



UNDERSTANDING OUR CUSTOMERS

PUBLIC LAW (Family Law)

HMCTS INSIGHT AND USER RESEARCH
DIVISION

This Customer Insight Pack is a resource to ensure that customer information across HMCTS is gathered in one place for the benefit of...

Service Owners

So that Service Owners understand the contextual data about their service and how customers interact with it. This will allow them to identify areas for service improvement and share what has worked for their customers with other services.

Customer Directorate

To provide the directorate with the usable Customer Insights to make decisions about how we develop and deliver our current services, and understand the needs and expectations of customers. So that the directorate can best support HMCTS in delivering services which meet the needs of our customers.

Reform

To help stakeholders in Reform understand customers so that they can deliver new processes that are Just, Accessible and Proportionate, and in a way that delivers an improved customer experience. E.g. Ensuring that cross-cutting services will meet the diverse needs of all customers.

Digital Design

As a scrum team goes into Discovery they are able to hit the ground running, by having access to a comprehensive set of Customer Insights

- Know where gaps exist to target User Research
- Identify customer need earlier in the development cycle
- Provide clear evidence to help with GDS assessments.

We welcome any feedback you may have on this customer insight pack. If you have any questions or would like help with understanding how you can use this information, please contact the Customer Insight team at CustomerInsightTeam@justice.gov.uk

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1. EXECUTIVE SUMMARY

1.1 Executive Summary

Key Findings

What do we know?

- The area of Public Law (care proceedings) is very **sensitive**, and there are **lots of parties involved**. There are also **hard-to-reach parties**, especially the parents. As a result, research and evidence on public law from the users' perspective is **limited**.
- A **lengthy process** actually takes place **before the care proceedings are taken to court**. Before initiating the court process, local authorities work with the family to resolve the issues and reform the parents. There are a whole host of journeys that take place in public law cases. There is pre-proceedings work, consisting of preventative work including early intervention and 'child in need' work. In the substantial majority of cases, this preventive work is successful and the cases do not come to court. If not, then the formal "pre-proceedings process" begins, namely the pre-proceedings meeting. This is followed by the court process.
- Public Law is a **heavily court based process**, involving the parents and multiple professional parties. Care proceedings may be considered as a journey with the case gradually moving towards the final hearing, and carrying the parties along. New methods of resolution are being trialled, e.g. Family Law Settlement Conferences.
- Public law cases are **dynamic and often rely on new information at the very last stage** which can change the direction of proceedings, for example when other parties intervene, such as grandparents.
- Care proceedings experience **repeat users of justice** (crime as well as family), with the same children and parents going through the care process multiple times.
- Public funding (legal aid) is **automatically available to parents (and anyone else who holds parental responsibility) and children involved in care proceedings**. Public funding may be available to other family members subject to financial eligibility.

1.1 Executive
Summary

Key Findings (continued...)

What do we know?

- The position of parents in care proceedings is both peripheral and central. **Legal representation** can really make a difference for parents going through **an extremely emotional and often distressing, process**. Having an advocate helps parents feel much more confident and in control, it helps them **feel listened to** and more involved in the decision-making process. Many of the tasks of representation - advising the client, taking their instructions, negotiation, advocacy in court and providing support - have to be carried out repeatedly and concurrently as the journey proceeds.
- **Suggestions from parents** include more flexible court hours; better preparation and support; waiting areas which afford greater privacy, comfort and safety; more sensitive seating arrangements in court; more comprehensible language and procedures; and greater participation in hearings. It also seems clear that the approach of the particular judge/magistrate can make a difference to parents' experience, which suggests that greater attention needs to be paid to this element in the judicial role. Judicial continuity is much appreciated.
- **Parents are likely to have a range of needs and issues**, including **drugs, alcohol, mental health, and financial** and this is likely to have repercussions around the **physical court environment, journeys to court (travel), and contact**. Looking at the reasons which lead children into care (e.g. such as abuse and neglect), it is important to consider the social environment and emotional condition of the parents and child, particularly the situation of the parents who are frequent court users in care proceedings.
- Most parents **who lack litigation capacity have learning disability or mental health problems**, and robust processes are needed to support them.
- In children's cases the court's primary responsibility is to the children. Nonetheless the overwhelming message from the research is that **greater attention needs to be paid to the needs of the parents** caught up in these proceedings to make the process less traumatic and alienating.

1.2 Executive Summary

Potential implications for HMCTS

Potential implications for HMCTS from this pack

- Given that public law is a heavily court-based process, HMCTS can better consider the physical court experience for all parties involved.
- Care proceedings are undergoing significant change. One aspect of this change is the process of care proceedings for parents; the options and assessments available to them. The dynamics of the care proceedings process has an impact on parents and their children in the short- and long-term, and can result in a cycle of inter-generational problems and further care proceedings.
- Does the HMCTS need to consider carefully the social and psychological situation of the parents involved in care proceedings? E.g. some birth parents may have drug, alcohol, or abuse issues. Does the HMCTS need to make adjustments or special provisions in the court process to accommodate their needs?
- The North-South divide in numbers of care proceedings reveals possible discrepancies in the way local authorities and judges address care proceedings. There are regional demand and practice issues. Local authorities dealing with care cases have their different and separate ways of working. HMCTS can be aware of these diverse approaches that local authorities take on care cases.
- HMCTS can identify the importance of grandparents and other family members in care cases, the role they play and their needs.
- HMCTS can work out how many Litigants in Person there are in care cases, how much legal aid is available, and what does HMCTS need to do to support the LIPs?

1.3 Executive
Summary

Customers in Courts for Public Law

What are the evidence gaps?

- Existing evidence shows that the evidence on customers in care proceedings is scarce.
- There is now increasing concern in the courts that parents' (especially the mothers) mental health and emotional needs should be addressed as a priority. HMCTS can provide a better service to its customers in care proceedings if there is an understanding of what their needs are.
- There needs to be more evidence to understand the social environment and emotional condition of families that enter care proceedings, i.e. the reasons that lead a child into care.
- Although research suggests that the number of LIPs in family cases are rising, there is no data available on the volumes of LIPs in care proceedings.
- There is a lack of evidence on the digital competency of customers involved in care proceedings. It is especially important to understand the digital competency of professional users who play such an important part in the public law process.
- Customers in public law may be repeat users of justice, i.e. children go into care multiple times. Further work is needed to understand this, how many and how often.
- Research has examined some possible implications of a speedier family justice system in public law cases and any change on this scale brings with it some risks. Further research can be carried out to assess whether faster decision making by the courts in child care cases can lead to miscarriages of justice.



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2. INTRODUCTION

2.1 Introduction

Family Law Courts

What do Family Courts deal with?

Family matters are dealt with in the Family Division of the High Court, by district judges in County Courts and in Family Proceedings Courts, which are specialist Magistrates' Courts. Magistrates undergo specialist training before they sit in Family Proceedings Courts, where procedures are very different from the criminal courts.

The various types of family courts handle issues such as:

- Parental disputes over the upbringing of children;
- **Local authority intervention to protect children** → **Public Law**;
- Decrees relating to divorce;
- Financial support for children after divorce or relationship breakdown;
- Some aspects of domestic violence;
- Adoption.

There are two types of cases concerning children: public and private law.

Public law cases are brought by local authorities or an authorised person (currently only the NSPCC) and include matters such as:

- Care orders, which give parental responsibility for the child concerned to the local authority applying for the order;
- Supervision orders, which place the child under the supervision of their local authority;
- Emergency protection orders, which are used to ensure the immediate safety of a child by taking them to a place of safety, or by preventing their removal from a place of safety.

Public law cases must start in the Family Proceedings Courts. They may be transferred to the County Courts if it will minimise delay or enable the case to be consolidated with other family proceedings, or where the matter is exceptionally grave, complex or important. Private law is a large area to cover here and will be addressed in another customer insight pack.



2.2 Introduction

What is Public Law?

Public law cases are those brought by local authorities or, very rarely, an authorised person to protect the child and ensure they get the care they need. They can apply for a range of different orders, including a care or supervision order which determines whether the child should be looked after or supervised by the local authority, or an emergency protection order which allows an individual or local authority to take a child away from a place where they are in immediate danger to a place of safety.

A large number of public law cases are **care proceedings**. If a local authority suspect that a child is at significant risk of harm they can apply to the court for a **care order**.

What is a Care Order?

An order of the court placing a child in the care of a local authority.

When will a court make a care order?

The Children Act 1989 states that a court may only make a care order or supervision order if it is satisfied:-

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to -
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child being beyond parental control.

“Care cases” and “public law children’s cases” are terms used to describe cases brought under s31 of the Children Act 1989, when local authorities seek a care order with respect to a child because of concern about actual or likely significant harm to the child.



2.2 Introduction

What is Public Law? (continued...)

The parents of a child should seek legal representation as soon as they are made aware that the local authority is considering making an application for a care order. If a care order is made, the local authority will make most of the important decisions about the child's upbringing including where they will live, who will look after them and how and where they are educated.

What will the court have to consider?

During the course of the proceedings there will be meetings between a social worker and the parents and other family members to try and establish why the child is at risk and what action should be taken. The court will order that there be reports setting out the outcome of those meetings. The court may also order that other expert evidence should be provided. The parents will also have the opportunity to give their written evidence.

Ascertaining the wishes and feelings of the child in care proceedings is essential. A Children and Family Court Advisory and Support Service (Cafcass) guardian must be appointed in most kinds of public law proceedings unless the court is satisfied that this is not necessary in order to safeguard the child's interests. A children's guardian should normally be appointed as soon as practicable after the commencement of proceedings. The guardian will also be asked to provide a report to the court.



2.3 Introduction

Public Law Orders (Care Proceedings)

Public law orders are court cases in England and Wales in which the courts decide whether a court order should be made to modify and substitute for the parents' sole right to make decisions about where their child should live and how they should be cared for.

Care orders, made under s31 of the Children Act 1989, create a sharing of parental responsibility between a local authority (local government) and the parent/s. They apply only to children who are suffering neglect or abuse in the care of their parents and are experiencing or likely to experience significant harm. They are instigated through applications made by local authorities; in all but the most urgent cases, following a period of attempted resolution of the care issues by social workers and other professionals working with the family on a non-mandated basis. Options available to the court under this Act include the making of care orders, supervision orders, under which the local authority is mandated to monitor the progress of the child and support the parent and child, or placement with relatives under a special guardianship order (SGO) or residence order, or making no order at all.

The process of seeking a care order starts (in most non-urgent cases) with a pre-application process, known as the pre-proceedings process, which is considered here together with the care proceedings themselves. Orders made in cases brought by public authorities are known collectively as "public law orders".

Children's chances of achieving stability and security with a permanent alternative family may decrease if rehabilitation with parents is not possible and care cases take a long time. Prolonged care proceedings place stress on parents and on any children old enough to be aware of their situation. Unnecessary delay is to be eliminated under the Public Law Outline (PLO) 2014, updated and implemented on 22 April 2014.

Despite the undoubted benefits to children and parents and the cost savings associated with greater speed and efficiency, it is suggested that there may be some risks associated with faster case resolution. These potentially include a threat to the quality of decision making, which may be based on less comprehensive evidence, and a loss of opportunities for parents to demonstrate the capacity to improve their parenting, increasing the chance that children will be placed with alternate carers. These issues may affect only a minority of parents and children involved in the care system, but are nevertheless issues worthy of concern.

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3. PRE-HMCTS

3.1 Pre-HMCTS

The different stages of the Care Proceedings journey: The Pre-proceedings Process.

The family's journey into and through care proceedings usually starts with a **period of engagement with local authority social work services, the pre-proceedings process**. Beckett *et al.* describe it as:

STAGE 1: *"Pre-proceedings work' can be conceptualised across three phases. The first may be considered preventive work and includes early intervention and 'child in need' work, child safeguarding, intensive 'edge of care' work, support for kinship care and use of s.20 accommodation. In the substantial majority of cases, this preventive work is successful and the cases do not come to court. It is worth remembering this, in the current climate where there is such an emphasis on speeding cases up towards court, through court proceedings and into adoption.*

STAGE 2: *The second stage, which should be used unless it is matter of urgency or likely to increase risk to the child, is the formal "pre-proceedings process", namely the letter before proceedings and the pre-proceedings meeting, at which the parent(s) can be accompanied by their lawyer(s).*

STAGE 3: *The third phase is when the decision has been made to go to court, and all the necessary documents and plans have to be produced" (p. 35).*

3.2 Pre-HMCTS

PLO or Pre-proceedings Meetings

The Public Law Outline, or PLO, is a revision of the 2003 Judicial Protocol, which was itself an attempt to reduce unwarranted delays in family court cases. Reducing delay remains a top political priority as every day matters for some children in the care system.

When social workers are concerned about the welfare of a child, they may be thinking about taking the case to court so that they can ask the court to make orders to protect the child.

In most cases the Public Law Outline requires the social services department to arrange a meeting with the parent(s) to see if it is possible to reach agreement about what needs to happen to protect the child from harm, so that court proceedings can be avoided.

The hope is that the parents will come to the meeting with a solicitor. The solicitor will be able to help the parents to negotiate an agreement with the social services department to try to avoid the need to go to court. This formal meeting is often known as a “pre-proceedings meeting” or “PLO meeting”.

In some cases the social workers may feel that the risk of harm to a child is so great, or the case is so urgent, that the case should go straight to court. In these cases no meeting takes place at all.

If the parents have been asked to go to a PLO or pre-proceedings meeting, it is important for them to seek urgent legal advice. A parent or person with parental responsibility, will be entitled to legal aid and will not have to pay for legal advice.



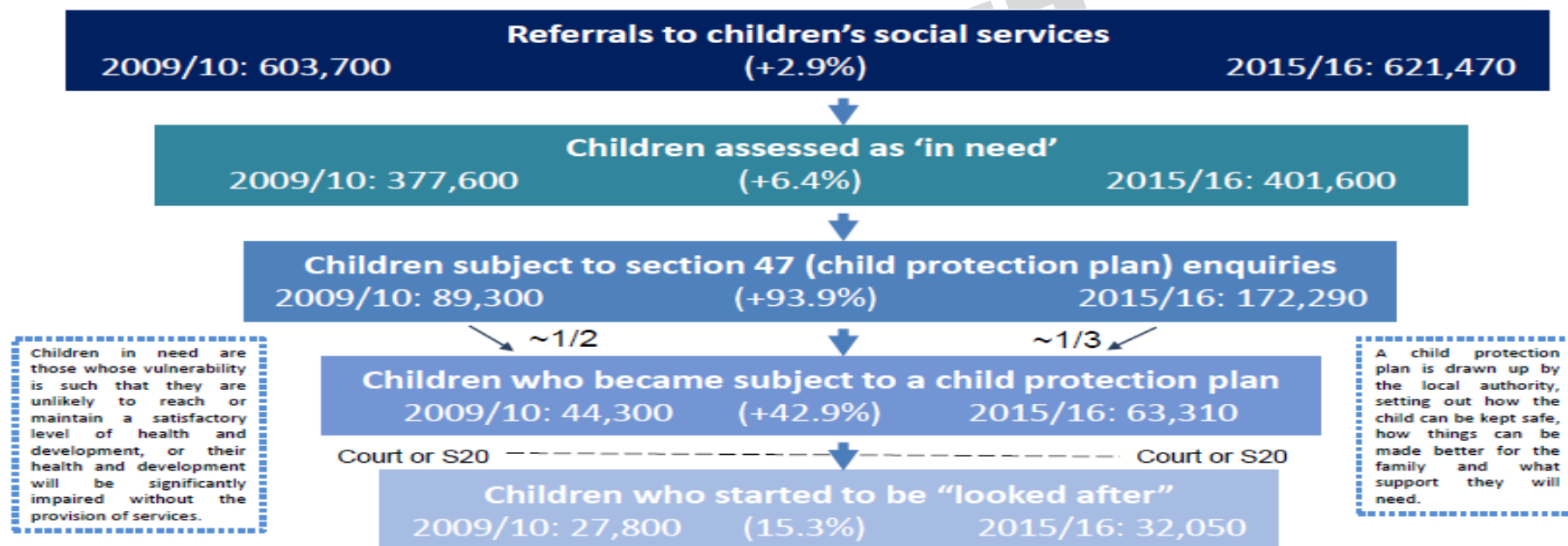
3.3 Pre-HMCTS

Only a small number of children referred to children's services move down the pipeline to become looked after

Insight: The vast majority of referred children are dealt with by local authorities through mechanisms that do not involve going to court (either as children in need, or through child protection plans).

