure the best possible outcome for that person. As this evaluation has found, the MHS has provided assistance to a large number of people in mortgage hardship. The evidence also suggests that more assistance for mortgage matters has been provided by the agencies involved than was the case before the program commenced. But what was the impact of this assistance?

One aim of this evaluation was to explore the outcomes for clients assisted by the MHS. While we present some of the results below, we caution the reader that information on outcomes is not comprehensive and is available only for a small set of Legal Aid MHS and CCLC MHS clients. We cannot claim that the findings are representative of the outcomes of all MHS clients; nor can we assume that the MHS was the only factor influencing these outcomes.

Outcomes were recorded for 54 of the 92 CCLC MHS casework clients whose files were closed. Of these, around half retained their home, generally after negotiation with the lender or a hearing at court or tribunal. A slightly higher proportion of a sample of 60 Legal Aid MHS casework clients also retained their home.

We found that one in six CCLC casework clients for whom outcomes were recorded had their home repossessed by the lender. For the sample of Legal Aid NSW clients, the corresponding figure was that one in every nine had surrendered their home to their lender or had their home repossessed.

A preferred outcome to repossession is for the client to sell their house on their own terms. Fifteen per cent of the Legal Aid NSW and 12 per cent of the CCLC casework clients were able to sell their home prior to the lender repossessing it, or were in the process of doing so. However, the MHS did not simply aim to save homes. Where this was not possible or appropriate to the client's circumstances, the MHS aimed to achieve the best possible outcome for the client. Saving a home may not be the 'best' outcome, for instance, if this means that the client would remain in a financially unstable situation.

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[79] CCLC reported that some non-bank lenders are trying to wind up their businesses and are therefore no longer lending and are very reluctant to give hardship variations, which have the effect of extending loans. Further, with regard to interest rates, particularly in the period when the Reserve Bank rates were falling in response to the GFC, many non-bank lenders did not drop their rates in line with the Reserve Bank and bank lenders. This was due to dependence of non-bank lenders on overseas markets for their funds.

[80] By contrast, MHS solicitors report that banks tend to adopt a more conservative approach to granting home loans but perhaps, because of these more stringent entry conditions, tend to provide more latitude in terms of missed payments and are somewhat more sympathetic in their hardship provisions.

The follow-up survey found that three-quarters of clients (from both agencies) who had retained their home when their file was closed still owned the property at the time of follow-up. Some continued to pay off their mortgage comfortably; however, for some respondents, it was an ongoing struggle to service their mortgage and keep up with their other financial obligations. For a small number of respondents who had originally retained their home following assistance from the MHS, selling their home had become their best option and the course of action they were pursuing.

Irrespective of whether the home was retained or lost, more than two-thirds of clients in the follow-up survey reported that the legal assistance and financial counselling provided by the MHS had helped them to achieve more control of their financial situation. Indeed, the view of surveyed respondents and of several MHS solicitors was that, in some cases, the clients *had* to lose their home in order to achieve financial stability.

The follow-up survey also indicated that MHS assistance may have contributed to some further positive outcomes for clients, including changing attitudes and empowerment to deal with mortgage issues. In addition, survey respondents reported a reduction in the considerable stress that they had been under prior to seeking assistance, feelings of increased confidence and capacity with regard to managing their financial issues in the future, willingness to take action or seek help when faced with mortgage difficulties in the future and recognition of the need to respond to future mortgage issues *early*, instead of 'burying their heads in the sand'.[81] We cannot quantify the extent of these client views, but they do provide an insight into some of the potential added benefits of the MHS.

Future monitoring and evaluation

This evaluation of the MHS was a relatively small-scale project, limited in its scope and resources. However, within these limits, it has attempted to go beyond simple measures of processes and outputs. In particular, it has attempted to examine the outcomes for clients in terms of what the program set out to achieve and to identify the stage of enforcement as a variable that affects the delivery of legal assistance to clients experiencing mortgage hardship.

