



**HM Courts
& Tribunals
Service**

Public Law Cases in the Family Courts User Research – Round 1 [Short Version: Thematic Analysis] (December 2017)

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1. Executive summary

Exploratory user research on experiences of public law was conducted in order to support the newly established public law and adoption service project. The following research question was explored via a combination of semi-structured interviews and focus groups:

- **What is the current experience of the end to end service in public family law from the perspective of the various user groups involved?**

Research participants were recruited via a number of channels, with all service users being accessed via an external recruiter and all professional users being engaged with via a combination of professional engagement groups or snowball sampling. A total of 37 participants were spoken to, including care leavers [5 participants], family members involved in public law cases [4 participants], HMCTS staff (operational, managers, legal advisors) [9 participants], Cafcass staff [4 participants], Children's Services staff [2 participants], legal professionals [4 participants], magistrates [3 participants], and judges [6 participants].

Transcripts were analysed and coded to develop themes. These were subsequently clustered into superordinate clusters. This version of the report amends the structure of these clusters to present a more linear narrative that mirrors the user journey through the service. The subordinate themes remain largely unchanged, although two supplementary clusters have been added to provide additional insight on the High Court and on adoption.

Thematic analysis (superordinate clusters)

- The service level experience of service users: Support and sensitivity
- The service level experience of professionals: A delicate equilibrium
- Application
- Pre-hearing
- Hearing
- Outcome
- The High Court
- Adoption and special guardianship orders

For each of the clusters above, a number of subordinate themes are described and evidenced with verbatim quotes from participants. Sets of user needs inferred from these responses are identified, and presented at the end of each superordinate cluster.

2. Introduction

2.1. Objective

Develop knowledge of the current experience (including tasks, goals, needs) of public law cases in the family courts. This will support the work of the newly established public law and adoption project, and will (alongside other insights) provide an initial evidence base from which further products can be created and then iterated.

2.2. Research question

The central research question was framed in broad terms to promote exploratory research. Additional avenues of inquiry were established with the project team and other key stakeholders.

What is the current experience of the end to end¹ service in public family law from the perspective of the various user groups involved?

Additional points to explore:

- How do experiences in different parts of the country vary?
- How do user groups interact with one another?
- How do professional users balance co-working with other agencies against their independent status?
- What are the good and bad ('pain points') aspects of the process at each stage?
- How does this domain compare to others, such as private law or other jurisdictions?

There was an intention to focus primarily on care orders, but to allow research participants the chance to talk about other types of order as well as adoption, where appropriate.

2.3. Terminology

'Service user' is used as a blanket term throughout this report to refer to anyone encountering the justice system in a non-professional capacity. In public law cases, this therefore refers to children, parents, and also wider family members involved in care proceedings or acting as witnesses. The word 'customer' has been deliberately avoided in order to best reflect the lived experiences of people involved in care proceedings, who typically would not be choosing to engage with a service (see below for comments from a member of Cafcass staff to illustrate this point further).

'Professional user' is used to refer to the remaining user groups who work within (or in partnership with) the justice system, such as judiciary, HMCTS staff, and other non-HMCTS professionals (legal professionals, Cafcass, local authority staff).

¹ In terms of the HMCTS portion of the user journey, this refers to tasks from initial application through to outcome.

2.3.1. ‘Customer’ vs. ‘client’ vs. ‘service user’

A member of Cafcass staff here expresses the opinion that the word ‘customer’ is not the right way to talk about people involved in public law cases. The appropriateness of other terms is debated, and it is acknowledged that the use of language changes over time, but ‘customer’ is felt to be inherently inaccurate because of an implied level of choice and agency that parents do not have.

Customer implies you’re actually going to get something in a shop. Like you’re going to buy something, purchase something. But people coming into court, they’re coming to use a service. So, to us the term service user was more applicable. If we sort of said, oh, you’re a customer of this service. I think we met with quite a barrage of abuse. ‘What do you think customer means’ ‘I’m not buying something, I don’t want to be here’. Because certainly in public law, parents nine times out of ten are parents who do not want to come to that court service. I mean years ago we would use the terminology clients. And that felt a bit too clinical in some ways. And the term service user, in my view from the people I’ve spoken to fit the parents who reluctantly come into the court process through public law proceedings.

[P390, Cafcass staff]

This issue of how we refer to people did not emerge strongly across all participants (although this may be because it was not explicitly probed in discussions guides). However, it very closely echoes the feelings of professionals engaged with elsewhere, such as a solicitor interviewed during previous research on immigration and asylum tribunals².

It is possible that phrases such as ‘customer-driven’ and ‘customer-focused’ are less problematic than referring to parents and children as ‘customers’ (although this is a hypothesis that would require further testing with a range of user groups to validate). For example, a judge who described a sophisticated level of sensitivity towards parents in court did (in the context of reducing waiting times) mention ‘good customer relations’ as something to aspire to:

I suppose it’s not good for parents to feel that judges and the system is under pressure. And their advocates will tell them that the system is under pressure, and that that’s why they can’t have their hearing, which they desperately want, any sooner than four months hence or five months hence. So, it’s not good customer relations to tell parents that they’re going to have to wait for their case to be dealt with.

² Immigration and Asylum Chamber: User Research (Revised December 2017) v1.1.

2.4. Revisions in this version

The original draft of the full report (including both thematic analysis and design principles) was circulated prior to the public law inception. Following the development of a suite of products after the project inception took place, this report was revised. Themes have been restructured to follow the process-based framework that has been used in the development of user journeys (with additional themes sitting under a 'service level' category). Needs have also been expanded, and presented alongside each cluster of themes (instead of in a single appendix) to more transparently illustrate how they have been developed.

Additional short sections added to cover topics that were not the focus of the research, but have emerged as in scope or of interest to the project. It should be noted that these sections involved revisiting existing data, and a new round of data collection has not been conducted:

- **The High Court.** Drawing on an interview from the current research with a High Court judge, as well as wider insights on the Royal Courts of Justice from an earlier piece of research.
- **Adoption and special guardianship orders.** Findings on adoption (and how the process relates to care proceedings) are included to guide future design and research efforts. Related findings in relation to special guardianship orders are also included to guide future design and research efforts.

This version of the report focuses solely on the thematic analysis arising from primary research interviews and focus groups. An additional suite of products has been developed in partnership with other teams to support the work of the public law and adoption service project. For example, implications, recommendation and principles for design, an insight pack reviewing secondary research and volumetric data, and sets of personas and user journeys to assist the project with the more granular aspects of service delivery.

2.5. Navigating this document

This document has been formatted to preserve hyperlinks. If viewed digitally, it can be navigated by clicking on the relevant headings in the table of contents. Alternatively, the Document Map feature in Word can be used.

3. Methodology

3.1. Data collection and analysis

A semi-structured interview was the primary method of data collection. A discussion guide was developed for each user group, but was applied in a way that allowed participants to focus on areas that were of importance to them. A mixture of face-to-face and phone-based interviews were used. Interviews were mostly conducted individually, but with some joint interviews taking place with professional users. A focus group was used to collectively explore the experiences of care leavers. Observation of a small number of cases was conducted, and notes from these are drawn on during analysis.

Interviews were selectively transcribed. Responses relating to the research questions were prioritised, but other issues that participants highlighted as important parts of their experiences were also captured in transcripts. A qualitative analysis tool³ was used to conduct a thematic analysis of transcripts. Common themes across users and user groups were identified. These themes were then sorted into clusters, which are described in this report.

3.2. Ethics

One of the central aims of public law proceedings is to protect children and to arrive at a decision that prioritises their best interests. In the context of research, children and young people involved in proceedings would therefore be of the most important groups to engage with. However, direct research with children was ruled out on multiple grounds, such as the lack of adequate infrastructure within the organisation to support effective safeguarding processes, and the need for appropriate specialist training for researchers who may not have worked extensively with children and young people. Even with these in place, inviting children to participate in research relating to issues that may be recent or ongoing would have presented additional needs to ensure that participation would not cause further harm or distress, or unduly influence an ongoing case.