Social workers deal with hundreds and thousands of care cases but they try to resolve them before the cases actually go to the court. By their fifth birthday, 1 child in every 5 will have been referred to children's services. As Figure 1 below shows, 621,470 children were referred to children's social services in the 12 months to March 2016.

Figure 1: From being referred to being "looked after".



Sources: Department for Education (2016) Children Looked After in England (including adoption) year ending 31 March 2016 SFR 44/2016 and DfE (2016) Characteristics of Children in Need: 2013 to 2016. SFR 53/2016
Bywater, P. (2017) Bywaters, P. (2017) Identifying and Understanding Inequalities in Child Welfare Intervention Rates. London: Nuffield Foundation.

A child who is being looked after by their local authority is known as a child in care. They might be living with foster parents, at home with their parents under the supervision of social services, in residential children's homes or other residential settings like schools or secure units. These arrangements can be made voluntarily (Section 20) or through court.

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4. OVERVIEW OF PUBLIC LAW PROCESSES

4.1 Overview of Public Law Processes

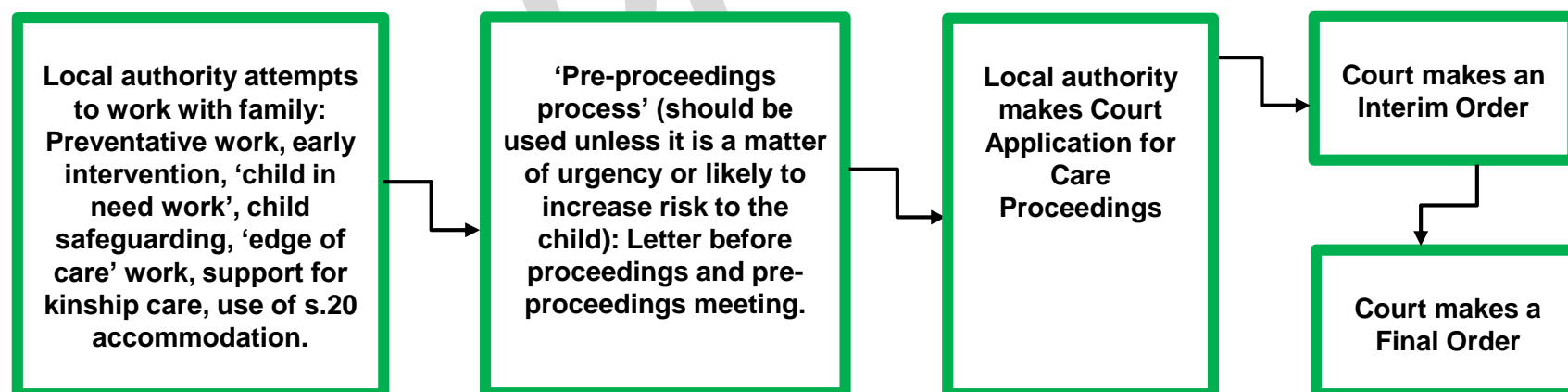
Overview of Public Law Processes

When a local authority makes an application for an order to safeguard the welfare of a child, these cases are usually referred to as “public law” cases or “care proceedings”. Essentially public law is about state intervention to protect a child from inadequate parenting. There are a number of different orders that a local authority can apply for but the most common are care orders, supervision orders, emergency protection orders and secure accommodation orders. Before the court can make a Care or Supervision Order it must decide that the child has suffered or is at risk of suffering significant harm due to the care they are receiving.



There are a whole host of journeys that take place in public law cases (see Figure 2 below). Before the care proceedings begin in court, there is a period of engagement between the local authorities and the family where attempts are made to resolve the issues. If this does not succeed, then the local authorities make an application to the court for the care proceedings to begin. Often the court is asked to make an interim order, which is followed by a final order.

Figure 2: End-to-End Journey of the Care Process



4.1 Overview of
Public Law
Processes

Overview of Public Law Processes (continued...)

Interim Orders

Often the court is asked to make Interim Care Orders or Interim Supervision Orders. Interim just means temporary. These orders are the same as Care Order and Supervision Orders above but only last until the end of the court case. Before making a temporary order the court must decide that there are reasonable grounds to believe the child has suffered or is at risk of suffering significant harm due to the care they are receiving. Before the court can approve making an order that will let the local authority take a child away and put them in foster care or with a relative the court must also decide that the decision cannot wait until the end of the case because of a risk to the child's safety. A child's safety includes things like a risk of physical harm, but also includes things like risks of emotional harm.

CAFCASS

In these proceedings, the child is automatically a party and is represented by a Children's Guardian appointed by Cafcass. The Children's Guardian is an independent person who is there to promote the child's welfare and ensure that the arrangements made for the child are in his or her best interests. The guardian appoints a solicitor to act for the child. Occasionally the child and guardian will not agree on what is in the child's interests and if the solicitor decides that the child is of sufficient age and understanding they will be able to instruct the solicitor.

Legal Aid

Legal aid is always available for parents in care cases and anyone else who holds parental responsibility (anyone with an order saying the child should live with them usually has parental responsibility). This means these parents will get a lawyer through legal aid. Sometimes legal aid is also available for family members/carers even if they don't have parental responsibility, but this will depend on various things including their income. The lawyer will be independent of social services and will give the parents advice so they can make decisions about their options and their case.

According to the law, public law cases should be finished within 26 weeks (6 months) of starting, unless there are exceptional reasons. This means that it is really important for the parents to take part in the court process and instruct a lawyer right from the start, and to work out what they need to do to be able to show they can safely care for their child by the end of the case.

4.2 Overview of
Public Law
Processes

What are the different types of Public Law Orders?

1 - Care Orders



Care Orders - Section 31 Children Act 1989

These orders are usually sought by a local authority (although the NSPCC can bring proceedings it is extremely rare for them to do so) in respect of children who they believe are suffering or are likely to suffer significant harm and:

- a) the harm is attributable to the care being given to the child not being what it would be reasonable to expect a parent to give him or
- b) that the child is beyond parental control.

No care or supervision order may be made with respect to a child who has reached the age of 17 (or 16 if the child is married). Care orders continue until the child is 18 years, unless discharged earlier. Once a local authority has made an application for a care order the court can make a series of interim orders under s38 which gives the local authority parental responsibility and the power to remove the child from home. Further investigations and assessments are carried out before any final orders are made by the court.

While a care order is in force with respect to a child, the local authority designated by the order shall:

- a) have parental responsibility for the child
- b) have the power to determine the extent to which a parent or guardian of the child may meet his parental responsibility for him.

The local authority can make decisions as to where the child will live and with whom, and how the child will have contact with named people. There is a positive duty on the local authority to allow reasonable contact between a child in care and their parents. What is reasonable is sometimes in dispute and in those circumstances, the court can be asked to make specific directions about how and when contact should occur.

If the local authority want to suspend or stop contact for a period longer than seven days they need to obtain a court order to do so. If there is a dispute between the local authority and parents about contact, either party can seek a court order to define contact. If the local authority believe that there should be no contact between the child and his parent/guardian the court can make an order authorising the local authority to refuse to allow any contact.

4.2 Overview of
Public Law
Processes

1 - Care Orders (continued...)

Care Orders - Section 31 Children Act 1989

Sometimes children who are the subject of care orders will remain at home being cared for by their parents, however it is more usual for children who are the subject of care orders to live with foster carers or in residential establishments.

Although the local authority has parental responsibility there are some decisions which require everyone with parental responsibility to agree including:

- 1) agreeing for the child to be adopted
- 2) causing the child to be brought up in any religious persuasion other than that which they would have been brought up if the care order had not been made
- 3) allowing the child to live outside the UK for more than 28 days.

If agreement cannot be reached then the court can make an order.

Children who are the subject of care orders are the subject of regular reviews by the local authority. Each child will have an individual care plan that sets out how all their needs will be met. These reviews will consider amongst other things the arrangements for contact with the family and others, as well as the child's health and educational needs. All local authorities must appoint Independent Reviewing Officers who must work to ensure compliance with care plans.

4.2 Overview of
Public Law
Processes

2 - Supervision Orders

Supervision Orders - Section 31 Children Act 1989

These orders are made on the same basis as care orders i.e. that the child is suffering or is likely to suffer significant harm. These orders do not confer parental responsibility on the local authority, but when there is a supervision order in force it is the duty of the supervisor to:

- 1) Advise, assist and befriend the supervised child
- 2) Take steps that are reasonably necessary to give effect to the order and
- 3) Where the order is not wholly complied with or the supervisor considers that the order is no longer necessary, to consider whether or not to apply to the court to vary or discharge the order.

A supervision order may require the supervised child to comply with directions given by the supervisor to do things such as:

- 1) Live at a place specified by the supervisor;
- 2) Present themselves to specific people at specific places or times e.g. to meet with the social worker;
- 3) To participate in activities specified on certain days.

A supervision order can also require the child to submit to medical or psychiatric examination as directed by the supervisor. This requirement will only be included where the court has been satisfied on evidence as to its need.

Initially a supervision order lasts for one year. The supervisor can apply to the court to extend supervision order, but the supervision order can only be in place for a maximum of three years.



4.2 Overview of
Public Law
Processes

3 - Emergency Protection Order



Emergency Protection Orders (EPO) - Section 44 Children Act 1989

These orders are obtained from the court to ensure the short term safety of a child. Any person can make an application including a local authority or other authorised body. The court will only make the order if they are satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if:

- 1) He is not removed to accommodation provided by the local authority
- 2) He does not remain in the place where he is currently being accommodated e.g. in hospital.

A local authority has to show that their enquiries under section 47 of the Children Act 1989 are being frustrated and access to the child is required urgently.

In exceptional circumstances a local authority can apply for an EPO without notice to the parents.

In circumstances where the applicant believes that the child will be safe in the interim period, an application for an EPO will be made on notice to the parents. This gives them an opportunity to come to the court and advise the court of their views and plans to safeguard the child. When the court makes an EPO, the court can also make an exclusion requirement under s44 A where:

- a) There is reasonable cause to believe that if a person is excluded from the home, the child will cease to suffer or cease to be likely to suffer significant harm and
- b) Another person living in the home is able and willing to give the child the care which it would be reasonable to expect a parent to give him and consents to the exclusion.

The exclusion order may require a person to leave the home where he/she is living with the child, prevent him/her from entering the home or exclude him/her from a defined area. A power of arrest may be added to the order.

An emergency protection order is only a short order granted for up to a maximum of 8 days but can be extended for a further seven days. The order grants the applicant parental responsibility but only permits him to take such action as is reasonably required to safeguard the welfare of the child. The court can give directions it considers appropriate with respect to the contact the child is to have with any named person or any medical or psychiatric examination or assessment of the child under S44 (6). If the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessments.

4.2 Overview of
Public Law
Processes

4 - Secure Accommodation Orders

Secure Accommodation Orders - Section 25 Children Act 1989

These orders permit a local authority to place a child in secure accommodation.
The court can make a secure accommodation order where:

- a) A young person has a history of running away, is likely to run away from any other kind of accommodation and if he runs away is likely to suffer significant harm; or
- b) If the young person is not kept in secure accommodation he is likely to injure himself or other people.

A secure accommodation order can only be made with respect to a looked after child: if they are not subject to a care order an order can only be made for a child who is under 16 years, if the child is subject to a care order they can be placed in secure accommodation until the age of 18 years. Children under 13 can only be kept in secure accommodation with the consent of the Secretary of State.

The court's authority is not required for the first 72 hours that a child is placed in secure accommodation. However if the local authority believes that the child needs to be in secure accommodation for longer, an application must be made to the court. The court cannot make the order unless the child is legally represented in court.

The court can make a secure accommodation order for up to three months on the first application, and then for periods of up to six months on subsequent application. However, where the child is on remand to the local authority from a criminal court having been charged with a criminal offence, different rules apply.

Regardless of the length of the court order, if during the course of the order the child no longer meets the criteria for an order, the local authority must remove the child from secure accommodation.

The local authority must make arrangements for contact between the child and their parents, or seek a court order to suspend or stop contact if they believe that it is not in the child's interest for contact to take place.

There will be regular reviews of the care plan for the child and to monitor the child's progress whilst in the secure setting. These reviews should also consider the future plans for the child, once they have left the secure setting. Whilst in the accommodation the child must receive education.



4.3 Overview of
Public Law
Processes

What are the different types of Hearings within Care Proceedings?

There are several different types of hearings within care proceedings, these are:

Case Management Hearing

This is a short hearing to make plans for how and when the case is going to be decided. The court will make directions to get all the information it needs and to allow everyone involved to have their say by making a statement in writing or providing evidence. This might include saying that certain assessments of the parents or children should be carried out. Where there is more than one of these hearings they are called “further case management hearings”.

Contested Removal Hearing

If social services want to remove a child at the start of the case and the parents do not agree the court will hold a hearing where it can decide whether this should happen. Typically this might take a whole day and the court will hear some evidence from the social worker, guardian and the parents – but the exact length and format will depend on the circumstances.

Issues Resolution Hearing

Once all of the evidence is gathered together and social services have said what their final plans are for the child the court will hold an Issues Resolution Hearing to see if some or all of the issues can be agreed. Sometimes parents agree that a child should go and live with a relative for example and if everything is agreed the court can make final orders and finish the case there and then, which is easier for everyone. If anyone doesn't agree with the plans the court will list a Final Hearing.

Final Hearing

At a final hearing the court will hear all the evidence and the parents can challenge the plans through their lawyers asking questions of the witnesses. These hearings typically take days rather than hours, but it depends on the case.

Settlement Conference

This is a new development being piloted in some areas. Where everyone agrees the court can arrange a settlement conference to try and encourage everyone to agree things without a long hearing. It is a little bit like mediation run by a judge.

4.4 Overview of
Public Law
Processes

Welfare Checklist for Courts issuing Orders

The Welfare Checklist - Section 1 Children Act 1989

When a court is considering making any of these orders it must have regard in particular to:

- a) The ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding)
- b) His physical, emotional and/or educational needs
- c) The likely effect on him of any change in his circumstances
- d) His age, sex, background and any characteristics of his, which the court considers relevant;
- e) Any harm which he has suffered or is at risk of suffering
- f) How capable each of his parents and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs
- g) The range of powers available to the court under the Children Act 1989 in the proceedings in question.

For all proceedings under the Children Act 1989, when the court considers a question of the child's upbringing the child's welfare is the court's paramount consideration.



Children Act 1989

Welfare Principle – section 1(1)

Welfare Checklist (s1(3))

- ✓ The child's ascertainable wishes and feelings in the light of his age and understanding
- ✓ His physical, emotional and educational needs
- ✓ The likely effect of any change in circumstances
- ✓ His age, sex, background and any other characteristics that may be relevant
- ✓ Any harm suffered, or at risk of suffering
- ✓ The capability of each parent and any other relevant person



4.5 Overview of Public Law Processes

How the Public Law Outline will improve case management and care proceedings...

The process of taking children into care is being improved through a revision of a judicial protocol known as the Public Law Outline.

How will the PLO improve proceedings?

The PLO emphasises the importance of **strong judicial case management throughout a case**; of narrowing the issues in dispute and **seeking to resolve these at a much earlier stage**; of reducing the amount of written material and oral evidence so that **practitioners can focus on the big issues in a case**; and of introducing a **pre-proceedings gate-keeping regime** to ensure local authority cases are better assessed prior to an application to court being made.

A significant change under the PLO is the requirement **for an individual timetable for each child to eventually replace the 40-week target to complete all cases**. The shift is a recognition that some cases can be dealt with in less than 40 weeks, while others will take longer for a good reason – even with the PLO in full flow.

By seeking to modernise the framework in which public law child care proceedings are carried out, the PLO is one of several necessary reforms to the family court system underway.