If the MHS continues into the future, and we are of the opinion that it should, we suggest that Legal Aid NSW and CCLC continue to monitor the operation of the program and give further thought, in particular, to the outcomes of the MHS and their measurement. Further, wherever possible, the collection of program information should be incorporated into the day-to-day administration of the MHS. We would like to offer a number of suggestions, listed below.

1. Legal Aid NSW and CCLC continue to record stage of enforcement not only at the time when clients first contact the MHS but also at each *subsequent* occasion of service.
2. An 'early intervention' goal for the MHS should be to assist clients before their mortgage hardship matter escalates to Stage 3. Ongoing monitoring of MHS clients' stage of enforcement in the future should indicate a growing number of clients being assisted at Stages 1 and 2, with a corresponding decrease in the number of clients assisted at later stages.
3. The MHS needs to retain the capacity to assist clients who are already at later stages of mortgage hardship (Stages 3 to 6) when first detected, including those with more complex needs.
4. The effectiveness of the MHS be considered *primarily* in terms of achieving the best possible outcome for each client rather than solely in terms of saving homes. While saving homes

[81] Research has found that the feeling that nothing can be done and that there is no point in seeking help for legal problems is a key barrier to people seeking legal assistance (for example, see Coumarelos et al. 2006).

remains a legitimate goal, other positive but not necessarily compatible outcomes include clients selling their home on their own terms and clients achieving greater financial stability.

5. Consideration be given to the ongoing recording of outcomes for a small but random selection of clients over time. One way to do this would be for Legal Aid NSW and CCLC to randomly select five clients each month whose file was closed six months earlier. These clients would be asked a set of follow-up questions about their current circumstances (for instance, based on the follow-up survey used in this study), including whether they still owned their home and about their current financial situation. If a client could not be contacted or refused to participate, this would be recorded and another client substituted in their place. This would provide a solid basis for better attributing outcomes to the program and for measuring client satisfaction with the legal assistance provided through the MHS.

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Appendix A. Follow-up survey — interview schedule

To be completed PRIOR to calling client

This page provides background information on the client, taken from their file. Please answer EVERY question.

Before you start make a note of the address of the property in question. You will need to refer to this address (e.g., your flat in Smith St, Fairfield).
Also note how long it is since this client's file was closed. You will need to refer to this time period.

1. CASES No/Client ID:

2. Client's first name

3. Type of assistance provided by service

- [ ] Advice only
- [ ] Minor Assistance
- [ ] Casework

Other (please specify)

4. Date File Closed:

Date file closed: DD / MM / YYYY

5. Number of months since file closed (NOTE: you will need to refer to this period in the questions)

6. Outcome at the time file closed

- [ ] Retained home with repayment arrangement by negotiation
- [ ] Retained home with repayment arrangement by order of EDR/Court
- [ ] Client sold home
- [ ] Home repossessed
- [ ] Unknown

Other (please specify)

Introduction to the survey

My name is ... from [Legal Aid NSW/ Consumer Credit Legal Centre].

[6] months ago we provided you with some legal assistance concerning your mortgage. I am ringing now to follow up on how things have been with your mortgage situation since that time.

To let you know, we are doing this as part of a review of the services we provide, so, with your consent I will also ask about the help you received. Can I assure you, your answers will remain anonymous.

7. Are you happy to speak with me for 5-10 minutes now?

- ☐ Yes
- ☐ No, Decline interview
- ☐ Not now/Another time

If 'not now', arrange another time and record here

8. IF THE CLIENT'S HOUSE WAS ALREADY SOLD WHEN THE CASE WAS CLOSED, CLICK HERE. (This will take you to next appropriate question)

- ◯ HOUSE ALREADY SOLD OR REPOSSESSED

Follow up information from clients

Please enter a response for EVERY question. Thank you.

9. To start with, I just want to ask about your current situation with your housing/mortgage? Do you still own the property at [address]?