Whilst engagement with adult service users presented fewer of the issues above, researchers were still conscious of the emotional impact that the research itself might have. This began at the recruitment and screening stage, with the external recruitment agency being briefed to source participants who were likely to be in a position to participate without finding the research interview itself to be upsetting or re-traumatising. A careful debrief was conducted with all service user participants (adult care leavers, parents, and extended family members) towards the end of each interview. Contact details for relevant helplines and support agencies were included at the end of the discussion guide, so that the interviewer could readily offer these if required. This was further supported by a process of debriefing, including inviting participants to reflect on how they had experienced the interview itself in order to sensitively identify any emotional impact that might need to be addressed.

³ NVivo for Mac v11.

Researchers were also mindful that the need for thorough debriefing could be even greater when speaking to participants on the phone (without the visual cues that would otherwise be used to identify any distress). Extra time was therefore added to phone-based interviews with service users to account for this⁴.

3.3. Participants

The following participants were engaged with over the course of the current research. They were recruited in multiple ways. Service users were accessed via a participant recruitment company, whilst professional users were contacted via existing stakeholder relationships and contacts that were newly established to support the research:

- Care leavers (adults with experience of being taken into care as children) [5 participants]
- Family members involved in public law cases [4 participants]
- HMCTS staff (operational, managers, legal advisors) [9 participants]
- Cafcass staff [4 participants]
- Children's Services staff [2 participants]
- Legal professionals [4 participants]
- Magistrates [3 participants]
- Judges [6 participants]

⁴ These issues were expanded on in a presentation delivered by the authors: **Phone interviews and sensitive topics [presentation at Government Digital Service research meet up] v4.1.**

4. Thematic analysis

4.1. The service level experience of service users: Support and sensitivity

This cluster of themes draws on service user experiences with a wide focus on a range of support needs (some of which may fall outside the remit of HMCTS). The experiences of professional users attempting to meet these diverse needs in the best way possible are also considered.

There is an apparent imbalance between the size of this cluster, and the following one focused on service level experiences of staff and professionals. This is because more of the needs and experiences expressed by service users were able to be placed within specific parts of the process.

4.1.1. The voice of the child: A lack of direct involvement

Where former care leavers described an awareness of the process, they did not experience being invited in to be an active part of it. Instead, as children, they described being passive participants piecing together crucial information about their case:

I knew everything that was going on. But, a lot of it is kept behind hushed doors. And it's only because I used to listen in late at night to conversations and things like that that you would find out fully what's going on in the background. [nods from others in focus group]

[P255, Care leaver]

Another care leaver here describes not just a process of being left out and being placed in an inherently passive position (the object of the process rather than the subject), but also of being labelled as less reliable than the adults involved:

P257: And being a child at the time, nobody ever listens to you. You're the person that the plan's being created about. But, nobody ever takes you seriously. So, it's like you're listening to the adult. The adult's telling lies. You're not getting believed. You're made out to be a liar. And because you're made out to be a liar, you're then isolated...

P258: Labelled.

P257: ...put here there and everywhere.

[Care leavers]

There is a link here to pre-hearing and hearing tasks that are being undertaken in some regions to address this lack of involvement (see relevant themes below on contact with judges).

4.1.2. The experience of parents: Getting the right kind of support

Both professional users and service users agreed that during the HMCTS portion of the journey, family members involved in public law cases typically received a great deal of attention from the local authority and were able to access various forms of support, much of which was felt to be helpful:

The school was involved, the social worker at school, he met the girls once a week to see how they felt. He did a lot of work with [one of the children] around emotional things, losing somebody. I thought it was really really helpful, he was a really nice guy, I see him regularly, even now and he's been there for me for years and years. I did appreciate the time.

[347, Family member – birth father]

However, some noted that the nature of this attention could sometimes feel oppressive – exacerbating the feelings of passivity that service users could experience. Moreover, some described wider needs around housing or mental health not being addressed and the wrong forms of support being offered to them at the wrong times.

As well as the support itself, the places and ways in which it was offered were noted as important. For example, help in a service user's own environment, and accompanied by clear and transparent explanations of the process:

It would be nice if they [the parents] had been given support in their own environment before physically taking children away. I know there are circumstances, but unless you're going to get a proper fair go at trying to keep your children there's nothing more that can be done...More interaction, proper explanation of this is what's going to happen, more time to be given [would have been good] instead of just 'bye'. More time I think, for the family. There's a lot of pressure put on the parents to...[inaudible] but I think it would be good to have more of a chance in their own home. If those changes were made it would make me feel it was a lot fairer...

[P346, Family member]

4.1.4. Emotional demands on service users

At a service level, former care leavers, parents, and witnesses all highlighted how emotionally demanding going through care proceedings was for them. Some of the specific points in the process that were particularly difficult are highlighted in the specific sections below.

4.1.5. User needs

As a child involved in care proceedings...

- **I need to have the opportunity to express myself so that I can influence important decisions.**
- **I need to be kept informed as to what is happening, and to have this explained to me in a way that I can understand.**

As a parent involved in care proceedings...

- **I need to have my wider needs addressed in the right way and at the right time, so that I can participate effectively in the court process.**
- **I need support to be offered at the right time, in the right place, and by the right people so that it addresses the problems that are most concerning me at any given time.**
- **I need support to be offered in a way that empowers and involves me as much as possible, so that I feel a sense of agency.**

4.2. The service level experience of professionals: A delicate equilibrium

Themes in this cluster do not map on to specific parts of the process, or the point at which associated needs are most acute is currently unknown. Although these themes may be difficult to approach with a very process-based approach to design, this cluster is presented first to underline their importance in understanding the current user experience (as well as the risks associated with implementing more granular service re-design without taking these cross-cutting issues into account).

Although further investigation may reveal that professionals experience specific issues at particular points in the process, the current primary data indicates paints a picture of these themes operating throughout and beyond the process of dealing with care orders.

4.2.1. Changes over time: Increased bureaucracy and complexity

Many of the professional users interviewed had worked in the area of family law for several decades. The issue of limited resource is explored separately below, but here a member of staff from Cafcass points out that the increased challenges faced today may be because of increased complexity in the cases being dealt with (and a greater engagement with this complexity on the part of professionals):

I'm a mature person and I've actually been working as a children's guardian since 1986 so, from almost when guardians were brought in. It was... not a very bureaucratic system, it worked very well but of course the volume of work was so, much smaller in those days as well. I think certainly from the very beginning, the issues were seemed to be less complex as I said in terms there were less cases with an international element, there were less cases of children from Europe, less cases of children from ethnic minority groups and I think perhaps a lack of recognition of some of the issues we cover today, and that's about an increase in knowledge and skills as well. Things like female genital mutilation for example or honour based violence.

[P392, Cafcass staff]

4.2.2. Changes over time: Shifting responsibilities

This theme relates to previous ones about working in the context of reduced resources, but focus on a specific consequence of this; the shift in responsibilities for key tasks that can come about when agencies that previously carried them out are unable to continue doing this.

There are a lot of good people working in the system, but they are often hindered simply by the lack of resources to deal with cases in the way we would like to do so... I think the court staff have suffered cutbacks as well, so where we had dealt for many years with staff who knew what they were doing, in come new staff who don't know what they are doing and they don't have anyone to draw on. So even things like arranging a hearing, making contact with court staff becomes increasingly difficult... With everyone under such pressure, we find it's usually the local authority that gets used as the whipping boy, we're expected to do more and more to fill in the gaps... and we simply cannot do everything...

[P341, Local authority legal professional]

4.2.3. Regional variation

Only a subset of participants had regular experience of working at multiple hearing centres (or encountering other colleagues that did). Responses from these individuals indicates distinct practices in a number of areas, such as the nature and quality of bundles submitted, as well as decision making on the part of a local authority around proceeding with an application, and the level of involvement of magistrates in public law cases. Here, a legal advisor describing some of these disparities speculates that this could in part be attributed to different constraints on resources:

But the worrying thing then – the only explanation is that local authorities aren't bringing cases to court because they can't afford to... I don't know. There was a period here recently where [local authority] had told us, 'Look, we've got 10 cases in the pipeline, be prepared but we can't issue them because there are no foster carers. So, if we get a care order we can't take the children off the parents because we've got nowhere to put them'.

[P369, HMCTS Legal Advisor]

These differences were not highlighted by everyone, and also appeared to be less pronounced when comparing local authorities within the same region. Here, a legal advisor working in a different part of the country describes experiencing more continuity across the county she works in:

I wouldn't say there are huge disparities [between local authorities in terms of support for service users]. I'm dealing with seven local authorities feeding into this hearing centre. I see disparity in the quality of some of the social work. But in terms of the services I personally am not aware of that. If it's there I don't know.