The Public Law Outline

- Introduced by the MOJ as a tool for the management of care proceedings cases
- Principally concerned with s.31 of the Children Act 1989
- The PLO, and associated statutory guidance for local authorities, are the two key reforms to emerge from the care review in 2005/6
- Trialled in ten initiative areas from summer 2007
- Rolled out nationally from 1st April 2008

4.6 Overview of
Public Law
Processes

How is the PLO working? What is its impact on court process and outcome?

The last few years have brought important reforms to care proceedings. The Judiciary made proposals for modernising family justice with a focus on strong judicial leadership, judicial continuity and better case management. The *Family Justice Review* recommended that the duration of care proceedings should be limited to 26 weeks, that fewer experts should be instructed in proceedings and there should be more limited scrutiny of the care plan.

The Review's recommendations were enacted in the Children and Families Act 2014, supplemented by new procedural rules (the PLO 2014) and implemented on April 22, 2014. This date also marked the opening of the Family Court, replacing the triple jurisdiction of the Family Proceedings Court, the County Court and the High Court. The *Outcomes of Care Proceedings for Children Before and After Care Proceedings Reform* study is being undertaken by a team of socio-legal and social work researchers. It was designed to find out how the changes introduced by the Children and Families Act 2014 and the PLO 2014 have impacted on the decisions made in care proceedings and on children's subsequent care. This study analyses a random sample of care proceedings, issued between July 2014 and the end of February 2015, focusing on the court process and decision-making. These cases are compared with cases issued by the same local authorities in 2009-10, which were included in an earlier study: *The Operation and Impact of the Pre-proceedings Process for Care Proceedings*. Initial findings from the first part of the study on court process and decision-making are:

Findings: The Court Process

The changes introduced in the 2014 reforms were aimed at cutting the duration of proceedings and delays by: ensuring cases were allocated to the correct level of judge; judicial continuity i.e. the same judge hearing the case throughout; streamlining the process so that cases could be completed with fewer hearings, particularly before the final hearing at an Issues Resolution Hearing (IRH). There was also an expectation that applications would be better prepared by local authorities and fewer experts would be appointed during proceedings.

❑ Judicial continuity

Judicial continuity was achieved in only one third of cases, and in less than half of those heard by judges. Cases were passed to different judges because of judicial availability/ listing difficulties, case complexity and the need for urgent or timely hearings. Over two-fifths of cases were heard by two or more judges, with more than a quarter of these being heard by three or more judges. Average duration for cases heard by one judge was significantly shorter (by three weeks) than for those heard by two or more judges.

❑ Length of final hearing

Half of the final hearings were completed within a single day.

❑ Case duration

The mean length of the sample cases was 26.62, just over the PLO time-frame. The shortest case lasted only six weeks and the longest 64 weeks. Two-thirds of cases were completed in less than 27 weeks, just over one fifth took more than 33 weeks, i.e. more than the 26 week period plus one six week extension.

4.7 Overview of
Public Law
Processes

Family Law Settlement Conferences Pilot 2017

The Sussex Settlement Conferences pilot began in January 2017, beginning in Brighton but with the aim of extending across Sussex.

This new process can be applied to any Family Law case – public or private – to aid resolution. It seems that the potential for the process to be applied to a case will be considered at an early hearing, but it may also be that a case can be referred at any stage. The purpose is to try to resolve some or all of the issues in the case.

This must be by consent of all parties. Conferences are given priority listing, usually within one or two weeks of referral.

A Judge conducts a conference with the parties and their legal representatives. This takes place in the courtroom but in a much more informal way than a regular hearing, and the Judge speaks to the parties, who may also speak freely to the Judge. However they may not be seen without their legal representatives. If they are not represented a Cafcass officer or Guardian will be present.

The Judge will give a 'neutral evaluation' if the parties wish, but another Judge may disagree with him/her. When the Judge speaks to a party, the legal representative (who may contribute at any stage of the process) is able to address the Judge, object and/or raise any issues.

No pressure is applied on anyone to reach agreement. If any party has an issue with a lack of understanding, or shows signs of emotional pressure or vulnerability, the Settlement Conference must be terminated. The parties may withdraw from the court to reflect on the issues, and return to court later in the day, or even the next day. The conference can also be adjourned to enable further reflection, consideration or further information to be obtained.

In case the Settlement Conference does not resolve some or all of the issues, a final hearing will be listed so that the parties have that available. The Judge conducting the conference is not the case management Judge (unless the Parties agree) and must not be the Judge who conducts the final hearing.

The Judge conducting the conference does not read all of the papers, just a broad outline. This is deliberate so that the Judge does not stray into considering factual matters and matters in dispute. This better enables the Judge to facilitate and assist the Parties to reach agreement.

The final hearing Judge will not be aware of what happened at the Settlement Conference, which is confidential and goes no further.

The Sussex Family Justice Board will be providing training, and the pilot will be audited by the Ministry of Justice.

4.8 Overview of
Public Law
Processes

Speeding up the Family Justice System?

What will be the impact of speeding up the family justice system (i.e. faster case resolution)?

Research has examined some possible implications of this change, starting from the premise that speeding up the family justice system in public law cases is much to be welcomed, but any change on this scale brings with it some risks. These are considered in the context of evidence from relevant research and commentary.

What might be the pitfalls in a speedier justice system for children and their parents involved in the new, faster care proceedings?

A search has been carried out for material relating to child care proceedings and adoption and timeliness; including policy documents, official statistics, law, case law, research and literature from the relevant practitioner community. Similar sources were also searched for material relating to parental rights and parental challenges (such as mental health) and care proceedings and adoption.

Analysis focuses on arguments and themes relating to the potential costs and benefits of speedier proceedings, with a view toward reflecting on issues that the courts are likely to have to confront and the possible implications for the probable minority of parents and children for whom speed may not be in the interest of the child nor the parent.

The research concluded that there is a balance to be struck between those risks associated with delay and those associated with speed. Both can have negative consequences, but the natures of those risks are very different, which may make it particularly hard to weigh and balance them.

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5. CUSTOMERS AND PROFESSIONALS

5.1 Customers and Professionals

Customers and Professionals

Insight: Public law cases involve a number of different user groups, with a range of professional users often representing the parents. Besides parents, family members very often play a key role in care proceedings.

Customers

- Children
- Biological Parents/Step-Parents
- Foster Parents
- Family Members

Professionals

- Local Authorities
- Social Workers
- Legal Representatives
- CAFCASS Family Court Advisers
- Children's Guardian
- Psychologists

Users

- Family and Friends
- Family Court Staff
- Contact & Complaints Staff

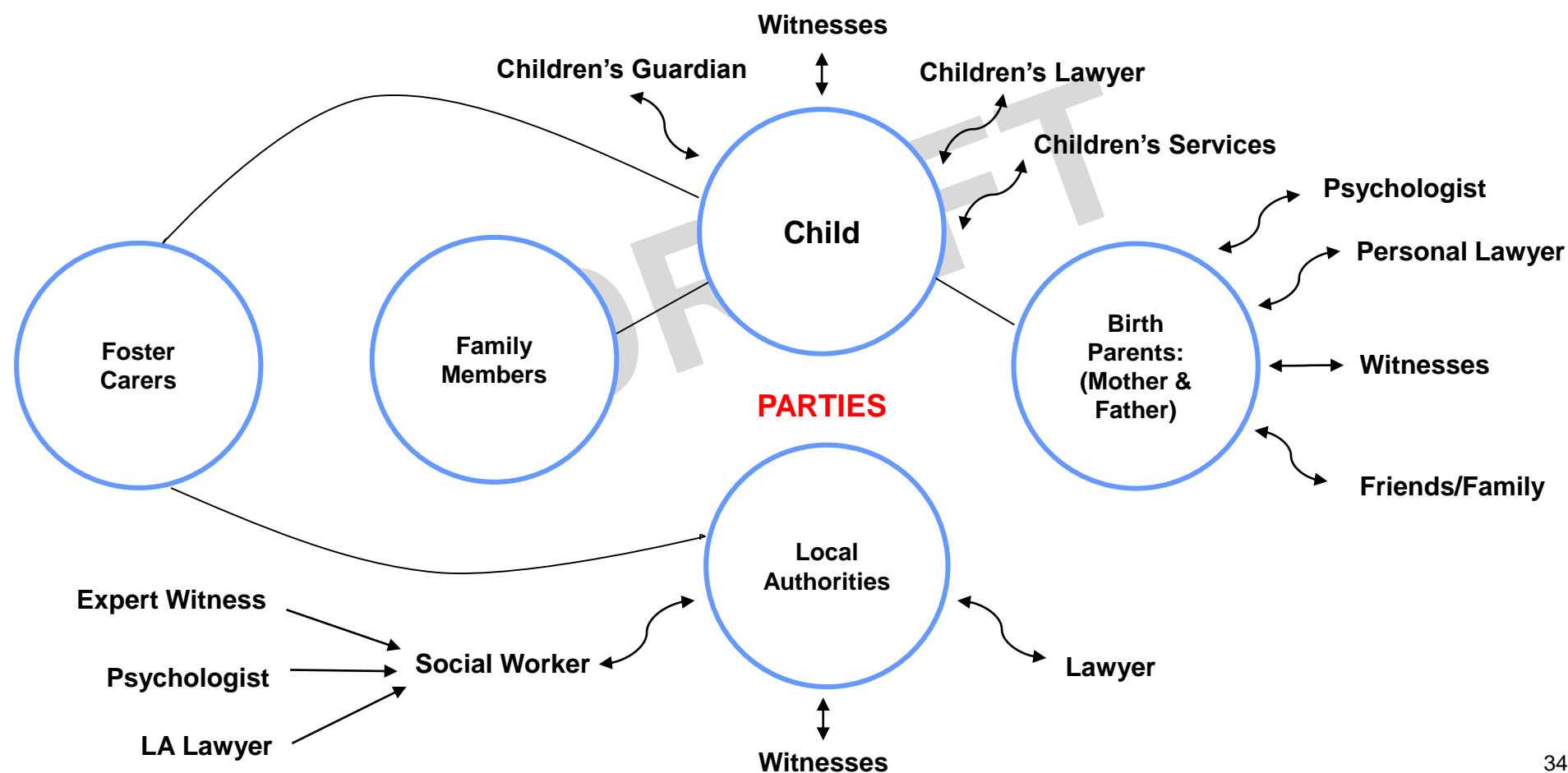


Child care proceedings involve essentially a trio of parties: the Local Authority applicant, the children – represented by their children's guardian, and the parents.

5.1 Customers
and Professionals

Customers and Professionals (continued...)

Insight: The number and role of different parties in care proceeding cases varies depending on the circumstances, broadly there are five parties who may be involved to varying degrees, and each have support and advice from a range of professionals.



5.2 Customers
and Professionals

The role of Local Authorities in Care Proceedings

What are the types of services provided by the Local Authority to children in need?

These following services can be provided by the Local Authority, upon request by children in need or their families:

The Local Authority children's services team have responsibility for finding homes for children in care. Cafcass tracks the number of applications made by a Local Authority each month, to measure demand and to ensure that limited resources are allocated where needed, responding to changes in trends and providing children and young people with a timely and effective service.



5.3 Customers
and Professionals

The role of Psychologists in Care Proceedings

The Social Worker can instruct the family to have a psychological assessment.

Psychological assessments

Psychological assessments provide professionals with information about the current functioning of the individual parent in terms of their personality, mental health, cognitive capacity and any experiences of trauma and/or abuse. Psychologists provide comprehensive, concise reports of the full psychological assessment within four weeks from receipt of a letter of instruction.

The psychological assessment considers any difficulties identified in the context of the subsequent impact on the parent's capacity to parent safely and appropriately. Conclusions are informed by a range of sources, including clinical interviews and observations, psychometric assessments, police and medical records, and analyses of parent-child interactions.

Psychological assessments are carried out by chartered clinical psychologists with considerable experience of working with parents in care proceedings and in working with the Family Court system.

One parent who underwent a psychological assessment said:

"The time away from my kids really allowed me to reflect on where I think I went wrong, I attended counselling to help sort out some of my past issues, am on medication for the depression, attend a parenting group for parents of special needs children, really stepped up at home, to the point where the social worker said there wasn't a risk, and no reason to place the children I have back, back into the care system (although we're being appointed a support worker, we expected that)"

Insight: Psychological assessments can be used in court to better inform care proceedings. This can help HMCTS understand the special needs of parents.

5.4 Customers
and Professionals

The role of the Children's Guardian in Care Proceedings

Following a care application the court will ask Cafcass to allocate a practitioner, called a Children's Guardian, for the child to help make sure that the decisions made about them are in their best interests. The Guardian's job is to check the local authority's plan and make sure that it is the best possible for the child.

The guardian is the independent voice of the child in court. Cafcass guardians are all qualified and experienced social workers. They are independent and do not work for the local authority or for the court.

The Guardian will:

- appoint a solicitor to represent the children.
- advise the court on what work needs to be done before it can make a decision about the children's future.
- Analyse all of the options being considered for how the children could be cared for and tell the court what they think is best for the children.

ASSESSMENT BY THE CHILDREN'S GUARDIAN:

Who will the Cafcass guardian speak to?

The guardian will talk to the parents and may talk to other people who know the parents' family, such as teachers, social workers and health visitors. It's very likely that the guardian will see the child. From the start, they will be analysing the local authority assessment and care plan to make sure it is right for the child. If they disagree, they will propose an alternative.

What will happen in the end:

It is the court's job to decide what will happen to the child and the judge will listen to everyone involved in the case including the parents, their solicitor, the local authority social worker and the guardian before making a decision. The guardian's role is to recommend what he or she thinks is best for the child based on their assessment.

5.5 Customers
and Professionals

The role of Family Members in Care Proceedings

What is the role and rights of Grandparents when it comes to care proceedings?

Unless they have parental responsibility for their grandchild by way of a residence or special guardianship order, grandparents are not automatically involved within the care proceedings.

If they do have parental responsibility then they will be entitled to become a party to the proceedings and also public funding, i.e. that they would not have to pay towards their legal costs.

If grandparents do not have parental responsibility then in order for them to become involved in care proceedings they will have to apply for leave to be granted party status. This means that they have to ask the Court's permission before their application will be considered. In order to be granted party status they have to have a case to put before the Court separate to that of the parents such as; contact with their grandchild if they are in foster care or to be considered as a long term carer if the Court feels that the child cannot be returned to their parents.



5.5 Customers
and Professionals

The role of Family Members in Care Proceedings (continued...)

Grandparents and their Status in Family Law

It has long been acknowledged that grandparents have an important role to play in the upbringing of children. *Re W (Contact: Application by Grandparent)* [1997] 1 FLR 793 in particular noted that contact with a grandparent may be beneficial for children. Statistics prepared by Grandparents Plus in July 2009 showed that approximately one in three families rely on grandparents for child care, rising to 47% of all single parent households. Yet Parliament, through the Children Act 1989, does not single out grandparents for particular rights or recognition simply by virtue of being grandparents.

Research published by Families Need Fathers, the Grandparents Association and the Family Matters Institute indicates that 42% of grandparents lose contact with their grandchildren when their parents separate. **The potential therefore for grandparents to become involved in proceedings for contact and other s8 orders is significant.** In terms of public law proceedings, in July 2009 Grandparents Plus reported that 200,000 children were living with their grandparents as kinship carers, and that **placement with grandparents was the preferred choice of 65% of parents in the event that they were unable to care for their children.**

Courts' approach can work in favour of grandparents

In terms of a child's primary residence, the approach of the courts has appeared to emphasise that, where possible, the children should remain with the parents to whom they were born. The case of *B (A Child)* [2009] [UKSC 5](#) however recently re-asserted the importance of the welfare principle as the paramount consideration when making decisions regarding the upbringing of the child, and stated that application of the natural parent presumption, although a consideration, is secondary to undertaking the statutory balancing exercise to act in the best interests of the child. This may have important implications for grandparents (and other relatives) seeking residence orders in respect of children, as it can work in their favour.

5.5 Customers
and Professionals

The role of Family Members in Care Proceedings (continued...)

Grandparents and their Status in Family Law (continued...)

