



Family Public Law Discovery – Research summary

May 2018

Contents

- Project background
 - What is Family Public Law?
 - From inception into discovery
 - Core journey - As Is
- Understanding Users
 - Prioritising user groups
 - Research methods used in discovery
 - Mitigating methodology risks
 - Research visits
 - User profiles – Judiciary, HMCTS, local authorities, legal representatives, citizens, other parties
- Key findings
 - What makes an effective hearing?
 - What makes an ineffective hearing?
- User needs
- Annex – the story of a mother in care proceedings

What is Family Public Law?

Public law cases are usually brought by local authorities to safeguard the welfare of a child they assess is at risk of harm.

A local authority can apply for different types of orders but the most common is a **care order**.

This allows the local authority to make decisions as to where and who the child will live with, and also who the child can have contact with.

In October 2017, the public law team was set up to research, design and build the new service.

Project mission is to make the public law process more efficient:

- Ensure the court, parties and their representatives have access to the right information at the right time to help decide the best outcomes for children involved in public law cases
- Design a seamless digital system which supports effective inter-agency working

From inception into discovery

At the end of inception, the team refined scope to focus in Discovery on **Get a care order**.

Getting a care order:

- Legal process must complete within 26 weeks (as defined by rules laid down by the Public Law Outline, 2014)
- Involves up to 17 user types
- Starts with the local authority applying for a care order
- Ends with the judge delivering the final order

After initial research work, the team decided to narrow down to a more specific goal:

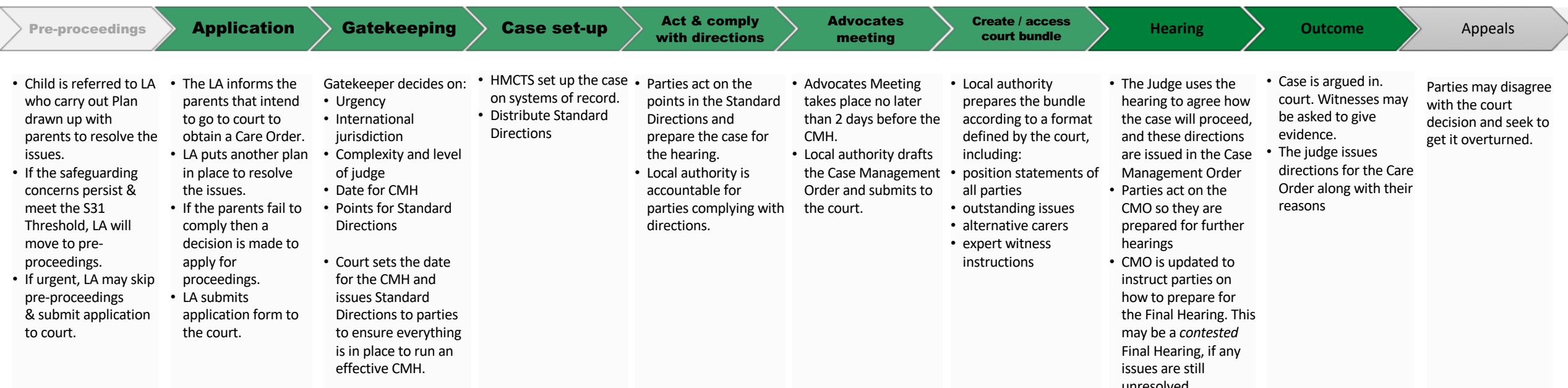
- **Getting to a successful first Case Management Hearing and issuing the Case Management Order**

The rationale behind that decision:

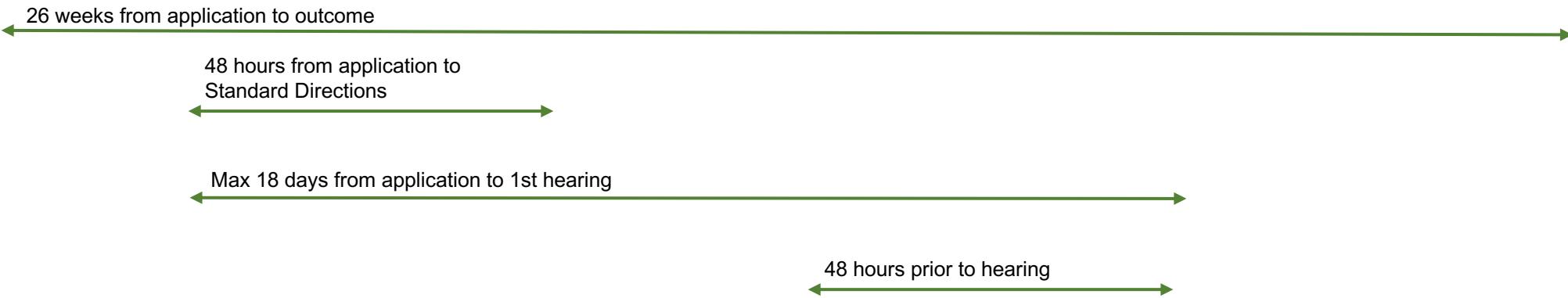
- Hearings tend to follow the same pattern – review evidence, prepare statements, generate orders, approve orders.
- The first CMH sets up the tone for the rest.

Our hypothesis: The better prepared the first CMH is, the more likely proceedings will end within 26 weeks

Core journey – As Is (Professionals)



Public Law Outline:



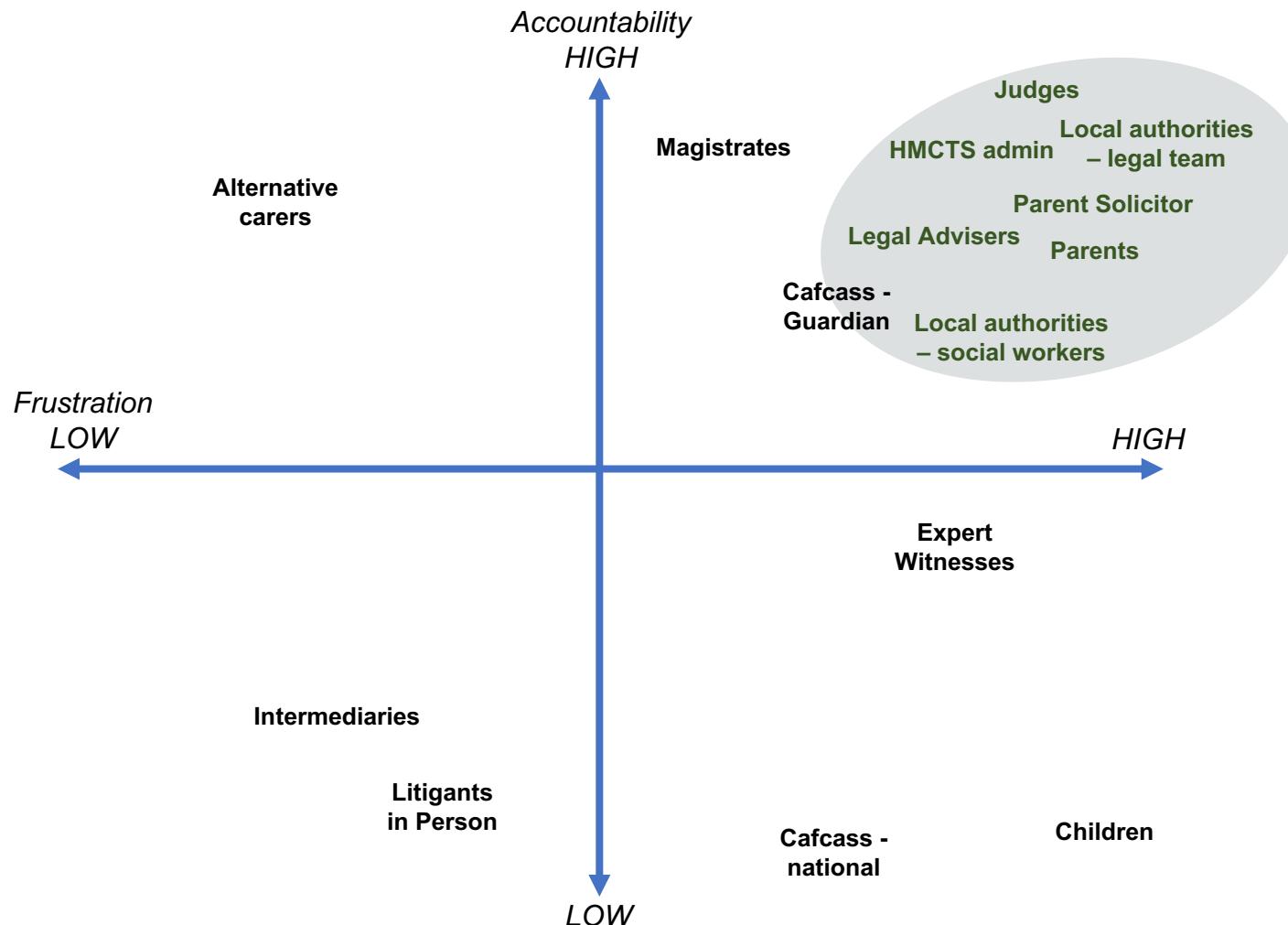
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 - Prioritising user groups
 - Research methods used in discovery
 - Mitigating methodology risks
 - Research visits
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Prioritising user groups