[P388, HMCTS Legal Advisor]

4.2.4. A system that works

Despite increasing demands and decreasing resource, most professional users described a functional system populated by dedicated and motivated staff. There also appeared to be a good degree of trust between agencies, even when frustrations arose. For example, an HMCTS legal advisor describes an issue with obtaining materials from the local authority, but does not ascribe this to a deliberate attempt to frustrate the process (which would be counter-productive for all involved):

I know that they, everybody is stretched, I know how much admin work the local authority solicitors do themselves and I know that counsel that a lot of these local authorities instruct to do their care cases for them, are doing this care case today, they're doing another one in another court tomorrow. It's definitely the resources for everybody. I don't think any local authority... is being deliberately obstinate, I mean, why would they?

[P369, HMCTS Legal Advisor]

This view of agencies interacting in a way that works was echoed by others, such as staff from Children's Services:

I think given the performance what we've got and that everybody contributes to that, I think It is working quite well. We're not chummy with anybody, there is challenge, but I think we are pretty good at filing our reports on time and I think that we do have staff who do go in knowing what they're there for.

[P394, Children's Services Manager]

4.2.5. Making a difference

It's very rewarding to represent somebody on the rare occasions that you feel you have made a difference- what happens to me is that I feel that I have been a good thing in that person's life, that's fantastic! Even if it's a paedophile- alleged- some of them admit it but mostly not! An alleged paedophile, you've done what you're supposed to do, sticking like glue to your vocational ethics, fighting tooth and nail for some total horror, the kind of person you wouldn't want in the same post code as your children, but doing what needs doing and making it fair, because then it's just...So, there's a personal satisfaction about feeling that you're doing something right.

[P384, Legal professional – Barrister]

Many professionals valued their work highly, citing the ability to make a difference to the lives of children and families. For some, this crossed over with the next theme of valuing direct contact with clients:

I think still being involved in direct work with children and having the power and authority and respect of other people to make a difference. When I was a basic grade social worker, although of course it is a very skilled job, I found sometimes that I got frustrated that I wasn't able to effect as much change as I would have liked to have done with children. Whereas now because people in general have a good grasp of the role of the guardian

[P392, Cafcass staff]

4.2.6. Having contact with service users

This was something that some staff felt was harder when moving into more senior roles:

I think one of the things is that it's a privileged position because you can become involved in the actual practicalities of the work, which a lot of people miss if they climb up the management ladder. So, it's not just the management issues, I also have the day-to-day contact.

[P316, Cafcass staff]

4.2.7. Prioritising the needs of the child

Although the unmediated voice of the child has limited input into public law hearings (and is also absent from the current research) the professional users interviewed expressed a clear commitment to conducting their work in a way that would prioritise the needs of children. For example, during a case observed at Newcastle Combined Court, a judge expressed sympathy directly to a parent who was present, but explained that her decision-making was driven by what would benefit the care of the child.

4.2.8. Decreasing resources and increasing demands

The twin challenges of increasing case load and decreasing resources were felt by professionals across multiple agencies:

A good day, I would probably say would be the reverse of that! Cases coming in which are just free and flowing as they should, judges available, the other parties are able to attend on time, everything goes smoothly. Yeah, I suppose that's a good day, everything kind of working as it's supposed to, everyone's on time, the hearings are on time.

[P344, HMCTS staff – clerk]

A good day starts with having as many people in the office as possible, that's always nice. A good day, whenever we've got a period of sustained staffing and work is ticking over at a reasonable rate, we don't have blockages at one end of a process or another, it varies...

[P345, HMCTS staff – manager]

I know that they, everybody is stretched, I know how much admin work the local authority solicitors do themselves and I know that counsel that a lot of these local authorities instruct to do their care cases for them, are doing this care case today, they're doing another one in another court tomorrow. It's definitely the resources for everybody.

[P369, HMCTS Legal Advisor]

There are a lot of good people working in the system, but they are often hindered simply by the lack of resources to deal with cases in the way we would like to do so...

[P341, Local authority legal professional]

This could lead to less of the individual work with children and families that many professionals highlighted as being important and valuable:

Well, I think obviously for everybody it's the volume of work which has increased, it's just continued to go up so, I don't have the luxury of doing the sort of work I used to do with children, which is sometimes frustrating. Lack of resources I think in terms of social services are being increasingly squeezed as well so, I think it's a concern about the lack of capacity for social workers to do the preventive work that stop cases escalating to the point where they need to come to court.

[P392, Cafcass staff]

Not all constraints were negative. For example, the 26-week limit was felt by many to be useful in focusing activity and achieving a balance between a good outcome and timely one:

I know that there are arguments for getting rid of the 26-week statutory time limit but at the end of the day it's there, it focuses our minds and we in North Wales are performing really well against those targets. You would have to speak to these children who have gone through the system to find out how it is for them because the fact that we've got this case through in week 25 doesn't mean that we've achieved the best outcome for that child. But clearly that's what we have at the forefront of our minds and we also know that if there is good reason to extend the 26 weeks then we do that provided you give your reasons.

[P369, HMCTS Legal Advisor]

A legal professional here notes that this constraint on resources also related to families being properly supported before entering the care systems, and points to differences in experience that can arise for those with fewer financial resources:

The challenge is often about resources. You do not have the resources. The Local Authority are trying to take your clients children away- if they want to look in someone's phone, they have the resources and can get an order. If your client is saying 'the social worker rang me on a particular day' your not going to get an order that you can look at the social worker's phone. So you are under-resourced and your clients are always running round- they're obviously disadvantaged, usually by their circumstances. The only rich kids who are taken into care are parents who are highly functioning in one sense but emotionally not, where say it's sex abuse or a shaking injury where someone loses their temper with a baby. But care cases are usually about poor people and it's usually to do with not being able to afford a cleaner and life just being tough, so they drink too much and they shout and they swear at the neighbours... and nobody's got any money. So, it's often resources.

[P384, Legal professional – Barrister]

4.2.10. Working digitally

Across all professional users, technology was seen as welcome if it made their work more efficient (and allowed for the best use to be made of limited resources). Conversely, where reservations about technology were expressed this was because of the inability of the digital system to replicate common physical tasks (such as annotating or navigating documents), or where technology impeded other actions⁵.

Where digital ways of working were in use, there were still frustrations and ‘pain points’ to be resolved in relation to how these were used. Here, an HMCTS Legal Advisor notes that effective use is dependent on the correct information being uploaded in a timely way:

Most of the work we do now is digital, I don't have the files for most of the work we do. So, having the correct information on the system at the right time. And for me that's several days in advance of the hearing. That allows me to do the preparation to walk into that court room and be prepared. If I'm flying by the seat of my pants [slight laugh] because information hasn't filtered through electronically to me, that isn't a particularly pleasant situation to be in. But workload is such- The admin team are working at full capacity and stretched, there are situations where I... I am having to fly by the seat of my pants.

[P388, HMCTS Legal Advisor]

4.2.11. Emotional demands on professionals

So, the content is very interesting, it's worthwhile, it's hideously stressful, I still don't sleep after 30 years doing it sometimes- better and better it gets. I worry about if I've made a mistake, I worry if I'm going to cross-examine particular witnesses, if I've forgotten a question, have I got the right angle on things, have I picked the right path for the client's case, so it's very responsible. Because we're self-employed, we can't delegate to anyone, we don't have an employer who gives us any training, we don't have anyone to talk to, except on a no-names basis, but we don't ever work in teams, except with solicitors as they hire us.

[P384, Legal professional – Barrister]

The commitment to help service users and to make a difference has the associated risk of to some degree taking on board their frustrations and stresses, as illustrated by an HMCTS Legal Advisor:

⁵ See theme ‘Technology as a barrier’ for more detail on this.

It's a day when I can successfully juggle the case load that we've got so that people aren't waiting and being caused additional stress and anxiety. Because when they're feeling it, so am I. if I'm triple listed... And of necessity we have to do that, that's a fairly a stressful exercise for everyone concerned but not least for legal advisors – you're conscious people are waiting.