The Government Green Paper, 'Support for All – the Families and Relationships' (2010) makes proposals for additional support for adults and children following the breakdown of a relationship. Significantly, a number of these measures are directed towards grandparents, including proposed reform to improve their ability to apply for contact and support for kinship carers.

Developments such as Special Guardianship Orders have had a role to play in supporting the placement of children within the extended family and providing enhanced parental responsibility for such carers. The Green Paper makes further proposals to provide specific support to family and friends who act as foster carers which is appropriate to the issues in each case. **Where a parent is unable to provide safe and appropriate care for a child, it is very often the child's grandparents who are approached to provide long term care.** It is useful to see within the proposals plans to educate carers in issues of alcohol and drug misuse and also to look the issues faced by proposed kinship carers within the court proceedings.

It is worth noting that as a matter of practicality, **grandparents do remain in an entirely different position from parents in respect of legal aid within the arena of care proceedings. They have no right to automatic non-means or merits-tested legal aid.** As such, a grandparent wishing to care for a grandchild, unless that they have the support of the local authority, may be in the position of having to finance such an application privately, or acting in person throughout very emotive proceedings.

Evidence Gap: Grandparents in care proceedings have no automatic legal aid. Potentially as a Litigant in Person, what is the legal aid they will receive?

5.6 Customers
and Professionals

The role of Legal Representatives in Care Proceedings

“Care proceedings are frightening. It is very difficult and stressful when social services are involved with your family and you may feel powerless when dealing with professional people, meetings and court hearings in care proceedings. It is devastating to think your child could be removed from you.”

Legal representatives have experience representing parents and other family members in all sorts of situations which lead to care proceedings. These include cases where the local authority is concerned children are being neglected and where family members are accused of injuring or abusing children. As well as acting for parents, legal representatives also represent other family members such as grandparents and uncles and aunts who want to care for children.



5.7 Customers
and Professionals

Litigants in Person (LiPs) in Care Proceedings

Moorhead and Sefton (2005) conducted research on LiPs in family cases. Table 1 shows litigant status broken down into four categories: those cases where all parties are represented throughout the proceedings; those where there is an unrepresented adult litigant who does not participate; those cases where one or more adults are unrepresented for part of the case and participate whilst unrepresented; and finally those cases involving an adult party who is unrepresented throughout and participates in their case. In the table above, it can be seen that there were significant numbers of unrepresented litigants in adoptions and that about half of Children Act cases involved litigants unrepresented for part or all of the proceedings. However, these figures are somewhat inflated by the numbers of inactive unrepresented litigants.

Table 1: Family Cases - Litigants in Person

	Cases involving fully represented parties	Case involves unrepresented litigants (s)		
		Inactive	Partial Active	Full Active
Adoption	23%	7%	6%	64%
Ancillary Relief	69%	12%	4%	15%
Children Act	50%	16%	12%	21%
Divorce	31%	8%	1%	60%
Injunction	53%	19%	8%	20%

A Court of Appeal judge spoke of the ‘infinitely more difficult’ task of dealing with litigants in person in the family court. Giving judgment in a care and placement order for four children in Stockport, where the mother was unrepresented, Lady Justice Black said the case was ‘illustrative of an increasing problem’ faced by the court. She said more and more litigants are representing themselves, requiring all involved in the appeal process to ‘take on burdens that they would not normally have to bear’. Black said everyone involved in public and private law children cases is trying to achieve the best result for the children’s welfare, but without legal representatives for all parties ‘that task is infinitely more difficult’. The issue of litigants in person has been widely discussed since the cuts to legal aid in 2013 and reforms of the family justice system in 2014. A study by the Nuffield Foundation (2015-16) found that **most parents who lack litigation capacity have learning disability or mental health problems, and robust processes are needed to support them.**

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6. VOLUMETRIC AND DEMOGRAPHIC DATA

6.1 Volumetric
and Demographic
Data

Key Facts and Figures

March 2017 statistics from Cafcass

In March 2017, Cafcass received a total of 1288 care applications. This figure represents a 4.3% increase compared with those received in March 2016.

April 2015 – March 2016

Between April 2015 and March 2016 Cafcass received a total of 12,792 applications. This figure is 15% higher when compared with the previous financial year.

April 2014 – March 2015

Between April 2014 and March 2015 Cafcass received a total of 11,159 applications. This figure is 5% higher when compared with the previous financial year.

April 2013 – March 2014

During 2013 – 2014, Cafcass received 10,620 new applications. This figure is 4% lower when compared with the previous financial year.

6.1 Volumetric
and Demographic
Data

Key Facts and Figures (continued...)

The average time for the disposal of a care or supervision application made in July to September 2016 was 26.6 weeks, remaining steady over the past year.

63% of care or supervision proceedings were disposed of within 26 weeks, following on from the 26 week time limit introduced in the Children and Families Act 2014.

Possibly due to the publicity surrounding the Baby P case, the number of children involved in public law applications made by local authorities jumped from around 20,000 to almost 26,000 in 2009 and subsequently to 29,500 in 2011.

Figures have remained fairly steady at around 7,000 per quarter, but there has been an increase over the last 12 months, with 9,082 children involved in public law applications in July to Sep 2016, an increase of 20% from the equivalent quarter in 2015.

Each region has experienced a rise in the number of children involved in public law applications, although the size of the increase varies from 6% in the Midlands to 47% in London. The MoJ and HMCTS are continuing to look into the reasons behind the recent increases in public law applications.

Nearly half of the children are aged under 5 at the time of Public law applications.

There were 10,838 children involved in public law orders made in July to Sep 2016. The number of orders made is generally higher than the number of applications made as some orders relate to applications made in an earlier time period, and an application for one type of order can result in multiple orders being made.

6.2 Volumetric
and Demographic
Data

“The Baby P Effect”

The death of Baby Peter

In August 2007, Peter Connelly, aged 17 months was found dead at his home with horrific injuries. Peter, who was the subject of a child protection plan had been the victim of repeated physical abuse. A week before Peter's death, a decision was taken at a legal planning meeting that his case did not meet the threshold for care proceedings although a previous meeting which had not resulted in proceedings had decided that it had done so (Haringey 2009). In autumn 2008, Peter's mother, step-father and their lodger were convicted of causing or allowing the death of a child. Their trial and the subsequent dismissal of the Director of Children's Services in Haringey received huge publicity, re-igniting public views about the ineffectiveness of child protection services, particularly local authority social work. Although many factors contributed to this tragedy including obvious failures in the health service, the legal advice served to raise professional concerns about the use of care proceedings. In addition to appointing Lord Laming to report on progress on safeguarding children, the Minister asked all local authorities to review their safeguarding arrangements (Balls 2008).

From October 2008, there was a substantial rise in the number of applications made for care proceedings. Although this has been labelled 'the Baby P effect' (Douglas 2008) with the suggestion that the threshold for bringing proceedings has been lowered, it is far from clear that this is the case. A survey of Cafcass officers in November 2008 confirmed that cases were not being brought unnecessarily, with only 2% suggesting otherwise and over 40% indicating that cases allocated to them should have been brought earlier (Hall and Guy 2009). Overall, the number of care proceedings in England in 2007-8 was only four per cent higher than the previous year, and was lower than the number in 2005-6, see figure 1. The significant increase from November 2008 is likely to be a result of the delay of applications occasioned by the introduction of the PLO with its substantial pre-application requirements. The continued increase may reflect a change in the operational threshold but the greater scrutiny which is now required before applications are made means that the local authority will have been advised that the threshold is met, and social work managers will have taken the view that proceedings are required.

6.3 Volumetric
and Demographic
Data

Children in North of England 70% more likely to face care process: Regional Differences

Vulnerable children facing being taken into care are 70% more likely to end up in care proceedings if they live in north-west or north-east England than those living in London or the south-east, research has found.

The findings from [Lancaster University's Centre for Child and Family Justice Research](#) highlight a north-south divide. The research, funded by the Nuffield Foundation, shows that the north-west of England registered the highest rate of care orders in 2015-16, with courts agreeing to 46% of care applications, compared with London which had the lowest rate. In the capital, just a quarter of applications resulted in a child going into foster care or being placed for adoption.

Prof Judith Harwin, who co-led the study, said: "Our finding that children living in the north have significantly higher risk of ending up in care proceedings says to me that children's vulnerabilities to risk are unequal, and children are bearing that risk."

She added: "The north-east and north-west account for 27% of all children, but also for more than a third of all care proceedings. That forces the question: why?"

6.3 Volumetric
and Demographic
Data

Children in North of England 70% more likely to face care process: Regional Differences (continued...)

The likelihood of a child ending up in care proceedings also depends on where they live: the incidence of care proceedings in the north-east in 2015-16 was found to be 34 per 10,000, compared to outer London where it was about 13 per 10,000.

Attitudes to how much risk family court judges and local authorities are willing to bear once care proceedings are under way appear to vary dramatically across the country too, with children in London three times more likely to be returned to their families on supervision orders – 28% of cases – than in the north-west, which had the lowest rate of supervision orders at just 9%.

The inconsistency of approach between regions “raises questions about the fairness of the system”, Harwin said.

Whether the decisions being made by children’s services and family courts are fair or not still requires further analysis, she said, and could not be more urgent.

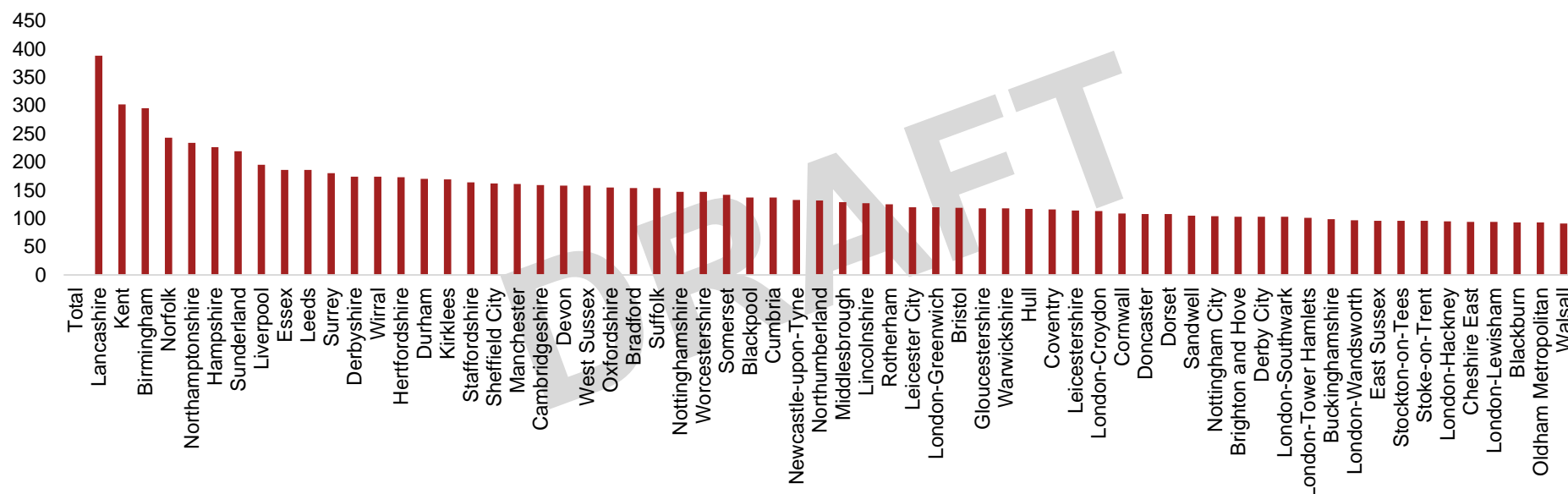
The research carried out by Harwin and Prof Karen Broadhurst responds to concerns about the soaring demand for care places, which was recently described by Sir James Munby, president of the family division of the high court, as a “looming crisis” that was putting the care system under unsustainable pressure. Munby said it was his analysis that “changes in local authority behaviour must be playing a significant role” in the rise.

6.4 Volumetric
and Demographic
Data

Care Applications by Local Authority

Insights: Further GIS analysis can show which regions are more likely to receive higher numbers of care applications.

Figure 3: Number of Care Applications per Local Authority (2016-17). *Cafcass*.



Findings

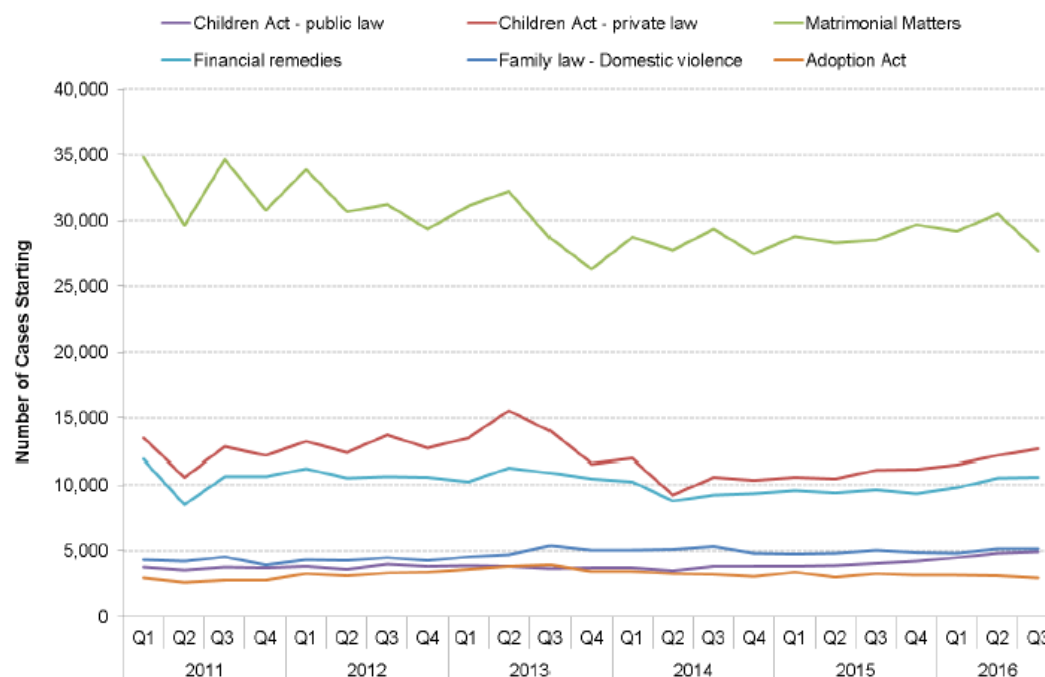
- The above figure shows the geography of care applications, where we see the number of applications per local authority.
- We see that Lancashire, Kent, and Birmingham receive the highest number of care applications.

6.5 Volumetric and Demographic Data

Steady rise in number of Public Law cases

Insights: There has been a steady increase in the number of public law cases starting as well as the number of children involved in public law applications.

Fig 4: New family cases started, by case type, January to March 2011 to July to September 2016.



Findings

- In July to September 2016, 64,109 new cases started in family courts, an increase of 4% from the equivalent quarter in 2015. This is driven by recent increases in public law, private law and financial remedy cases, as shown in Figure 4.

- Over recent quarters there has been a rise in the number of public law cases starting, an increase of 21% from 4,060 to 4,932 in July to Sep (Q3) 2016.