☐ Yes ☐ No

☐ Currently Selling

Comments (if currently selling)

If yes to Qn 9

10. Are you experiencing any difficulties in making your mortgage repayments?

◯ Yes ◯ No

Other (please specify)

11. At the moment, are you up to date with your mortgage payments?

◯ Yes (GO TO Q13) ◯ No

12. How many mortgage payments have you missed?

◯ 1

◯ 2

◯ 3 or more

Other (please specify)

13. Are you up to date with all of your other debts and bills?

◯ Yes ◯ No

If no, please describe which debts (e.g. credit card)/bills and approx amounts

14. Have you had to borrow any more money in the last [6] months since we assisted you?

◯ No ◯ Yes, from a bank

◯ Yes, from family/friends ◯ Yes, from another source

Please specify other source

15. In the last [6]months, have you used a credit card to pay your mortgage payments?

☐ Yes ☐ No

If no to Qn 9

16. What has happened with that property?

- [ ] They (owner) sold the property
- [ ] They (owner)in process of selling property
- [ ] The bank/lender sold property
- [ ] The bank/lender in the process of selling property
- [ ] Other

Please describe

Current circumstances

17. Where are you currently living? (provide relevant prompt -e.g. are you living in the same house? renting?).

- ◯ Living in same home
- ◯ Purchased elsewhere
- ◯ Private rental
- ◯ Public/community housing
- ◯ Staying temporarily with family/friends
- ◯ Moved in with family/friends (longer term)
- ◯ Boarding house/caravan park
- ◯ Homeless

Other (please specify)

18. Have there been any other major changes in your circumstances in the last [6] months? (e.g., relationships, family, employment, health, other) (Prompt: anything else?)

19. Overall, would you say that you feel more in control of your financial situation, less in control or about the same as [6] months ago when your file was closed?

- ◯ More in control
- ◯ Less in control
- ◯ The same/stable

Please describe/explain

Advice and assistance given

20. Turning to the advice and assistance you were given by Legal Aid/CCLC. When you first contacted us, what type of assistance were you HOPING to receive?

- ☐ Help to save my house (general)
- ☐ Advice
- ☐ Help negotiating with the lender
- ☐ Help accessing superannuation
- ☐ Help writing letters/documents
- ☐ Help at court/representation
- ☐ Other

Please describe

21. What type of advice or help were you given? (prompt: anything else?)

- ☐ Help to save my house (general)
- ☐ Advice
- ☐ Help negotiating with the lender
- ☐ Help accessing superannuation
- ☐ Help writing letters/documents
- ☐ Help at court/representation
- ☐ Other

Please describe

22. Do you think that the assistance given helped you to resolve your mortgage/housing situation?

- ☐ yes, helped resolve it
- ☐ No, made no difference
- ☐ No, made it worse

please describe

23. Did the assistance given help you in any other way (e.g., reduce stress levels, help you with financial planning)?

- ☐ Yes helped to reduce stress levels
- ☐ Yes helped to put me back in control of financial situation
- ☐ Yes, other
- ☐ No

If yes, can you give me an example of how else it has helped you?

24. If you were to experience any further difficulties with your mortgage now, what do you think you would do about it?

- ☐ Nothing
- ☐ Take action myself (deal with lender etc)
- ☐ Seek help (where?)

Please describe

25. Is there anything else you would like to say about the legal service or the help you were given?

Thank you

Thanks very much for your time. That is the end of the survey.

If you need any further legal assistance about mortgage or money issues, please feel free to contact the credit and debit hotline (1800 808 488) or LawAccess NSW (1300 888 529) .

26. Interview Date

	DD	MM	YYYY
Today's date		/	/

27. Assisted by:

- ☐ CCLC
- ☐ Legal Aid

Appendix B. CCLC mortgage advices pre- and post-MHS (July 2008 to October 2010)

Figure A1. CCLC advices for all mortgage matters (1 July 2008 to 31 October 2010, including first 16 months of the MHS: 1 July 2009 to 31 October 2010)

Source: CCLC data (CLSIS and CDH databases, July 2008 to October 2010).