[P388, HMCTS Legal Advisor]

A senior judge working in the High Court further elucidates issues of wellbeing, although focusing more on the detrimental effects of over-working (rather than the potentially disturbing content of the work). She also describes good working practices around senior judges being conscious of the need to provide pastoral care and support. The president of the family division making their position clear also seemed to be an important part of fostering this positive approach:

We all devise our own methods of dealing with the pressure. And I suspect there are as many ways of doing that as there are judges. I am very disciplined in knowing what I've got to do today, and what can be left till tomorrow. Which judgement I must give this afternoon, which judgement I can afford to wait a few days to deliver. [Junior colleagues] have to keep work and life in a good balance. They must not over-work. They owe it to themselves and the litigants to be in a good condition to go into court and deal with the work. They must not get to a point of being overtired or stressed. They must pause. Take the time they need to do the job well. They mustn't overload themselves. And the president is very, very clear in saying that. He does not want judges over-worked. A few judges- Mercifully only a few. Who have to take time away from work because they are just so stressed – that's the only way to manage. We have a very good HR department, which deals with that level of difficulty and gives advice. We're very clear with the DFJs who manage the circuit judges and the district judges, that it's part of their responsibility to keep an eye on their judges to make sure they're not becoming too stressed and that they take the time that they need – and they're very good at doing that.

[P399, High Court Judge]

4.2.12. A system dependant on goodwill

HMCTS staff discussed a gradual process of burnout that they observed amongst their colleagues, whereby the pressures mentioned above gradually eroded the goodwill that the public law system was felt to be dependent on. They therefore painted a picture of a highly effective and highly motivated workforce, but one that provided little slack and that was at

risk of losing the most talented individuals. The precarious element of this was echoed by other professionals:

You're very reliant on everyone carrying out their role to perfection to get the right outcome for a child, and it's very frustrating when you know something has happened to that child but you can't evidence it because people haven't written a case not properly or haven't made a referral at the right time...

[P340, Local authority legal professional]

4.2.13. User needs

As a professional working in the area of public law...

- I need to feel that my work makes a difference, so that I'm motivated to deal with the practical and emotional demands of the work.
- I need to have the resources to do my job effectively, and to meet increasing or unpredictable demand.
- I need to know about what support I can access to deal with the emotional demands of the work, so that I can look after my own well-being and reduce the chances of burnout.

As a professional working in the areas of public law and at multiple hearing venues...

- I need to understand any regional differences in HMCTS process, approach, or culture, so that I can navigate these when working at different hearing centres.

As a professional working in the area of public law and dealing with new technology...

- I need the time and resources to carry out my work to a high standards, so that I can achieve the best outcome for the child.
- I need new tools to make my work more efficient, so that I can make the best use of limited resources.
- I need to be offered initial training and ongoing technical support, so that I can get the most out of new tools and get help when things go wrong.
- I need new tools to replicate important functions of paper-based system (such as the ability to annotate and navigate documents in a natural way).

4.4. Application

The application process was not addressed in detail in discussion guides, and there is therefore only one theme presented in this cluster (which itself sits at the pre-application stage).

4.4.1. A need for earlier support

Some professional users described a desire to change the way in which cases were dealt with before coming to court. For example, diverting service users to mediation where appropriate or better meeting their needs earlier on so that situations did not deteriorate to the point of care proceedings being necessary. Whilst this would have benefits for HMCTS in terms of reducing case load, it was the needs and experiences of families and children that prompted this desire for earlier support.

Diversion away from a legal process was not always seen as desirable. P339, a judge working in the high court, described dealing with the most serious and complex public law cases, which would not be appropriate for diversion from the courts. However, she did also highlight the value of this earlier intervention in cases where it was appropriate:

There's a process in Canada, which is pre-proceedings where local authorities seek to engage with parents and bring about real change that will obviate the need for any court involvement. That I find very interesting. That's worthy of some proper consideration. It's trying to do things differently, trying to head off the need for proceedings by putting in services.

[P339, High Court Judge]

4.4.2. Getting notice of upcoming applications

This was framed as a possible solution to currently experienced problems around constrained resources. It was described as happening in a small number of cases in some locations, but not universally and with notable variation in practices across different local authorities:

It used to be that they would let us know a lot better. I think you're right, [local authority 1] is the only one that does. [local authority 2] never ever mentions it. They're the ones who phone up and say it's urgent, we need it a hearing, we need a hearing within 24 hours. And then we sit around waiting.

[P348, HMCTS staff – operational]

4.4.3. Dealing with urgent cases, and sudden increases in case load

Dealing with too many urgent applications coming in at short notice was a problem raised by some staff. However, there was a high degree of motivation to accommodate these requests from partner agencies. Meeting these demands effectively depended on things such as judges being good at communicating their availability to listings staff. In some areas, there also appears to be a preponderance of urgent requests at certain times during the week, causing a pattern of uneven demand (such as on Fridays). When requests were later amended or withdrawn, this decision making on the part of the local authority sometimes seemed opaque and frustrating:

The judges are quite good with telling us about their calendars. In most cases, we do have a judge available, and we can tell the local authority, ok, we can hear this and we'll say please be here then and they'll call back and say, 'actually we can't get in there at this time!'. Which is quite frustrating when you've tried so hard to try and get that listed and in front of a judge....

[P344 HMCTS staff – clerk]

But saying that, last Friday we had an email from [_____] Council they wanted a hearing urgently. They emailed in the morning and they wanted a hearing that afternoon, so the judge was waiting for the application to come in. It never came in until the following Monday. So, the judge made directions in readiness for the application, but it never came in. Sometimes local authorities might mess you about a bit...

[P349 HMCTS staff – operational]

4.4.4. User Needs

As a parent or child at risk of being involved in care proceedings...

- **I need early, appropriate, and effective support from agencies to avoid being drawn into a legal process.**

As a member of HMCTS staff...

- **I need local authorities to provide notice of upcoming applications so that appropriate resources can be put in place to support them.**
- **I need available staff and judicial resources to be matched to any weekly (or seasonal) changes in levels of demand.**

4.5. Pre-hearing

4.5.1. Submitting and receiving materials

The number of parties involved in a case meant that any lack of compliance with directions on submission had impacts on multiple users. A Legal Advisor here discusses dealing with this, and where possible working with parties to limit delay on the wider process:

Prior to the first hearing, I wouldn't say there is prior to the first hearing but clearly case management issues quite often arise during the life of the case and more often than not it's issues such as local authorities not complying with directions regarding filing its evidence etc. And then conscientious solicitors for the guardian writing in saying well look how is the guardian meant to get her report in by the 20th of July because the local authority are already a week behind filing their evidence.

[P369, HMCTS Legal Advisor]

4.5.2. Accessing and reviewing materials

Reviewing materials thoroughly before a hearing was seen as crucial by legal professionals, judges, and HMCTS legal advisors. Whilst these users were highly receptive to electronic ways of doing this, there were needs expressed around being able to replicate behaviours that might be intuitive when dealing with hardcopies, such as making notes and annotations, and being able to easily navigate bundles. These needs closely echo those of users engaged with during previous research projects.

I read the papers, whatever papers have been filed. I read them. Sometimes you're having to do that at real speed. Because, the days of being able to shut the office door and read at leisure, they're long gone and I don't think they're coming back! So, sometimes it gets a little bit fraught. But there's no shortcut, they've got to be read. You've got to understand them and you've got to be mentally prepared for... What's gonna be asked during that hearing. I quite like the drop-down index and I can go to whatever document I choose to go to. At the moment, I don't believe that I can mark any of those documents. So, I can't make my own notes on them and go back and refer to my own notes. That would be a huge step forward for me.

[P388, HMCTS Legal Advisor]

4.5.3. Case allocation

For staff involved in listings and case allocation, this process was described as being carried out collaboratively with judiciary, but there were indications that the nature of interactions between judges and staff could vary slightly across different venues:

Allocate when it comes in, which we do jointly with the District judge, and type up the directions and order. Listing it for either an urgent contested hearing or for a case management hearing. We fill in those forms online and then the staff then can cut and paste from those. The DJs here are really good if it's a case that they... hat is allocated to themselves, they'll do their own, but I don't think happens everywhere. Clearly the schedule is the first thing, where depending on the nature and the seriousness of the case, we have to follow the schedule and the urgency issue is the other one of course, It could be Friday afternoon and whilst it's a matter that could well be dealt with by a Magistrate, we don't have a court on the Friday. So, quite often the DJs are helpful and they say 'I've got room this afternoon, send them to me'. you get to hear that some of them don't have a good working relationship with the DJs at all, So, how they go about their everyday Public Law allocation work, that must be very difficult. I don't know the ins and outs of why they don't get on. I can imagine that there would be some judges, some of them that still think that you know 'we're on a pedestal whereas you're not' or talk down to legal advisors. But we don't feel that here, we really don't.