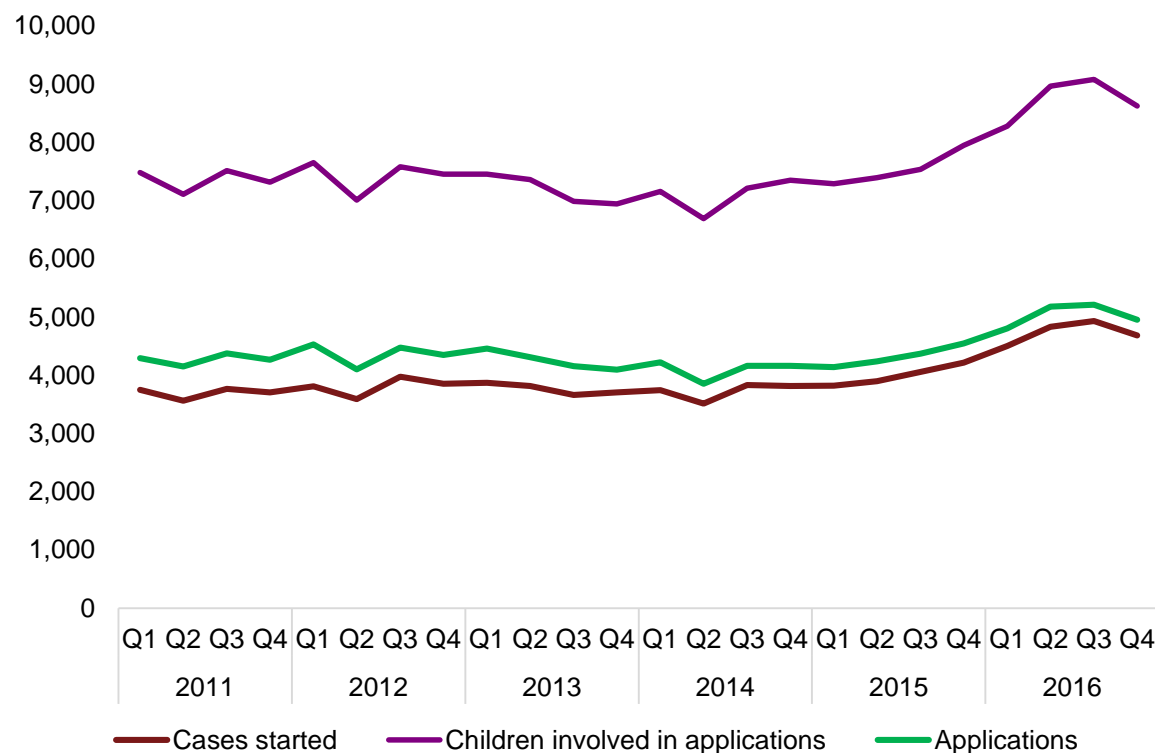
- Following the publicity surrounding the Baby P case, the number of children involved in public law applications made by local authorities jumped from around 20,000 to almost 26,000 in 2009 and subsequently to 29,500 in 2011. Figures have remained fairly steady at around 7,000 per quarter until the increase over the last 12 months.

6.6 Volumetric
and Demographic
Data

Cases started, Children involved, and Applications

Insights: There has been a steady rise in public law cases since 2011 across all three measures - the number of cases started, children involved in applications, and applications.

Fig 5: Public Law Volumes, 2011 Q1-2016 Q4



Findings

- The number of cases started and care applications has risen since 2011.
- The number of children involved in applications has risen, especially from 2015-16.

Figures have remained fairly steady at around 7,000 per quarter, but there has been an increase over the last 12 months, with 9,082 children involved in public law applications in July to Sep 2016, an increase of 20% from the equivalent quarter in 2015.

More than one application may be made during the life of a case. The number of public law cases started increased by 21% to 4,932 in July to Sep 2016 compared to the same quarter in 2015.

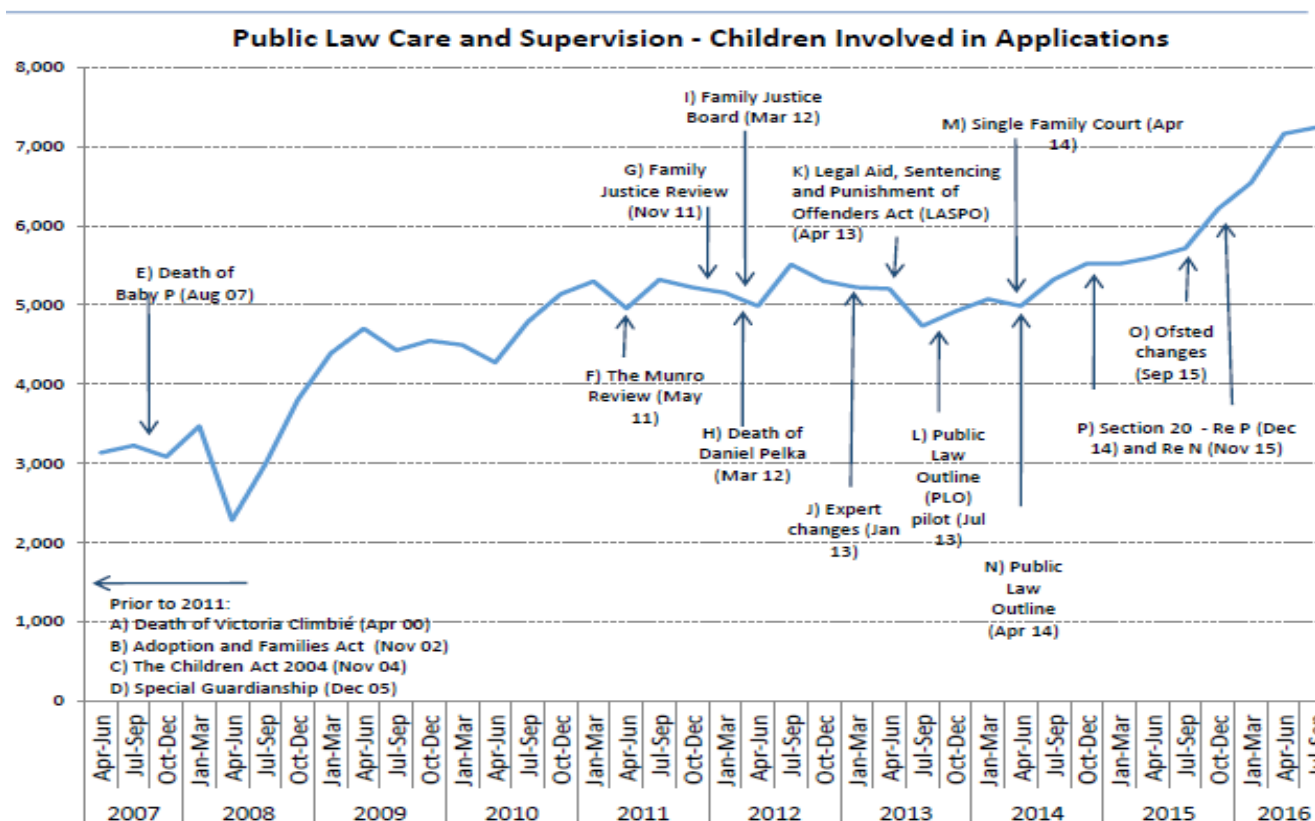
The number of applications made, which can cover more than one child, was 5,209 in July to Sep 2016 – on average, there were 1.7 children involved in each application.

6.7 Volumetric and Demographic Data

Understanding the rising volume of care and supervision applications

Insights: The timeline below shows us the events that have had an impact on the rising volume of care and supervision applications. From just over 5,000 applications in 2007, there were over 7,000 applications in 2016.

Fig 6: Public Law Care and Supervision – Children Involved in Applications



Glossary:

(F) Munro Review: set out proposals for social work reform.

(G) Family Justice Review: an independently chaired review of the system which highlighted failings and made recommendations.

I) Family Justice Board: established to improve the performance of the system and outcomes for children.

J) Expert changes: new rules to make sure that expert evidence is only used where necessary.

K) LASPO: reforms to the scope of legal aid so private law cases only eligible where domestic violence can be evidenced.

L&N) PLO: judicial guidance that requires all public law proceedings must be completed within 26 weeks.

O) Ofsted changes: introduction of a common inspection framework.

P) Section 20: A voluntary (rather than court-ordered) arrangement for Looked After Children. A review of S20 cases by LAs following judicial concerns that S20 agreements were being misused.

Source: Evidence Pack: Public Family Law, ASD.
(Not for wider circulation)

6.8 Volumetric
and Demographic
Data

Applications and Orders by Number of Children Involved

Insights: Care orders attract the highest number of applications compared to other public law orders.

Fig 7: Applications and Orders, Jul-Sep 16.

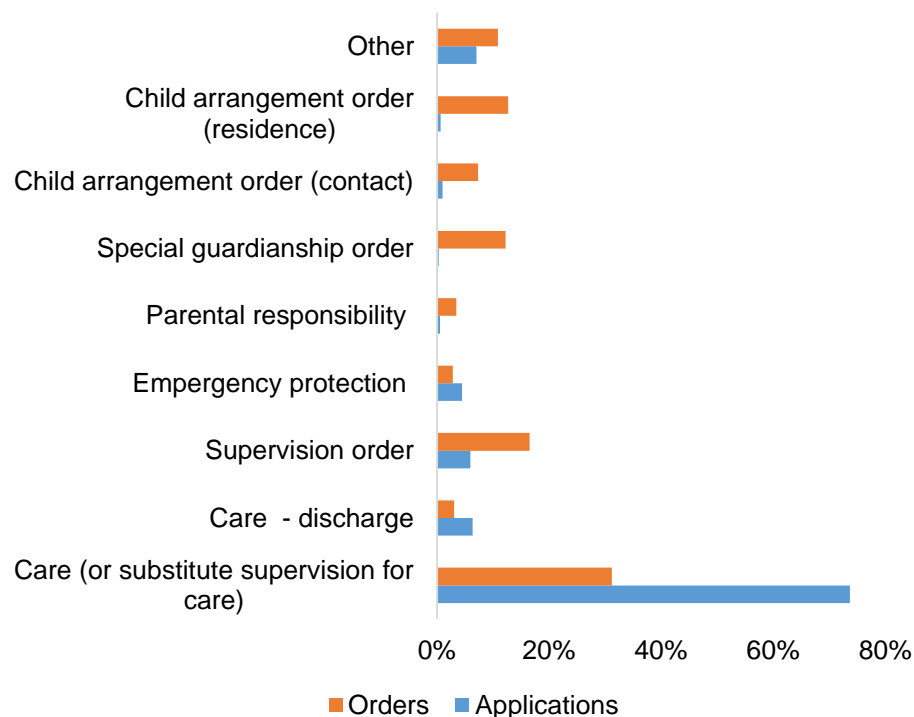
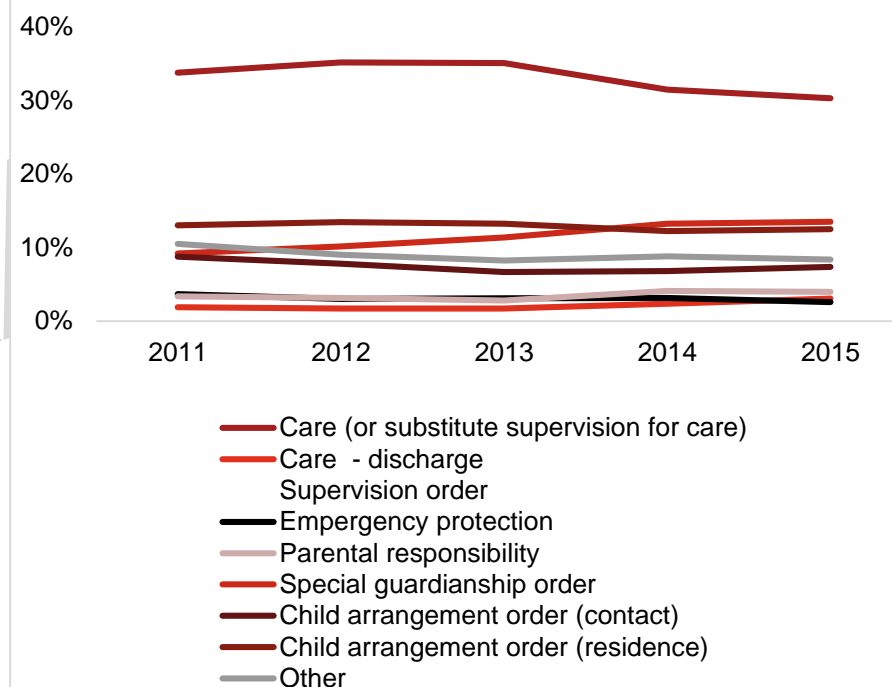


Fig 8: Orders (% of total orders), 2011-2015.



Findings

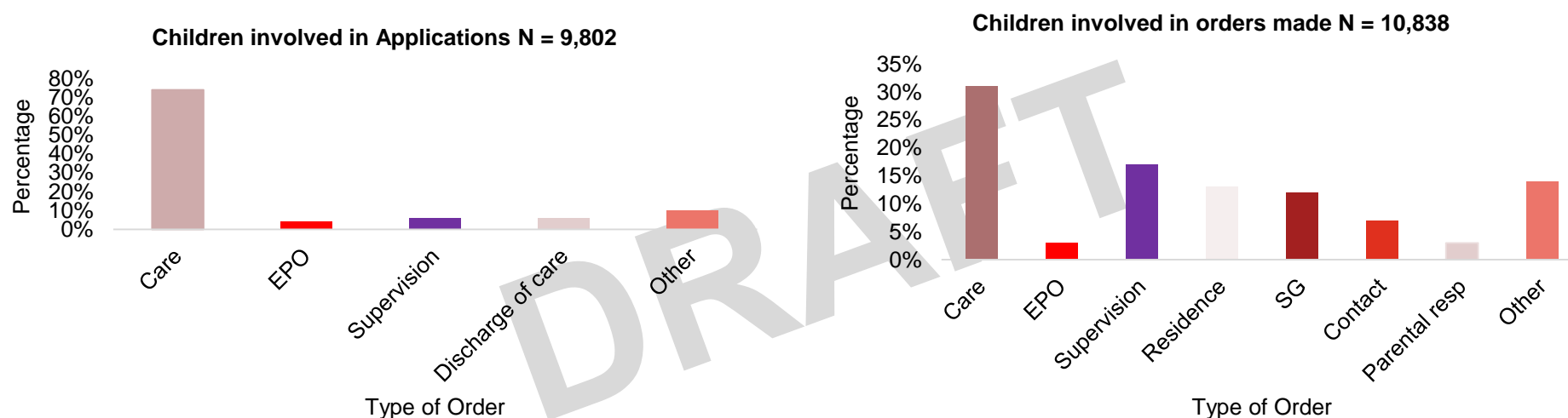
The above figures show that care orders are the most common type of public law orders from care proceedings applications. There are further variations in care orders as well.

6.9 Volumetric and Demographic Data

Public law applications and orders made and proportion of Children involved

Insights: Data shows that the most common type of order applied for was a Care Order.

Fig 9: Public law applications and orders made, showing the percentage of children involved in each order type, July to September 2016.



EPO = Emergency protection order, **SG** = Special guardianship order, **Parental resp** = Parental responsibility order.

Findings

Figure 9 shows that the most common type of order applied for in July to Sep 2016 was for care (74% of children involved in applications). There is often a different pattern between the types of order applied for and the orders that are given because an application for one type can result in an order of a different type being made, and public law cases are dynamic, and if other parties (e.g. grandparents) step in, then the result can change at the last stages.

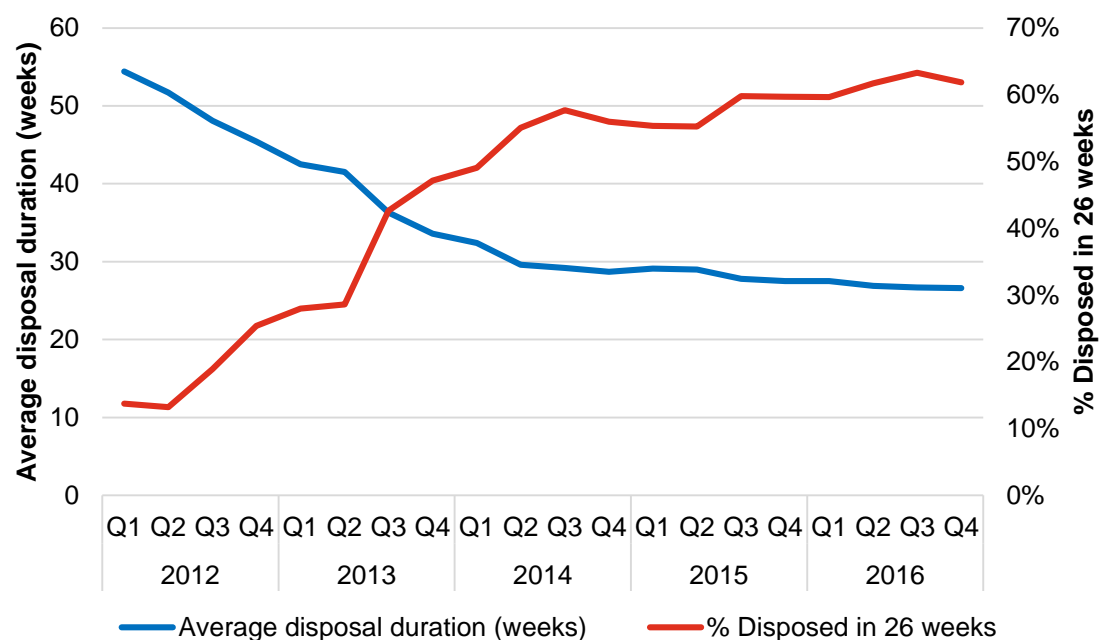
For example, as Figure 9 shows there were 542 children involved in applications for a supervision order in July to Sep 2016, compared to 1,787 children involved in supervision orders made in that same quarter. This is because some supervision orders made resulted from an application for a different order type. Care and supervision orders made up almost half of the total orders made in July to Sep 2016.

6.10 Volumetric
and Demographic
Data

Public Law Timeliness

Insights: Timeliness for public law cases has improved since 2012. Public law cases used to take twice as long to complete, but this has now improved significantly.

Fig 10: Public Law Timeliness, 2012 Q1 - 2016 Q3



Findings

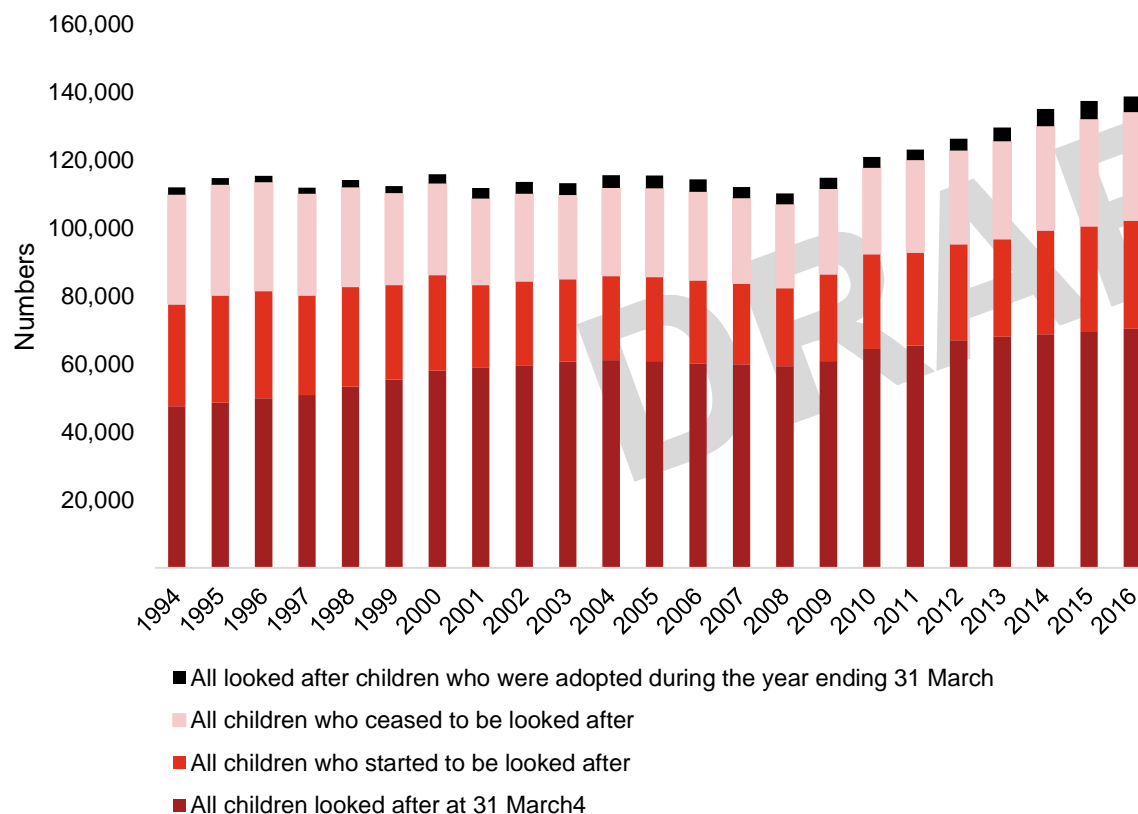
- The percentage of cases disposed of in 26 weeks have risen since 2012.
- The average disposal time (in weeks) of public law cases has decreased.
- The average time for a disposal can be skewed by cases that take a long time, and so the median time is also calculated. The median time to make a disposal in a cases was 24.4 weeks for all children involved in a care and supervision proceedings where a decision was reached during July to Sep 2016.

6.11 Volumetric and Demographic Data

Looked after Children on the rise

Insights: The number of looked after children has been increasing steadily since 1994, especially since 2011.

Fig 11: Looked After Children. *Department for Education.*



Findings

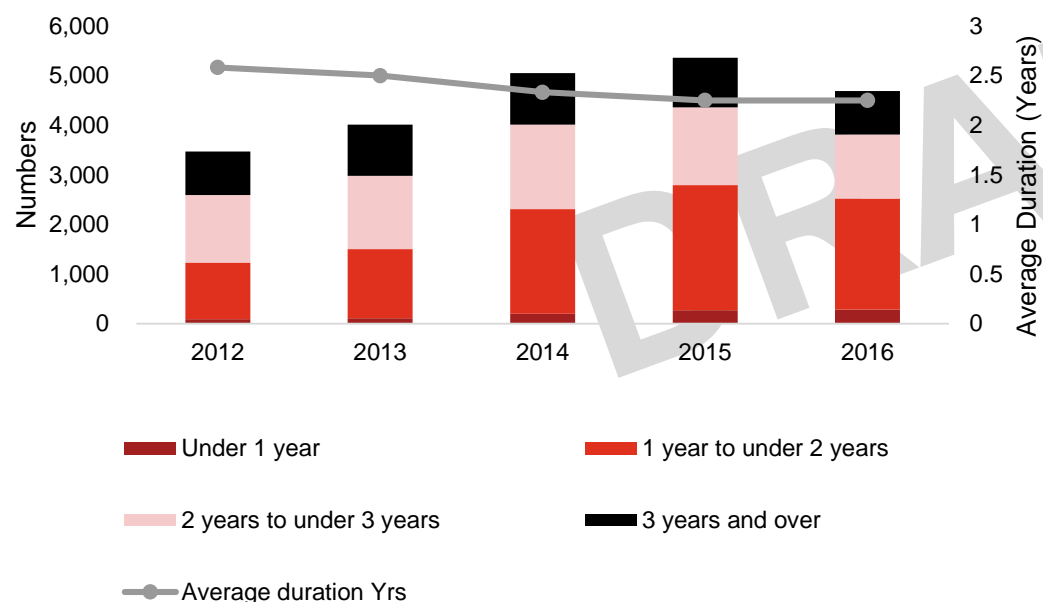
- The number of looked after children have continued to rise; there has been a steady increase over the last eight years.
- There were 70,440 looked after children on 31 March 2016, an increase of 1% compared to 31 March 2015 and an increase of 5% compared to 2012.
- The rise in 2016 reflects a rise of 1,470 in unaccompanied asylum seeking children, compared to a rise of 970 in all looked after children.

6.12 Volumetric
and Demographic
Data

Duration of Care reduced due to improved Public Law timeliness

Insight: The duration of care, in its final period, has improved in the last five years, and the average duration of care has also decreased because of improved public law timeliness by the courts.

Fig 12: Duration of Final Period of Care. *Department for Education.*



Findings

- Due to public law cases being completed quicker by the courts, children in care are now entering their permanent homes faster than before.
- The duration of care, in its final period, has reduced over the last 5 years, with greater numbers of children now leaving care within 1-2 years, as compared to 2-3 years.
- The average duration of care has decreased from 2.6 years in 2012 to 2.25 years in 2016.

6.13 Volumetric and Demographic Data

Profile of parents and children in care proceedings

Research of care proceedings over many years demonstrate that parents involved in care proceedings require support and assistance as they often have complex and multiple problems (see Brophy et al 1999: 2003; 2005: 2009; 2012; Harwin et al 2011; Hunt et al 1999; Masson et al 2008). Often families are from the most impoverished households where parents and children are at the bottom of the social and economic strata. Many parents live a destitute life. **In addition, many of their problems are not properly assessed, diagnosed or treated until they are subject to care proceedings based on factors of neglect and/or ill-treatment of their children.** Many children and parents are repeat users, i.e. they go through the care proceedings multiple times. The Nuffield Foundation and Cafcass have done research into this (Broadhurst et. al 2015).

Parents:

- 90% are below the poverty line.
- 60% have been abused as a child.
- 45% experience mental health problems.
- 35% lead chaotic lifestyles frequently associated with substance abuse.
- 35% have been through care proceedings with a previous child (**repeat users of HMCTS**).
- 30% have been through the care system themselves when they were children.
- 27% have a physical disability.
- 25% care for a child with special educational needs.
- 25% suffer with drug and alcohol addictions.
- 20% have a learning disability (often not assessed prior to proceedings).

Children removed from their parents:

- Are three times more likely to lead chaotic lifestyles frequently associated with alcohol and drug abuse.
- Are twice as likely to have their children removed.
- 53% leave school with no formal qualifications.
- 49% are convicted of a criminal offence.
- 45% are assessed as having a mental health disorder compared with 10% of the total population.
- 20% who leave care between ages 16–19 become parents within one year compared with 5% of the total population.
- 20% will be homeless on leaving the care system.
- 20% will become prostitutes.
- 20% will be unemployed on leaving the care system.
- 13% achieve five A* to C grade GCSE's compared with 47% of all children.
- 6% enter higher education.

6.14 Volumetric
and Demographic
Data

Care Proceedings: The European Dimension

In recent years, family practitioners within the public law arena have found that an increasing number of families who are the subject of care proceedings brought by local authorities originate from outside of the United Kingdom. That development has been underlined in recent days with the publication of the judgment in *A (A Child)* [2014] EWHC 604 and the publicity which has been given to the comments of Mrs Justice Theis.

These cases can be divided between those in which the subject families originate from within the European Union and those in which they originate from outside of Europe, for example, areas of Asia and Africa.

Family practitioners within the public law arena are seeing an increasing volume of cases involving international and more often than not, European, elements. It is important that family practitioners representing parents or local authorities, are aware of the guidance set down by the case law and the suggested "best practice". A working knowledge of BIIR is also required and it may be that they have already reached the stage where such an understanding is indispensable to any public law practitioner.

Evidence Gap: Given that there are an increasing number of European or international families involved in care applications, they may well have separate needs to be considered in court.

DRAFT

7. FAMILY DRUG AND ALCOHOL COURT (FDAC) PILOT

**7.1 Family Drug
and Alcohol Court
(FDAC) Pilot**

Parents' problems with Drug and Alcohol

A 2009 report presents interim findings from the evaluation of the first pilot Family Drug and Alcohol Court (FDAC) in Britain. FDAC is a new approach to care proceedings, in cases where parental substance misuse is a key element in the local authority decision to bring proceedings.

Thirty-seven (37) families with 51 children entered FDAC in its first year. Twenty-three (23) fathers were parties to the proceedings and 25 cases concerned single parent mothers. In approximately half the cases children had been removed before proceedings began. The majority of parents were aged 30 or more and were White British. A small number were Black African, Black Caribbean or described as Black/Other.

Maternal substance misuse was the trigger to all the care proceedings but most of the fathers also misused substances. A majority of the mothers and fathers misused both illegal drugs and alcohol and had long experience of substance misuse. Very few cases involved alcohol misuse alone.

Substance misuse was rarely the only problem. Over half the mothers had current or previous mental health problems and domestic abuse experience, half were on income support, and housing difficulties were common. Just over half the mothers, and two-thirds of fathers, had a past criminal conviction. Most families had had contact with children's services before the current proceedings, some for several years.

The children were young – 38 were less than five and 18 of those were under a year old. The largest ethnic groups were White British (22 children) and mixed heritage (14 children). Emotional and health difficulties affected approximately one third of the children. The combined category of 'neglect, physical harm and emotional harm' was the most common reason for proceedings being brought.

Psychosocial difficulties of parents

The mothers had a range of difficulties, with available file information showing that: 20 mothers had a history of mental health problems (mostly depression); 24 had been subject to domestic abuse in the past, and; 11 had been in care as a child. There is little recorded about the psychosocial difficulties of fathers, bar the fact that three had been in care as a child.

Offending history

Many parents (mothers 19 of 37, fathers 16 of 23) had a past conviction, and it was common for parents to have had several convictions, and for different types of crime. Offences involving violence were common (a third of mothers and just over half of fathers). More drug-related convictions were for possession rather than dealing. Other offences included theft (9 mothers, 11 fathers), actual or grievous bodily harm (3 mothers, 6 fathers), prostitution (5 mothers), crime against property (10 mothers, 9 fathers) and crime against the person (e.g. common assault 10 mothers, 11 fathers).

7.2 Family Drug
and Alcohol Court
(FDAC) Pilot

Parental difficulties and the nature of child care concerns

Insight: A pilot study (2009) carried out by Family Drug and Alcohol Court (FDAC) involving 37 families who demonstrated serious concerns about the mother's substance misuse, gives us some findings about the demographics of these families. It must be noted that the sample size of this study is very small, therefore is not representative of care overall.

Findings

Age and ethnicity of parents

There were more mothers and fathers aged 30 or over than in any other age band, and very few parents were under 25, a fact that is likely to be linked to the fact that some parents, had had children previously. The ethnicity of the largest group of mothers and fathers was White British. A small number of parents were Black African, Black Caribbean and described as Black/Other. One mother and one father were of mixed heritage.

Figure 13: Age of Parents

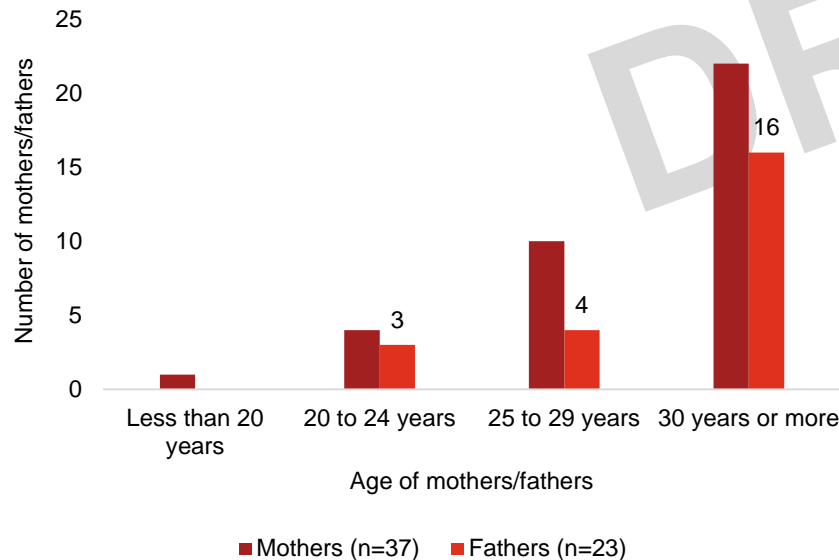
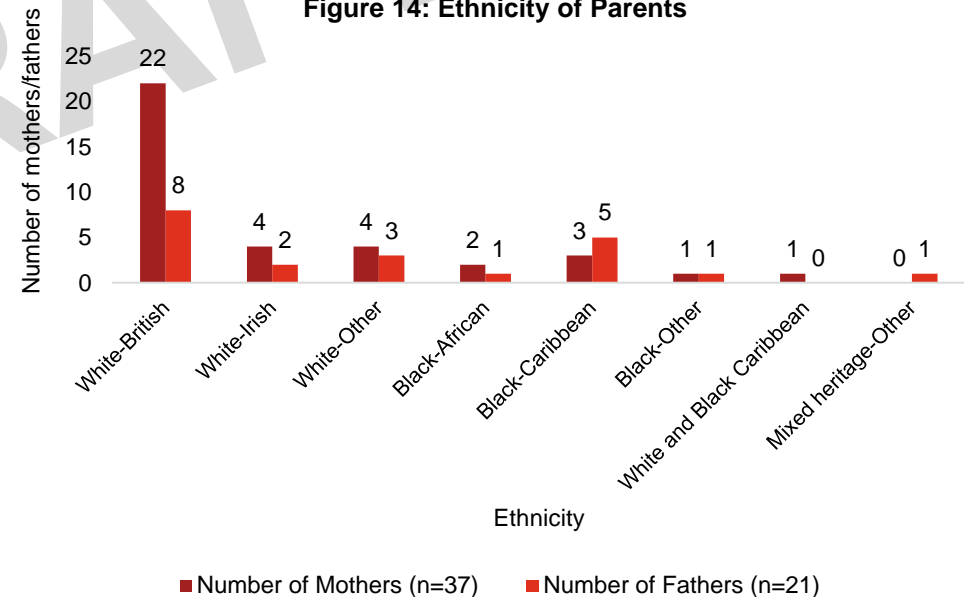


Figure 14: Ethnicity of Parents



7.2 Family Drug
and Alcohol Court
(FDAC) Pilot

Parental difficulties and the nature of child care concerns (continued...)