[P369, HMCTS Legal Advisor]

Establishing the optimal dates for the numerous hearings involved in a public law case was described as potentially complex process requiring nuanced judgements (and building slack where possible):

So, we're always listing, we err on the side of caution and give something three days and we as legal advisors, it's part of our job to 'right then, we've got to find 3 days in court' – sometimes it takes a while and to make sure that everybody leaves knowing the dates of the 3 days and which court they're going to be [in].

[P369, HMCTS Legal Advisor]

4.5.4. Opaque practices around scheduling and listing

Just as some HMCTS staff sometimes perceived a degree of opaque or unhelpful decision making on the part of the local authority at application stage (in relation to urgent cases), a similar experience was reported by external professionals when describing their experience of dealing with the courts. Some of these external professional users expressed a desire for more transparency around decision-making, particularly in terms of HMCTS listings practices. A manager for Children's Services here describes occasional frustrations around hearing dates changing:

It doesn't happen very often, but we've just been given something which has been put off and it's been listed actually for a hearing in November. Now that is because the court is so, busy at the moment and that is too far off. So, it's court capacity really. So, that would be the only issue but again that only comes up very rarely, normally it's dealt with.

[P395, Children's Services Manager]

Whilst there is a degree of trust expressed that these changes happen for legitimate reasons, they go on to say that more knowledge about the reasons for these changes would be helpful. This closely parallels the needs and experiences of external professionals in other areas of law. For example, Home Office Presenting Officers interviewed for previous research, who expressed a desire for more detail on the reasons for lists collapsing⁶.

⁶ Immigration and Asylum Chamber: User Research (Revised December 2017) v1.1.

4.5.6. Delegated authority for uncontested matters

Legal Advisors described being able to deal with a limited set of issues, but feeling that their remit could potentially be expanded (although acknowledging that this would require statutory changes). The benefits of such a change, such as increased efficiency, are highlighted below:

I think given judicial resources are so stretched, if this was my wish list, it would be for increased delegation of authority for legal advisors to deal with uncontested matters. I appreciate it would require a statutory change, but we could for example deal with uncontested care orders. Legal advisors could be used as a resource, more than they already are. [The benefits would be] cost saving, speed, greater efficiency during a variety of hearings. I deal with a significant number of public law hearings without magistrates, but there are lots of cases where we have to bring in a bench of three magistrates to deal with a very specific, discrete point that a legal advisor could actually be dealing with, using delegated authority.

[P388, HMCTS Legal Advisor]

4.5.7. The overlap between emotional and practical needs

A member of HMCTS staff here describes an experience of attempting to assist a parent calling the court for assistance. It is noted that the underlying need here may often be as much about an emotional and interpersonal one as a need for a specific piece of practical information:

So, they ring up, we take the call, we try to help them as best as we can, but it's almost as if they don't want help they just want to vent and get their frustration out, which is quite hard for us as we can't help them, we can't change anything, I mean the decision's been made and that's that.

[P344 HMCTS staff – clerk]

4.5.8. Waiting for a hearing

Service users described experiencing delay throughout the process, but most notably during the pre-hearing phase as well as in waiting areas immediately prior to going in. The birth father in a case here describes this negative experience being exacerbated by the nature of the channel of communicating (letters) as well as the perceived tone and content:

Just her and her solicitor trying to belittle me, saying bad things. She had no contact with me at the time so she was sending nasty letters to me via her solicitor, so that did get me down a little bit...[these letters] made it a long process... it just kept dragging on and dragging on... there was also a backlog with CAFCASS of six to eight weeks, that got me annoyed because it was just more [waiting].

[P347, Family member – birth father]

Family members described waiting to go into a hearing as particularly stressful, noting this could make a short amount of time feel much longer:

I think [we waited] half an hour to go into the court, but it felt like hours...

[P346, Family member]

4.5.9. Waiting areas

Family members described not just feeling anxious in waiting areas, but also feeling stuck and worrying about leaving in case they missed being called in:

It's like waiting for a life-changing interview, very nerve-wracking. You don't go to the toilet or to get a drink just in case they call you... I was pacing up and down. Quite anxious... I do remember I was asked if I was still happy to do this, and I said yes, I was psyching myself up, but once you're there you can't exactly leave! I felt like I can't leave to go and get any fresh air...

[P346, Family member]

Interactions with other parties was a concern for some. Staff noted that measures could often be put in place to address this, but that it was dependant on requests being made (which could potentially disadvantage those without representation, or witnesses who had been called at short notice):

We can make all kinds of arrangements to have people kept separate and brought into the court as and when. And we can do that at any of the hearing centres. With unrepresented parties, and really that doesn't touch hugely on public law, it tends to be more a private law difficulty. If they don't tell us in advance it's much more challenging, but it can still be achieved. Sometimes it is as simple as keeping them on separate floors until the case is called.

[P388, HMCTS Legal Advisor]

4.5.10. Pre-hearing interactions

The importance of pre-hearing interactions was illustrated during the observation of cases at Newcastle Combined Court. Before the hearing began, one representative was seen to approach another and inform them that discussions were taking place amongst parties. Both then asked the clerk to relay a request to the judge to delay the hearing so that these discussions could continue. This was justified on the basis that it would save court time by making the hearing shorter.

Based on responses from other professional users, these types of pre-hearing interaction are common and valuable. These are however dependant on having an appropriate space available, especially given the sensitivity of the subject matter:

It's imperative. This is some of the most sensitive work the law can throw at people. They are some of the most vulnerable people. If you haven't got somewhere private- And comfortable to sit and discuss really very difficult subjects, removal of children permanently – that's not a conversation to be had in a corridor. It's needs to be private, it needs to be pleasant surroundings. We don't need to make the process any more unpleasant than it actually is. But privacy and quiet is absolutely essential with this kind of work.

[P388, HMCTS Legal Advisor]

4.5.11. Involving the child

Contact between children and the courts (such as a meeting with a judge) were rare occurrences, but were regarded positively by everyone who discussed them. This related to improving the experience of the child, but was also felt to have potential benefits in terms of providing a fuller picture of relevant evidence by including the unmediated voice of the child.

One thing that we do here, that I think every judge should ask for, is that we do direct work with the child, so the judge can see from the pictures and writing of that child exactly what that child feels, it's really compelling evidence...

[P340, Local authority legal professional]

4.5.12. User needs

As someone representing one of the parties in a case (or representing myself)...

- I need to be able to submit and receive materials via an appropriate channel so that all necessary materials can be shared.
- I need to be able to access and review materials at the same time as all other parties, so that no one is at a disadvantage and so that I can make the best use of my time to prepare for a hearing.
- I need any digital materials to be organised in an intuitive way, so that I don't waste time locating and reviewing the most important bits of information.
- Where specialist support from expert witnesses is needed, I need the process for extended the legal aid budget to be fast and efficient so that all necessary materials can be submitted ahead of a hearing.
- If listings change at short notice, I need the reasons for this to be explained to me so that I understand that the reasons why I'm experiencing additional delay.
- When I contact the court, I need the person I deal with to have access to relevant materials, and to be familiar with the case so that my request can be dealt with quickly.

As a member of HMCTS staff involved in listings...

- I need to have a good working relationship with judges who oversee lists, so that we can use court time effectively.
- I need to have information about the availability of various parties as soon as possible, so that I can plan ahead when creating lists.

As a judge or magistrate...

- I need all materials to be easy to navigate and annotate, so that I can jump to the most important documents and digest a large amount of information in a short period of time.

As an HMCTS legal advisor...

- I need to be given greater authority to deal with uncontested matters, so that judicial time can be saved and cases dealt with more efficiently.

As a parent or witness...