Insight: The children going into care mostly come from single-headed mother households, where mothers are unemployed and misuse substances. Maternal and paternal misuse of both alcohol and illegal drugs was the most frequent pattern.

Household composition and size

Twenty-five (25) families were headed by a lone mother and none by a lone father. Ten (10) mothers and fathers were living together. Two mothers were living with a new partner. Families with one child predominated (28 out of 37). In some cases other children had been removed previously. Information about this is missing for six families; for the other 31 families, 23 children had been removed, from 18 families.

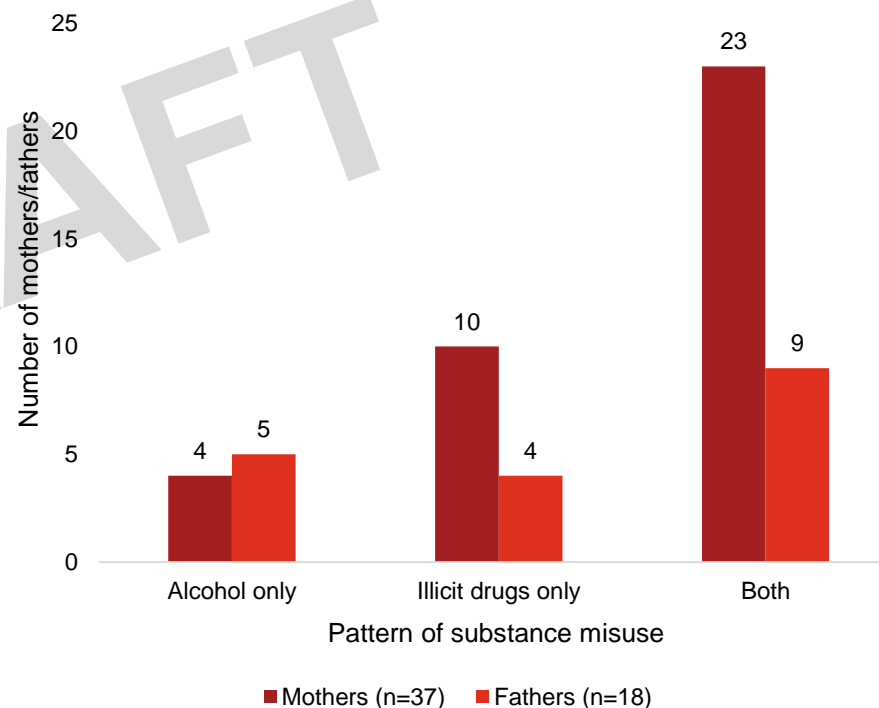
Income, employment and housing

A high proportion of the parents were unemployed (mothers 31 of 37, fathers 19 of 23). Of mothers, just over half were on income support and just under a third receiving housing benefit. Income support and housing benefit were the commonest benefits for fathers, too.

Parental substance misuse

All the mothers misused substances, as did 18 of the 20 fathers for whom information is available. Maternal and paternal misuse of both alcohol and illegal drugs was the most frequent pattern. Very few cases involved alcohol misuse alone. Many mothers had a very long history of substance misuse: 27 had misused for ten years or more. Four of the five fathers for whom this information is recorded had been misusing for at least ten years.

Figure 15: Pattern of substance misuse



7.2 Family Drug
and Alcohol Court
(FDAC) Pilot

Parental difficulties and the nature of child care concerns (continued...)

Insight: Children going into the care process have mothers who have serious problems with illegal drugs, often alongside alcohol.

Mothers

Although very few mothers misused alcohol alone, most misused it alongside their misuse of illegal drugs. The figure below shows the maternal misuse of the five most common drugs in the sample – heroin, crack, cannabis, alcohol and cocaine. Most mothers misused more than one substance, and just over one third (n=14 of 37) misused four substances.

Figure 16: Pattern of substance misuse

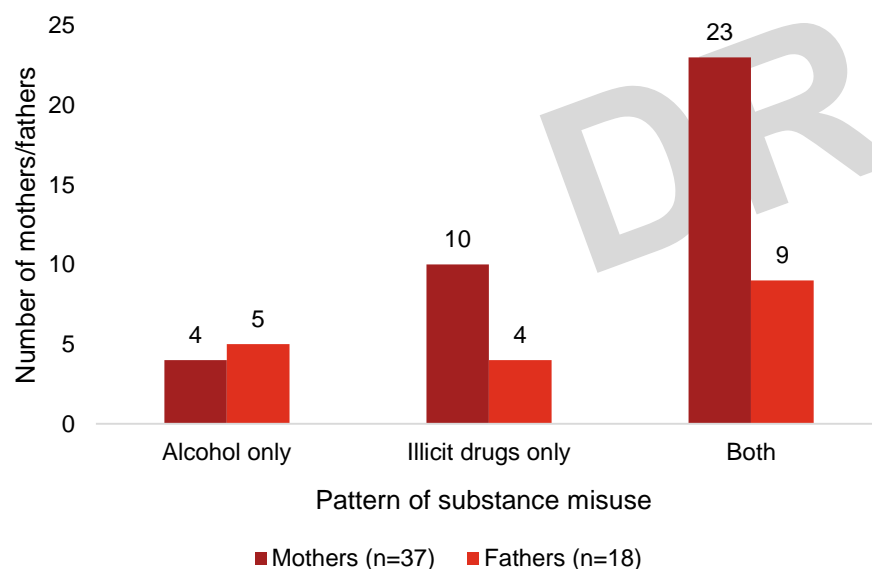
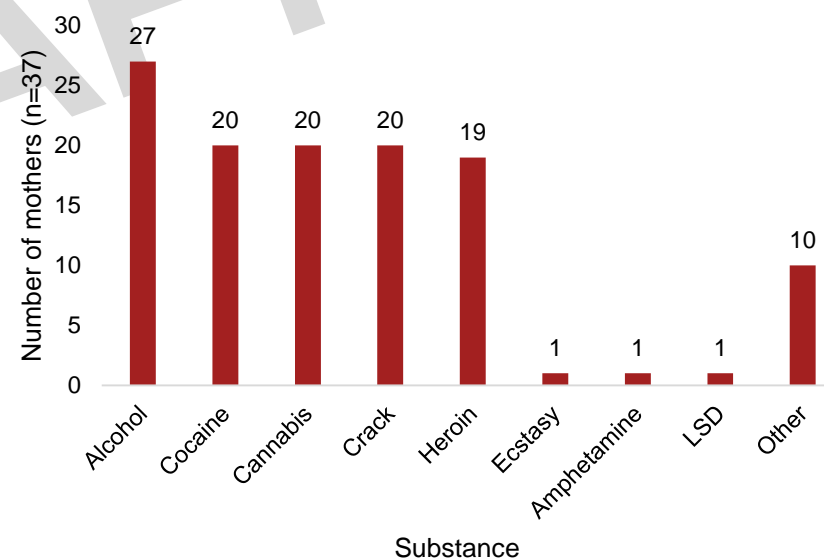


Figure 17: Drugs misused by mothers



7.2 Family Drug
and Alcohol Court
(FDAC) Pilot

Parental difficulties and the nature of child care concerns (continued...)

Insight: In all 10 cases where mother and father were living together, both parents were misusing substances, with the result that the children had neither parent acting in a protective capacity.

Fathers

As with the mothers, misuse of both alcohol and other, illegal, drugs is the most common pattern for fathers. Similarly, the most commonly-used illegal drugs are crack, cocaine, heroin and cannabis. With the exception of ecstasy there was a fairly even spread of the numbers of fathers using one or more different drugs.

Figure 18: Drugs misused by fathers

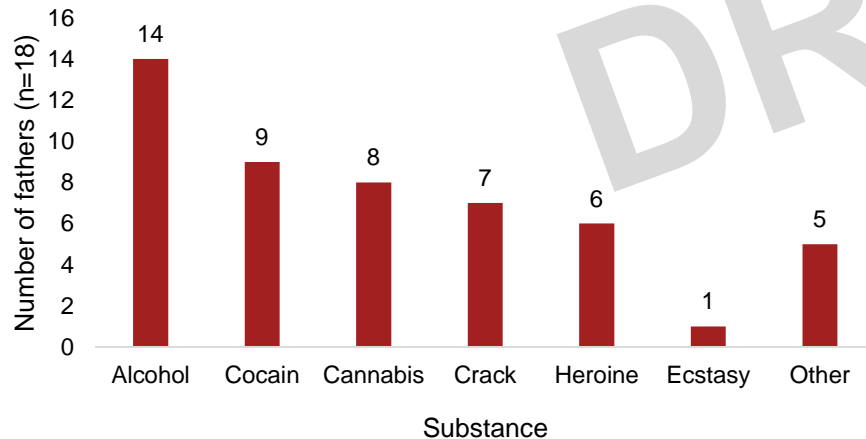
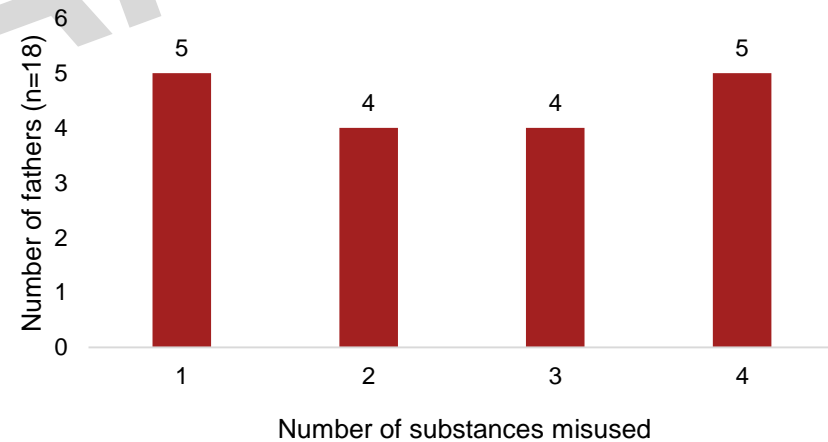


Figure 19: Number of substances misused by fathers



7.3 Family Drug
and Alcohol Court
(FDAC) Pilot

Children's difficulties

Insight: Children going through the care process may have health and wellbeing difficulties, highlighting the increased importance of them being placed in the right permanent home, be that with their family or through a care order.

Health and Welfare Difficulties

In the FDAC pilot study, 51 children had a range of problems, with some children featuring in more than one category:



Emotional and behavioural problems (temper tantrums, aggression, bed-wetting, anxiety and tearfulness) were recorded more frequently for children under five. So were physical health problems, largely because of the number of babies born withdrawing from drugs (n=11) or born prematurely (n=4), but also including five children with asthma. Development today included both cognitive and motor delay.

DRAFT

8. CUSTOMER EXPERIENCES OF HMCTS

8.1 Customer
Experiences of
HMCTS

A Heavily Court Process

Care proceedings involve a very physical court experience and customers who go through this face a number of issues which affect their experience of using the courts.

Parents are heavily involved in care proceedings, which take place in the courts. Research shows that there is a further aspect of representing parents (from a legal perspective) in care proceedings which goes beyond advice, taking and following instructions, negotiation and advocacy - support. Lawyers supported their clients during the proceedings, and especially at the final hearing.

For many lawyers, support was an inherent part of the relationship of trust they sought to establish with their parent clients. These lawyers recognised that their clients were '*very needy*' and that care proceedings could be '*hugely painful*'.

However, there were different views about how far solicitors should go in supporting clients who wanted to regain care of their children. Some recognized that parents needed to demonstrate that they could do things for themselves rather than expecting transport to be arranged to take them to contact or to see an expert, for example.

A judge commented negatively in the research about a case where a parent with learning difficulties was left to find her own way to a distant court where she was represented by a barrister whom she had never met (Pearce et. al 2011).

Some factors that affect the experience of parents as customers in courts are:

Literacy
rates

Court
facilities

Travel to
court

8.2 Customer
Experiences of
HMCTS

Local Authorities and the Care Process

Local authorities have an important role to play in care proceedings, but the limitations of local authorities can delay the care process. Care proceedings can be slowed down by the local authority both in terms of inadequate social work and failure to comply with directions, and by the court's failure to respond to this or to provide hearings in accordance with listing. Research found that appointment of the guardian was delayed and lack of continuity was a general feature. No fewer than seven lawyers represented the local authority; there were at least four different social workers, and court hearings were handled by a number of different magistrates' legal advisors (Pearce et. al 2011).



Richard Watts, chair of the Local Government Association's children and young people board, point out:

“But local authorities have faced significant funding cuts over this same period, and with such a big rise in demand for services, it's vital that local authorities have the resources they need to keep children and young people safe.

“Councils are forced to make difficult choices when deciding how to allocate their increasingly scarce resources, and a 55% cut in early intervention funding since 2010/11 has made it difficult to deal with problems earlier while continuing to provide essential help and support to children at immediate risk of harm.”

8.3 Customer
Experiences of
HMCTS

Timing Matters in Care Cases: Lengthy Care Proceedings

Court delays have considerable implications for the child. The following study seeks to show whether case handling within the local authority and court process delivered timely decisions for children, by focusing on the following questions:

Were there any delays in local authority and/or the court processes? If so what were the reasons for this?

Court decision making processes in care proceedings:

In each case **the evidence presented by the local authority was tested by reference to further, and sometimes numerous, assessments ordered by the court.** This was either by agreement with the parties or as a result of the judge upholding applications made by parents. This process contributed to delay, which was exacerbated by frequent late filing of local authority and expert reports. **Lack of judicial continuity**, and the proactive grip on the process this would have allowed, was a factor in almost every case.

Care proceedings were especially prolonged. **The average time taken for care proceedings to conclude was fifty two weeks.** In only one case did the court conclude the care and placement proceedings within the proposed new statutory limit of twenty six weeks.

What are the effects of lengthy care proceedings?

There is limited research that explores children's experiences of courts during care proceedings (Masson and Oakley, 1999; Timms and Thoburn, 2003). Timms and Thoburn's (2003) survey of 706 self-selected children and young people in care found that more practical help and more information would have made the court experience easier. The evidence also suggests that the length of time to find a stable placement, the uncertain nature of placements during care proceedings, and waiting times in finding out what the outcomes of the care proceeding was, all contributed to create a frustrating environment for children (Timms and Thoburn, 2003; Masson and Oakley, 1999).

Court and legal delays occurred in 34% of cases although these were unevenly distributed across Authorities (Adoption Research Initiative 2011).

8.4 Customer
Experiences of
HMCTS

Parents' satisfaction with the Court Process

Quantitative data from a study of parents in residence and contact disputes in which a welfare report had been ordered (Buchanan et al, 2001), found that a third of parents rated the service they had received from the court as excellent/good, a third as average and the remaining third as poor. It also reports, however, that nine out of 10 parents were dissatisfied with some aspect of their court experience and six out of 10 were entirely negative.