- I need to know my hearing date as soon as possible, to reduce anxiety and allow me to prepare effectively.
- I need access to a private, comfortable, and quiet room in the court building to consult with my representative or other parties before a hearing begins.
- I need the physical environment to feel like a family court, and to not feel like a criminal court.
- I need to get the support I need prior to going in to a hearing to help me feel less anxious and uncertain.

4.6. Hearing

Although this cluster of themes relates to broad user experiences of the hearing process, there is a weighting towards experiences of the physical environment. This covers aspects of physical design of the court room, as well other areas of the building. The practical needs of users are considered, as well as the more intangible and subjective ways in which physical space is experienced.

4.6.1. Judicial continuity

Continuity was seen as potentially beneficial throughout the process, but is placed here as judicial continuity in the hearing was one of the most strongly expressed needs. The importance of continuity in terms of the sitting judge, as well as the HMCTS staff and representatives involved was highlighted by many professional users. This was felt to serve dual purposes, to both improve the experience for service users who may have developed rapport with individual professionals, as well as making the service delivered by those professionals more efficient and consistent as they would be working on cases that they had prior knowledge of. This aspiration towards continuity was not always possible to realise:

We need also to have continuity with representation. It can be a little bit frustrating if at one particular hearing you've got Mr. X counsel, and at the next it's Miss. Y. It doesn't provide a smooth transition. Again, it tends to occur between the issues resolution hearing and the final hearing if it's going to occur anywhere. Quite often solicitors will deal with a case until the issues resolution hearing and then they instruct counsel for the final hearing. Which is fine, so long as counsel aren't deviating from directions made at the issues resolution hearing. But it's not uncommon for them to try and raise an issue that hasn't been raised before. It mucks up the first day of hearing, taking time to resolve those issues. Sometimes, we are picking up cases that we haven't dealt with before. And that's a fairly steep challenge. Most certainly not a criticism, but as a neutral observation, that can be frustrating. Particularly if you know you're not going back to that hearing centre again.

[P388, HMCTS Legal Advisor]

4.6.2. Emotional demands on service users and power dynamics in court

Many professionals and judiciary expressed a high degree of empathy for the people they dealt with, and an awareness of how multiple aspects of process and design could exacerbate pre-existing power dynamics and anxiety. Although professionals universally agreed that there was a need to always prioritise the needs of the child, they were also acutely aware of the experiences of birth parents:

And I just find it really, really heartrending for these women – and you see them in court and the power dynamics in court, the lady earlier on in the week was all [unclear] she's giving evidence there and the difference between her status if you like and the status of the rest of us in court and she has nobody there to support her, it's heart-breaking, it's heart-breaking.

[P382 Magistrate]

The theme of 'An awe inspiring physical environment' below starkly illustrates how the formal physical design of the High Court can deepen these issues even further. The same theme also demonstrates the way that the interviewed judges and magistrates across all family courts spoke about managing these power dynamics by dealing sensitively with parents and witnesses, and doing everything possible to put them at ease.

4.6.3. Giving evidence in an adversarial environment

Related to the service level theme of a lack of choice and agency, adult service users described feelings of powerlessness and uncertainty, especially in the pre-hearing phase.

Extended family members with a potentially more peripheral role in a case described additional issues with the way in which they were called to give evidence. A family member here describes not being given notice that they were required, and then facing an adversarial style of question in court that was stressful:

And they were supposed to give me some warning that I was supposed to be a witness and I actually had to ring my brother's solicitor to ask, you know, are we needed at the court, and he said 'yeah, you were needed hours ago... It was quite stressful and difficult. ...It made me feel like I was the person in the wrong...It was like 'I'm telling the truth' and they were like, 'are you sure?' and they were asking really personal questions. You're asking me really ridiculous questions, that are nothing to do with giving the children back or taking them away... It's like, talking to me like I was an idiot, as if I was the one in the wrong. It's stressful that you don't want to deal with. But then it's like, I done it, I broke down in tears and this whole experience, before this, I'd never even had a police caution, I'd never even

had to go to a solicitor's office, I'd never had to write a statement, I'd never had to deal with social services... I've never experienced anything quite like that in my life, I hope not to experience anything like that again...

[P346, Family member]

This adversarial approach was one that was seen by some professionals as less evident in the family courts as compared to other jurisdictions, although there was an unresolved tension also alluded to whereby the two approaches might coexist. For example, a judge here describes the process as necessarily adversarial given the positions of the parties, but also notes that a judge could (and should) play a more inquisitorial role to ameliorate this:

Judges in particular should be inquisitorial. But, in practice, you see the local authority on one side, parents in the middle, guardian on the other side and it can feel very adversarial, because there are high stakes. So, it's appropriate for it to be quite adversarial, although the judge's role is inquisitorial. There's a tension, that's the best way of describing it. The advocates have got a very important role in advocating for their clients.

[P339, High Court Judge]

4.6.4. Language in court

The importance of language used in court was also highlighted by HMCTS staff, with a Legal Advisor here discussing the importance and value of offering participants the choice of conducting proceedings in Welsh:

And I think it's also to deal with... if you're dealing with an emotive subject and clearly parents who are about to have their children away from them in Public Law cases or parents who have obviously split up and can't come to a decision that [unclear] the court makes arrangements for their child, it's so emotive they have the right to do that in their first language and if that's Welsh then it should happen.

[P369, Legal Advisor]

4.6.5. The unique identity of the family court

Both service users and professional users alluded to family courts having a unique identity and feel that distinguished it from others (most notably from criminal courts). This went beyond specific facilities, such as video links and adequate space, to take in more subjective

aspects of the experience that were related to things such as the way spaces were decorated:

It has space, it's a very pleasant environment. It's light, it's airy. It has security on hand if we need. It. We don't very often but it's available to us in this building. We've got video link facilities. I've got space to work. Parties have conference rooms they can use on that floor. So, we've got quite a good set up in this building.

[P388, HMCTS Legal Advisor]

For service users, an appropriate feel was important both to put them at ease and to avoid making them feel that they were being treated like a suspect (which a more severe or austere environment would risk doing). For some, this extended to wider aspects of the building, such as its size, how it looked on the outside, the ease of navigating the building (finding the court room, moving away from waiting areas briefly to relieve anxiety etc.), and contact with other court user in public areas:

Bigger courts are just too much for anybody, ain't they? I mean it's a bit intimidating, those big courts with the big dark furniture. You know, load of people up there for TV licencing and everything else. Family court they seem- Well they're just nicer- Family court's got to be nicer than a normal court. I mean you can actually stand out and get a bit of fresh air, you couldn't stand out of a normal court. Because you'd be called up and you won't even know it. You know, you weren't far from anything. It was nice and small.

[P374, Family member]

4.6.6. Safety and security

Some service users did express anxiety about safety or comfort at the court building (expanded on under the theme of waiting areas below). In terms of the court room itself, judges and magistrates spoke about striking an appropriate balance in terms of formality. They were highly aware of the need to put participants at ease and to not make the physical environment unnecessarily oppressive. This was noted as a particular issue in the high courts, and judge P339 described a supportive process of putting witnesses at ease early on to as much as possible offset anxiety created by the environment.

Before seeing judge P395, the researcher observed a witness causing a disturbance in the waiting area. When interviewing the judge, it transpired that this person had been repeatedly trying to enter her court room after being asked to leave the building. This meant that issues of safety and security received some attention during this interview. P395

concurred with other judicial participants, and felt that the environment should not be overly intimidating. She however also pointed to the benefits of an appropriate level of formality, such as maintaining order when dealing with litigants in person. This balance fed into specific aspects of design such as the bench, which was felt to be an important barrier in terms of security (as was quick access to the secure side of the building), but which should not be so high that it evoked the design of criminal courts such as the Old Bailey.

4.6.7. Technology as a barrier

Although positive about the use of technology inside and outside of the courtroom, some judges did express concern about technology becoming a barrier, both in terms of physically blocking someone's view of the judge, but also a psychological one that could be interpreted as making the judge seem more separate and less accessible. P395 noted that this might be a particular issue with dual screens, which would take up more space on the judicial bench.

4.6.8. User needs

As a parent or witness...

- **If my hearing is delayed, I need to know how long it will be till I go in so that I can move around freely and get refreshments to reduce my anxiety.**
- **If I come back to court multiple times, I need continuity in terms of the people dealing with my case (support staff, representatives, and judge) so that I don't have to explain things to someone new.**
- **I need the physical layout of the court room to make me feel safe, so that I'm not too near people that I don't want to interact with.**
- **I need the physical layout of the court to make me feel involved, so that I feel like I can follow everything and I don't feel left out.**

As a judge or magistrate...

- **I need the physical set up of the court to provide some separation from other parties and access to the secure side of the building, so that I feel safe.**
- **I need the physical set up of the court to be formal enough to help with maintaining order, so that a hearing can progress without undue disruption.**
- **I need the physical set up of the court to not be overly formal, so that parents and witnesses feel comfortable and are able to participate fully.**

4.7. Outcome

4.7.1. Delays after outcome

Delay was experienced at various stages of the process, but is included here in relation to the additional delays that emerge after outcome stage. A legal professional here expresses frustration at the fact that these delays appear to be built into the system, for example, in the way in which adoption can be contested:

Now, again, this is a bit of a bugbear for me, because you go through the whole very complex care proceedings, and if that proceeding concludes, that child can be placed for a placement order for adoption. Right, once we've got that order, we would then initiate a search for adopters, which can take some time. The child then needs to be placed with the adopters, again for a considerable amount of time before they can make the application to adopt. So, 12-18 months could have passed since the placement order was made, but we now have this child placed for all intents and purposes this child placed with a new mum and dad. With the adoption process, this gives [birth] parents a second bite of the cherry, to contest that adoption, which is incredibly stressful for the adopters, never mind the child if they were taken from the adopters and placed back with their [birth] parents. I can't get my head around why that stage is there, and why they enable parents to contest it...

[P340, Local authority legal professional]

4.7.2. A cliff edge: A need for aftercare

This applied principally to service user experiences of leaving the HMCTS portion of the journey, with both service users and the professionals supporting them noting a sharp drop off in available support at this point that could leave some people in a vulnerable position:

I think that during the proceedings [their wider needs are] relatively well met, because everyone has them at the forefront of their mind, and these people are well represented. And there's a whole raft of support in place, and raft of assessments. The moment we've made an order, that falls away. They no longer have representation. All the people who were standing alongside them pointing them in a variety of different directions and organising their appointments... That all falls away when you make an order. And if that order happens to be, for the permanent removal of their children, they walk out of this building, the children are adopted, and they're probably at their lowest point. But the court steps completely out of the equation at that point. These people just disappear from our radar.

[P388, HMCTS Legal Advisor]

This feeling of being left without appropriate ongoing care was echoed in other parts of the process as well. For example, adults with experience of being in are described an abrupt period of adjustment after they left care:

When I turned sixteen, I got flung out of the children's home straight into my own property. My rent was being paid, my bills, everything was being paid for me. And I still went out and got a full-time job. But then obviously having no responsibilities, led me down the wrong path, because I had all this money. What's the word? There's no intervention in the middle. There's no preparation between this and this...

[P258, Care leaver]

And sixteenth birthday, bags packed, out the door. I had no ideas where I was gonna go, because I didn't have any boundaries set. And I didn't have any authority over me, you get into a spiral of- I was a heroin addict until about four years ago. I was homeless, I was in and out of hostels. It was just a completely vicious cycle. And I don't use the fact that I was in care as an excuse. But I think if I would have had the right support when I left care then I not have taken them steps.

[P259, Care leaver]

4.7.3. The care system as a revolving door

Although the previous theme of the need for aftercare extends beyond the scope of HMCTS, this theme underlines the fact that these service users often come back into contact with the family courts.

Professional users described some service users coming back to court multiple times, sometimes in relation to the care of separate children. Importantly, some professionals drew a link between the sudden fall off in aftercare and this repeated contact:

From my magistrate tier, appeals are fairly limited. But people do come back into the system with subsequent children. It's not at all unusual to see the same mum- It tends to be a different father. But the same mum coming back time and again having had one child after another.

[P388, HMCTS Legal Advisor]

This pattern of repeated contact was one that some professionals described as operating across generations as well, with some of the children involved in care proceedings themselves later struggling with being parents⁷:

The most frustrating thing I find is that you think you've reached a good decision for a child and then in a few years' time you realise that hasn't worked out. The cycle, it's very frustrating that children who have often been subject to care system, never reach their full potential and then struggle to be parents themselves and more often than not you could be issuing to remove their children. A huge obstacle for me is that Cafcass is not involved during the PLO process, when you're making significant decisions for children and the child is not represented. The local authority is seen to act in the best interest of the child, but actually where's the voice of the child in that process?

[P340, Local authority legal professional]

4.7.4. A 'good' outcome: Quality vs. speed

Being able to return a child to its family was seen as one of the most positive experiences of the work by many judges, although adoption was also seen as a desirable outcome if it was felt that this was best for a child. This point about foregrounding the needs of the child needed to be balanced against a purely quantitative view of what 'good' looks like in terms of meeting targets and progressing a case quickly (although excessive delay was certainly seen as something to be avoided):

...it's making the right decision for the child isn't. A good day can be a very varied one – returning a child where the parents have recovered from the difficulties that they have previously been in, putting a child up for Adoption can be a good day as unpalatable and as objectionable that looks to members of the public looking So, making the right decision for the child. If you look at it mathematically and statistically, and if you look at it and see that a case is started at week 1 and it's finished very efficiently at week 20, does it matter really? That could be a poor case if the decision at the end of the day is not the right one for the child. If it's taken 2 years to take that decision, even though it may have been the right one at the end of the day, that's probably not the best decision for that child because it's taken far too long to bring stability into that child's life. So, whilst we shouldn't sacrifice justice for speed, I think also that we have

⁷ It should be noted that the former care leavers seen during the current research represent an important alternative experience. Many of them had themselves gone on to work in social care, and showed a sophisticated understanding of the needs of both at risk children and their parents.

to be mindful that that child has been living a court process for a very period of time, and that needs something special to justify dragging proceedings out on unnecessarily.

[P370, District judge]

4.7.5. User needs

As a parent...

- **I need to be dealt with sensitively and respectfully by everyone involved, so as not to make a potentially distressing situation worse.**
- **I need the final order to be presented to me in a way that is easy for me to understand and via my preferred channel.**
- **I need to have the chance to ask questions about the final order, so that I can fully understand what it means for me and my child.**
- **I need to be directed towards support from other agencies, so that I know who to ask for help with needs that go beyond the legal process (such as housing, mental health, or substance misuse).**

As a child being placed in foster care or adoption...

- **I need to have things explained to me along the way, so that the final outcome is not a surprise.**
- **I need to understand what will happen next, to help minimise any anxiety or distress.**
- **I need any subsequent adoption process to be as fast as possible, so that I don't have to deal with another period of disruption and uncertainty.**

As a judge or magistrate...

- **I need to be satisfied that the best outcome for the child has been achieved, and that this takes priority over the desired outcome of parents and the need to meet organisational targets.**

4.8. The High Court

The distinct user experience of the High Court was not intended to be directly addressed in the current research. However, one research participant (P339) was a judge sitting at the Royal Courts of Justice (RCJ) with experience of dealing with relatively serious public law cases (such as those involving elements of sexual abuse, or in some cases terrorism). Although based at the main RCJ building, she also had experience of dealing with High Court cases 'out on circuit' at other locations across London and the Thames Valley area. Findings from this single interview are highlighted here as an illustrative case study, along with wider insights drawn from previous research on the RCJ.

4.8.2. Continuity of experience

For the most part, P399 very closely echoed the experiences of other magistrates and judges interviewed. For example, painting a picture of a highly important area of law populated by highly motivated professionals generally coping well with a wide array of practical and emotional demands. Whilst the challenges were highlighted and explored, the desirable aspects of the current system were seen as worth vigorously defending:

For me, public law is the most important thing I do. It's head and shoulders above everything else. Because whether or not a child has a future, with their natural parent or not. Is, I think, the most important decision you can make in any family case – it's fundamental. And if there were any watering down of the way that we do our work and the care and important we attach to it, then I would be very sad indeed. I do believe there is a real role for judges in this work. I don't believe, and I would wish to emphasise, that it could ever be done by a tribunal. I believe this is specialist work for specialist judges. And I'd go to the barricades over keeping it that way. It does work and it works extraordinarily well. And in a way that achieves justice, which is what we're all trying to do. I mean justice for families, justice for children, no short cuts, you've got to do the job – do it properly. And if you're not satisfied that you've got what you need to do the job then you've got to say so. That's what judging is all about.