The Court Experience

For the parents in Trinder and Kellett's study (2007) a powerful disincentive to returning to court, perhaps the strongest, was 'the sheer horror or the emotional and physical impact of being involved in court proceedings'. As one parent put it:

"I just feel sorry for anyone else that has to go through it. I didn't realise how horrendous it was until you come out the other end. It was awful. The strain of it, you know. Trying to look after your children. Trying to get to work. Trying to get to the court cases. Trying to feel as if you've got to justify yourself all the time."

The traumatic nature of the whole experience is a strong theme in the research literature on both private and public law proceedings.

8.5 Customer
Experiences of
HMCTS

The anxiety of Parents during the Public Law Process

Parents subject to public law proceedings have the additional stress of feeling as if their parenting is being called into question and may be fearful that this will become public knowledge in their wider families and communities (Freeman and Hunt, 1998); an issue which can be of particular salience for BME parents (Brophy et al, 2005).

Freeman and Hunt note that parents with mental illnesses felt particularly aggrieved and unjustly stigmatised and perceived the system to be unfair and unfeeling towards them even though they had not actively or intentionally harmed their children. Booth and Booth (2005) highlight the difficulties experienced by parents with learning difficulties.

Parents typically report being very anxious, fearful and uncertain before attending court (Booth and Booth, 2004; Booth, 2005; Freeman and Hunt, 1998; Tarleton et al, 2006). This is likely to be particularly acute on the first occasion, when everything is unfamiliar:

“The first time I went to court it were nerve-wracking. Me stomach were turning over...I thought, oh god, let me get out”. (Booth and Booth, 2004)

However, although the experience may become less stressful over time each subsequent hearing remains something of an ordeal. All the parents in Freeman and Hunt’s study:

“Remained anxious and insecure about the final outcome. So each time they had to ‘psych’ themselves up for an experience they knew would be extremely upsetting. Levels of apprehension did not substantially diminish. Each hearing reactivated their distress.”

8.6 Customer
Experiences of
HMCTS

Waiting to go in the Courtroom

Waiting to go into the courtroom, understandably, is a difficult time for most parents (Booth, 2005; Brophy et al, 2005; Freeman and Hunt, 1998; Lindley, 1994), described as ‘frightening’, ‘nerve-wracking’, ‘terrible’, ‘horrible’, ‘awful’ (Freeman and Hunt, 1998). These feelings are exacerbated by any delay in starting the hearing and by the environment in which some have to wait.

Lack of privacy is a common complaint. Parents involved in care proceedings who were not able to wait in a side room report feeling publicly exposed, which they felt was ‘*degrading*’, ‘*embarrassing*’ or made them ‘*feel like a criminal*’ (Freeman and Hunt, 1998).

Court hearings themselves are generally described in very negative terms. Parents report feeling isolated and unsupported in court, intimidated, alienated and confused by the formality of the setting, the language and the procedures and overwhelmed by the numbers of people in court:

“They’ve got to simplify the actual system itself. One of the reasons why you need a solicitor is because it’s so complex. Your ordinary average person on the street like me goes into a completely unusual and alien environment. ... it’s a completely different world it really is. It’s just too complicated for us Joe Bloggs on the street” (Perry and Rainey, 2006).

8.7 Customer
Experiences of
HMCTS

Parents feel excluded and do not understand what is happening

Parents feel excluded from what is going on, either because they do not understand what is happening, because they do not understand the language, because they are not encouraged to contribute, or sometimes because, particularly where they are positioned at the back of the court, they cannot actually hear or see (Brophy et al, 2005; Douglas et al, 2006; Freeman and Hunt, 1998; Lindley, 1994).

"I might as well not have been there." (Freeman and Hunt, 1998).

"Parents are often left at the back, separate from their solicitor, with no-one to explain what is going on. Much of what happens washes over them." (Booth and Booth, 2005).

Similarly, studies of care proceedings (Freeman and Hunt, 1998; Lindley, 1994) highlight the difficulties parents experience in giving evidence, with even normally articulate parents being overwhelmed and feeling they failed to do themselves justice. As parents in the Freeman and Hunt study put it:

"The hearing was too quick.... You are only allowed to say it briefly and they don't let you explain.

There was no time to say how you felt before they would go on to something else when you were giving your answers."

Cross-examination was reported in this study to be one of the most disliked parts of the process, attracting a plethora of complaints: lack of comprehension of questions couched in legal language, irrelevant questions; questions coming out of the blue, lack of time to complete answers and feeling humiliated, deceived, personally attacked or above all confused. The authors also note that 'it cannot be assumed that if parents do not understand they will ask for clarification'.

8.8 Customer
Experiences of
HMCTS

Intimidating, Disabling, and Depersonalising

Despite the trauma of giving evidence, Freeman and Hunt (1998) found that none of the parents regretted having done so and that of those who had not been given the option many would have liked to have been asked, their comments suggesting that giving evidence might have helped them to feel more part of the process than they clearly did:

“It’s called the family court but they don’t involve the family.”

Overall, the authors concluded:

Whether as the result of the formality of the setting and the procedures, the adversarial process or the convoluted language, parents experienced proceedings as intimidating, disabling and depersonalising. What they would like is a more informal setting in which they could take part in a comprehensible discussion of their circumstances and speak directly to those who will be taking the decisions.

All this suggests that although court proceedings are rightly focused on the interests of children, the needs of parents involved in court proceedings require more attention from professionals. Parents do not feel sufficiently ‘cared for’ (Smart and Neale, 1999) and want ‘a more humane system more attentive to the emotional needs of parents in distress’ (Smart et al, 1999). They want a less intimidating, more personal and participatory setting; sensitive seating arrangements; more comprehensible language and procedures; judges and magistrates who speak to them directly (Douglas et al, 2006; Freeman and Hunt, 1998; Lindley, 1994; HMICA, 2008).

8.9 Customer
Experiences of
HMCTS

Judicial continuity and ‘Judge craft’

They would also appreciate **judicial continuity**, the lack of which was a theme in several studies (Buchanan et al, 2001; Douglas et al, 2006; Freeman and Hunt, 1998). Douglas and colleagues report that this was the single most common suggestion for improvement, with a third of parents saying they had been before at least six judges:

“Never the same judge – that appalled me....They can’t follow on, there’s no continuity in the cases.”

Court hearings, particularly contested ones, are usually not a comfortable experience for litigants. However research suggests that they can be made less uncomfortable. Two studies of care proceedings (Freeman and Hunt, 1998; Lindley, 1994) note **certain helpful aspects of court practice**: seating arrangements which allow parents to sit next to their lawyer; having someone in court to support them; giving evidence from where they are seated, not from the witness box; introductions and explanations by the judge/magistrates. The **approach of the individual judge** emerges as an important issue for parents in several studies.

Parents commented, both negatively and positively, on the approach of the individual judge. It would appear that individual practice could make some difference to perceptions. (Buchanan et al, 2001).

One of the clear messages ...was that in the context of a process which is fundamentally demeaning and acutely painful, **small kindnesses and individual indications of respect and concern** can have a significant effect upon parental perception. The highest levels of satisfaction were expressed **when the judiciary directly addressed parents, listened patiently and sympathetically to what they had to say, showed an interest in the children and displayed respect, warmth, and explained to parents what was happening in court and why**. (Freeman and Hunt, 1998).

Greater attention to this element of ‘**judge craft**’ (Brophy, 2006; Moorhead and Cowan, 2007) could, therefore, help to make the court experience somewhat less distressing for parents. Some parents in public law cases would also appreciate being able to **have a supporter with them in court** (Booth and Booth, 2004; Freeman and Hunt, 1998).

8.10 Customer
Experiences of
HMCTS

Information, explanations, and understanding

No matter how ‘user-friendly’ a court strives to be, the process is always going to be unfamiliar and alien to parents coming to court for the first time. **Hence the importance of having access to good information.** Several studies report parents wishing they had been better prepared for court (BMRB Social, 2004; Brophy et al, 2005; Freeman and Hunt, 1998; Lindley, 1994; Painter, 2002).

Freeman and Hunt report that most of the parents in their care proceedings study were practically as well as psychologically unprepared for proceedings and wanted better and more targeted information on such matters as the physical layout of the courtroom, the personnel involved, the process and their own role in it, the reasons for the various hearings and transfer between courts, and the likely duration of the process:

“I needed more help. If I had had someone who had explained to me what was going on it would have been easier. I needed more help and explanation about what was going on and understanding things”.

Parents’ suggestions included a booklet in uncomplicated language, the opportunity to visit a courtroom in advance, and a video.

One-off information is unlikely to be sufficient: the parents in Brophy’s study (2005) said their solicitor had tried very hard to prepare them, but their levels of stress and anxiety made it difficult to retain information and ask meaningful questions, particularly in their early stages of the case.

8.11 Customer
Experiences of
HMCTS

Care proceedings: A trial of parenting practice?

The position of parents in care proceedings is both peripheral and central. While the focus of the case can be seen as an inquiry into the child's future care needs, the proceedings can appear, from the parents' point of view, to be closer to a trial of their parenting practice. On the one hand, the proceedings take the form of a series of meetings between professional practitioners (lawyers, social workers and the children's guardian) from which the parents are excluded, on the other hand the parents are usually the only direct participants in the case with a personal stake in the outcome.

While parents may feel side-lined in this process, their performance (outside court) is likely to be the determinative factor in the case.

A review of the research relating to parents' perspectives on the family justice system was undertaken by Joan Hunt for the Family Justice Council (Hunt 2010).

It is clear in a number of respects what parents involved in family proceedings do and do not want: [as far as the courts are concerned they are asking for decent reception facilities and waiting rooms where they can consult their lawyers and Cafcass officials in private.](#)

[They want less formality in court proceedings, which should be conducted in a less adversarial yet fair and impartial manner.](#) They assess competence in the courts, in Cafcass officials and in their legal representatives by apparent efficiency and the avoidance of what seems to be expensive and unnecessary delay. [Above all they wanted to be treated with courteous respect and with a sensitive understanding of the stresses they and their children may experience during the litigation process – whether that be in private or public family law proceedings.](#)

Another finding that emerges from our user research report into public law is that social services can remove child after child from the same mother, without her being offered the help she needs to become a good-enough parent. Many mothers can be repeat users of care proceedings, losing custody of multiple children and related to this can, for example, be their experiences of domestic abuse with multiple partners. Being a repeat user can be devastating for the mother and the process very expensive – but now judges are calling for a new approach.

8.12 Customer
Experiences of
HMCTS

Care Process can be distressing for Parents

Insight: Parents can feel at their most vulnerable and isolated when care proceedings begin, particularly if they feel excluded from huge decisions that have an impact on their lives and their children's. HMCTS can do more to make the care process clearer and more inclusive for parents.

A snapshot survey of 14 parents carried out by Community Care (a social care organisation) in February 2015, found that most had come for support after the local authority had reached a stage where care proceedings were being considered or initiated. **The vast majority of parents sought help because they felt they'd not been involved in the local authority's decision-making and did not feel they'd had the care proceeding process explained to them in a way they understood.**

They also raised several issues with the process, including the fact that they felt excluded from decision-making. **In particular, they were frustrated at not being provided with the dates, times and any minutes of looked-after children meetings or any updates on their child's progress at school or their health, education and social needs.**

The survey found that 13 out of the 14 parents felt that having a legal representative had made a difference to their experience of the system. The survey also asked professionals, including social workers, for their views. Nine professionals responded and all but one of them said they felt independent advocacy should be available for all parents going through care proceedings.

They survey concluded that legal representation can really make a difference to an extremely emotional, often distressing, process. Parents wanted to be empowered at a time when they can feel most vulnerable, to know about – and understand – complex, difficult decisions that have been made by social workers, courts and local authorities. Parents wanted to be involved.

There is now increasing concern in the courts that parents' mental health and emotional needs should be addressed as a priority: Family Judge Stephen Wildblood QC makes clear his determination to encourage much earlier therapeutic intervention.

8.13 Customer
Experiences of
HMCTS

Child-friendly judgements in Care Proceedings

Insight: Involving children in care proceedings to better understand their experience is important in reaching the best outcomes for children.

The CAFCASS staff work closely with the legal team in care proceedings. The legal team recently highlighted the importance of child-friendly judgements and involving children in care proceedings. Here is an example of a judge writing to a child:

Judges writing to children

[A \(Letter to a Young Person\), Re \(Rev 1\) \[2017\] EWFC 48](#)

Mr Justice Peter Jackson, sitting in the High Court, has delivered a judgment, prior to his elevation to the Court of Appeal, which provides a model letter to the 14 year old child at the centre of leave to remove proceedings.

The court was concerned with the child's application to leave England to live with his father in Scandinavia (his father later became the lead applicant). Jackson J permitted the child to give short evidence at the outset of the hearing. He answered 5 pre-prepared questions from his mother and father, delivered by the judge. Jackson J then heard evidence from the parties and the guardian without the child being present.

Uniquely, the judgment (refusing leave) is delivered in the form of a letter to the child. It is clear, child focused and a model letter to an older child involved in proceedings. Further, it is a fine example of the use of plain English.

This is the same Judge who in [Lancashire County Council v M & Ors \(Rev 1\) \[2016\] EWFC 9](#) delivered a deliberately short judgment in plain English so that the older children could follow it. The judgment even uses an J to describe a message left by the mother at §27(13).

The judgment has been warmly received for its use of plain English and the clear way in which it tackles threshold issues and a complicated family history without legal jargon.

Given the continued drive towards transparency and the increased publication of judgments such an approach may make it easier for people to digest the outcome of family court proceedings. Perhaps more importantly, a child-centred judgment reflects the importance of the voice of the child and how crucial it is for them to be involved in and understand decisions affecting their lives.

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9. DIGITAL EXPERIENCE

9.1 Digital Experience

Beginning of digitisation...

Insight: Public law processes in the UK are still largely conducted offline - through the local authority and social workers. However, we are seeing the beginning of digitisation through pilot schemes in care proceedings.

At present, the process for care proceedings in the UK is largely person-based and there is a lack of evidence on the digital competency of professionals involved in care proceedings. Since professional users play such an important part in the public law process, understanding their digital competency will be important for HMCTS.

Over the last two decades, the public sector has embraced new modes of service delivery, moving away from traditional face-to-face provision towards internet and telephone-based advice and information (Balmer et. al 2013).

There are also a small number of pilot schemes that are looking at how to make the court process digital. A group of London local authorities, a legal software supplier and an electronic data specialist claim to have developed the first “entirely digital” process for court proceedings. Tim Long, chief executive of software company Zylpha, said that **under a pilot scheme at West London Family Court, 70 local authority care proceedings had been carried out without the need for paper.**

“The key to this is acceptance by the judiciary. Magistrates are particularly enthusiastic about it, because they can see the paperwork early and no longer have to drive to court.”

9.2 Digital Experience

Technology becoming more readily available

Insight: Pilot schemes show that the technology required to make the court system more digitised is now becoming more readily available.

The Digital Courtrooms scheme was developed by the South London Legal Partnership, made up of Richmond, Merton, Sutton and Kingston councils, Zylpha, which specialises in electronic bundles, and ProjectFusion, which specialises in data transfer and security.

Mr Long said that after the successful pilot the group aimed to extend the scheme to all London's 32 boroughs and beyond. "The local authorities' motivation has been reductions in funding, and the increased cost of cases," he said.

Mr Long said councils could save "huge amounts of money" from no longer having to print, handle and deliver paper documents.

"A child care case could cost £1,200 in preparation, maintenance and delivery of court bundles. We can bring that cost down to around £400. If the scheme was used across London the savings could run into millions."

Angus Bradley, managing director of ProjectFusion added: "The court system hasn't moved to digital before now as the quality of the technology did not warrant it.

"Now, however, the technology to effect this change has arrived using the very latest digital data room and document bundling systems, backed by the highest quality support."

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9. COMPLAINTS



9. Complaints

Complaints

The complaints data for adoption court cases is not currently available, but this area will be explored in the future.



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10. REFERENCES



10.1 References

References

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Will add these shortly.