[P399, High Court Judge]

4.8.3. Dealing with the most serious cases

There were some aspects of working in the High Court that were seen as unique (or at least where the issues experienced elsewhere could potentially be amplified. Most notably, the seriousness and complexity of the cases dealt with:

The most serious kind of case, involving serious injury, serious sexual abuse, sometimes by children against children, sometimes by parents, step-parents against children. And I've dealt with a couple of terrorism-related cases. The more complex kind. That's consistent with my role as a judge at the high court.

[P339, High Court Judge]

Potentially related issues of judicial wellbeing were discussed elsewhere in the interview⁸ (although in relation to workload rather than potentially difficult content associated with these more serious cases).

4.8.4. An awe inspiring physical environment

The importance of physical design was an example of something that reflected the same tensions and dynamics described elsewhere. For example, the need to balance the safety and security of the judiciary and the need to maintain order, against the need to make lay participants, such as parents and other witnesses, comfortable so that they could participate effectively. Given the nature of the physical building at the RCJ, there was at times a much greater need to reduce any anxiety associated with an ‘awe inspiring’ physical environment. At the same time, some of this formality was seen as useful and welcome – for maintaining order during a hearing, but also to properly reflect the seriousness of proceedings:

Quite intimidating. Some of the courts are huge. They are awe inspiring. They are part of a historical building. I’m sure as a parent for the first time feel quite intimidated. In the family court out of this building, a lot is done to make them more friendly. It’s well furnished, it’s comfortable. Good quality furniture...

The courts I sit in are very formal. Akin to a crown court. I believe that’s appropriate when we are considering the most interventionist orders that can be made by the state. Permanent separation for adoption – there’s nothing more serious than that. [Informality] would be a cosying up to the participants. The thing to say is that magistrates deal with the least serious type of case, where it’s possible to make a supervision order to keep the child at home. And to support the parents in whatever difficulties they face. High court judges are not dealing with those cases; it’s high end work. And potentially with very serious orders made at the end.

[P339, High Court Judge]

The special nature of the physical environment validates previous research conducted on the RCJ. A separate research project⁹ explored broad user experiences of the High Court (across jurisdictions) and considered how it differed from experiences of other courts. The physically imposing nature of the main RCJ building (with regards to the external appearance, large entrance hall, and court rooms themselves) was experienced in distinct ways (highlighting the subjectivity in user experiences of physical design). Staff working at the RCJ felt that the building had a positive effect on their personal investment in their

⁸ See theme ‘emotional demands on professionals’ for more detail on this.

⁹ **The Royal Courts of Justice: User Research – Rounds 1 & 2 (December 2017) v2.0.**

work. Conversely, litigants attending the building for the first time often described it as intimidating or disorientating.

There are additional themes and findings from the previous RCJ research that may be of relevance to the public law project. For example, a secondary research question explored in the previous research involved the way in which litigants (including parents in family cases) experienced the transition from the wider justice system into the High Court.

4.9. Adoption and special guardianship orders

Although overlapping with and echoing with many of the themes above, some issues relating specifically to experiences of adoption are highlighted in this cluster of themes. This section is adapted from a short presentation delivered to researchers at the Department for Education.

4.9.1. The specific skills and experiences of adoption clerks

...the adoption clerks and they pretty much do that at the exclusion of all else, because of the nature of the work it requires someone to be at it full time and to be as knowledgeable as possible. For other areas of the work you can get away without knowing too much about the work, and having just some formal training. With adoption it's better to have people on it and keep them on it for as long as possible because you build up an understanding of the nuances of that area of work which is very important given the security aspects of it.

[HMCTS staff – manager]

- Clerks working on adoption require specialist training, but are physically located near colleagues who deal with care proceedings.
- Another reason for work on adoption being ring-fenced and contained is strict restrictions on protecting personal data.
- There is a perception that some of these processes vary 'massively' across different courts.
- Responsibility for listings may not sit with adoption clerks, and could be passed to listings officers who deal with a range of case types.

4.9.3. The needs of children: Early and fast intervention

And there are a number of issues, but the one that comes up is the adoption issue, that comes up straight away. At a very early stage, when you're looking at care proceedings, the parents need to be aware at that stage that if things do not change, and things remain significantly dangerous for that child, adoption is an option.

[Cafcass staff]

it's probably hard enough when they're very, very young, but once they're 2, 3, 4 years old, that process... all sorts of issues [unclear] to address which crop up in later life for them and for the people looking after them.

[Magistrate]

Public law is typically section 31 cases, care applications where there is nearly always an adoption application, especially if it's a small child. If the local authority get a child into care, they would then want it adopted. It's very difficult to adopt a 13 year old, because they know all about where they've come from and want to see their parents...

[Barrister]

- A range of users (Cafcass, magistrates, barristers) noted the importance of effective and early intervention (as well as clear communication with birth parents).
- The added challenges of older children being adopted were noted.

4.9.4. The needs of parents: Before and after the court process

The earlier they realise how serious this is, the better. And this is what our guardians try to say, 'look you've had six months here, what have you actually done? Nothing?' Well that isn't particularly good evidence for them for the court. But, if they've taken part in parenting courses, if they've taken support and advice, at least then you can see there's a

process and these people want to get a better outcome for the child. So as part of the care plan, very often adoption is put in as an option there.

[Cafcass]

When you take a child off a young mother, the kid goes off into foster care or adoption and the mother is just kind of left. She'll be pregnant again in ten minutes and the same thing will happen again, because there are no resources available for what happens to her in between. When you're in a care case, she will be assessed, and that will be quite therapeutic for her- it's not therapy, it's psychological assessment or a parenting assessment- but although it's only assessing, it can be very useful. But then once the baby's gone, that's it, that's the end of it and they just become little fodder farms for children... So that lack of resources is pretty desperate and it creates a huge amount of expenditure in the family care system but also in the police. It's part of a kind of democratic short-sightedness really, that social work budgets are never at the top of anyone's manifesto. That can be quite frustrating.

[Barrister]

- Clear communication from agencies at an early stage is important.
- At the end of the process if children are taken away (either into foster care or adoption) the birth parents may have acute support needs.

4.9.5. The experience of adoptive parents: Stress and delay

The child then needs to be placed with the adopters, again for a considerable amount of time before they can make the application to adopt. So 12-18 months could have passed since the placement order was made, but we now have this child placed for all intents and purposes this child placed with a new mum and dad. With the adoption process, this gives [birth] parents a second bite of the cherry, to contest that adoption, which is incredibly stressful for the adopters, nevermind the child if they were taken from the adopters and placed back with their [birth] parents. I can't get my head around why that stage is there, and why they enable parents to contest it...

[Legal professional – local authority]

We thought we'd be assessed to see if we were suitable, which they found that we were suitable to look after the children. But then knowing that social services were going to write a report of recommendations that would go to the court, made me think that maybe the court decides are the children going to be given back to the parents.

[Family member]

- Adoptive parents (and those considering taking on this role) experienced delay and confusion.
- Some of this could be attributed to high level process issues – such as the right of birth parents to contest – but a lack of clarity and communication from agencies could exacerbate this.

4.9.6. The need for twin tracking

It is linked, it's a somewhat tenuous link in most circumstances. Throughout you'll have care proceedings and potentially running alongside that you will have placement proceedings, a care order will be made and a placement order made as final order, that's usually what the local authority seek.

[HMCTS staff – manager]

Because sometimes these things are dual-tracked. 'Cos that's important because you don't want to have six months on a case and then at the end of six months, then it's like adoption... another six months on adoption because that child could be...

[Magistrate]

Keeping children in the extended family is a good thing... is an aim and an objective, that those people are identified early on and they don't come in very late on in the process almost in a manner which would frustrate the

process 'cos if there are carers quite genuinely they should be assessed but there's time to do that and obviously you don't want a stop-start situation.

[Magistrate]

- Described as a useful way of reducing stress and delay for the child, family and also potential adoptive parents.
- Identifying possible carers or adoptive parents within extended family was seen as a priority.