There are 17 user groups within Family Public Law. We prioritized groups based on:

- Levels of **accountability** for a public law case reaching a legal outcome
- Degrees of **frustration** with their current engagement with the court and with HMCTS



Key groups with greatest impact on effectiveness of hearings via:

Good case preparation

Compliance with Judge's orders

Attendance at court

Effective 1st Hearing

- **Professionals** – technology is already helping to improve their accountability and mitigate their frustration
- **Parents** – their chaotic life situation allows very little access to technology and their frustration can drive very high levels of disengagement with the legal process

Research methods used in discovery

	Advantages	Risks
<u>Large group sessions</u> local authority solicitors & social workers	<ul style="list-style-type: none"> Fastest way to engage with a large number of local authority users Identify needs around how different users work together ie. social workers and the legal department, HMCTS admin and solicitors Identify factors that influence geographically different ways of working that could impact a national operating model 	<ul style="list-style-type: none"> Linked to stakeholder engagement / programme promotion which raises ethics/bias issue Participants likely to be self-selecting which can skew research Gives less depth and may obscure impactful edge cases Private opinions less likely to be openly shared in front of a large group of people
<u>One-to-one interviews</u> professional users & legal representatives	<ul style="list-style-type: none"> More time with each user and opportunity to express openly User needs can be explored in more detail Insight into specific cases and outcomes 	<ul style="list-style-type: none"> Users don't always accurately verbalise pain points (often better gathered via observation)
<u>Online survey</u> local authorities	<ul style="list-style-type: none"> Give quantitative data over a large number of users 	<ul style="list-style-type: none"> Only local authorities answered this survey. Having judges answer the survey would be beneficial and show 2 sides of the issue
<u>Indirect research</u> Parents & alternative carers (via key workers)	<ul style="list-style-type: none"> Access a wide and expert perspective on parents' needs and the lifestyle factors which affect their capacity to engage in the legal process Encounter anonymised case specifics without risking sub-judice issues 	<ul style="list-style-type: none"> We lack insight to pinpoint solutions which could have a real impact on, at least, some segments of parents We fail to mitigate any of the reasons of ineffective hearings that parents cause
<u>Observation</u> Hearings and gatekeeping	<ul style="list-style-type: none"> Can directly observe pain points that users might not normally articulate in an interview 	<ul style="list-style-type: none"> Time-consuming We haven't been able follow specific cases across the full journey, so we only have snapshots of the process currently

Mitigating methodology risks

For professional users:

- In Alpha, we are planning for **more observation** (what users do rather than what they say) via **more usability experiments** with stimulus materials and prototypes

For parents:

- Hypotheses that need deeper investigation:
 - If a parent's degree of engagement is already set by their experience of pre-proceedings, how can HMCTS reach a parent so that they engage with the impact of legal action?
 - If a parent's capacity for engagement is heavily conditioned by substance dependencies, mental health issues and cognitive needs, how and with whom should HMCTS collaborate to devise service routes that account for specific needs?
 - If parents in care proceedings lack access to technology, how should HMCTS' service adapt for non-digital users?
- To investigate these hypotheses will require:
 - Specific research (with appropriate specialist support) to understand the different subgroups (from single mothers with alcohol and drugs problems, to large families complicated by international factors)
 - Specific strategies to recruit parents who are currently in pre-proceedings or have just started court proceedings

For alternative carers:

- Hypotheses that need deeper investigation:
 - If a disengagement, shame and fear make a parent reluctant to name an alternative carer, how can HMCTS contribute to practices such as Family Group Conferences that help create a non-adversarial environment for carers to be identified earlier?
 - If alternative carers are identified late, how can HMCTS' service support speedier assessments?

Research visits

- Large group sessions with LAs
- Small groups & 1 on 1 sessions

Judiciary & HMCTS

- 9 Judges
- 35 HMCTS admin officers
- 10 at large group sessions

Local authorities

- 19 Solicitors & social workers
- 89 at large group sessions



Legal Representatives

- 4 Barristers
- 2 Parents solicitors

Citizens & other parties

- 6 parents (via key workers)
- 9 Cafcass members
- 12 children
- 2 Expert Witnesses
- 4 Parent Key Workers

User profiles – Judiciary and HMCTS

	Judges	HMCTS admin	Legal Advisers	Magistrates
Why are they important?	Circuit judges hear more complex cases than District Judges, managed by the court's Designated Family Judge	Application clerks, listings officers, judges clerks and case progression officers fulfil the bulk of tasks driven by standard directions and case management orders	Gatekeepers who allocate applications to the right tier of judiciary or to magistrates	Magistrates deal with the 20% of cases which are less serious and low complexity
Pain points	<ul style="list-style-type: none"> Not always having the critical information at the beginning of the hearing Not enough time to prepare for cases Last to be informed of critical case developments Lack of judicial continuity, having to understand the history from scratch, with little time 	<ul style="list-style-type: none"> Wasting time re-keying lots of data Wasting time perfecting the orders to be shared Not having enough time to progress cases and ensuring parties are complying Spending time answering queries on case status 	<ul style="list-style-type: none"> Getting urgent hearings listed Finding a judge to agree their decision 	<i>Hypotheses:</i> <ul style="list-style-type: none"> <i>Inconsistent access to case documents because of data security protocols</i>
How did we interact with them?	One-to-one interviews & observations at hearings	One-to-one interviews, observing at hearings & group sessions	One-to-one interviews	--
How many?	9	35	2	0

 High interaction

 Medium interaction

 Low/no interaction

User profiles – Local authorities

	Social Workers – Local Authorities	Legal Department – Local Authorities
Why are they important?	Carry out the bulk of assessments and support to parents during early intervention and pre-proceedings. During proceedings they are available to instruct local authority barristers	Accountable for threshold decisions and for all documentation that goes to the court, including case applications, the court bundle witness instructions, draft case management orders and all correspondence. Some solicitors also represent in court
Pain points	<ul style="list-style-type: none"> Spending most of their time assessing risk to the child, rather than supporting parents needs Wasting their time waiting at court Short notice for kinship assessments 	<ul style="list-style-type: none"> Wasting time doing a lot of admin work (preparing and re-keying information: C110A, C2, CMO...) Burden of case progression (have to chase and being chased) lies only on them Communicating with the court (unless they get direct e-mail from the judge) Not receiving Cafcass perspective on time
How did we interact with them?	One-to-one interviews & large group sessions	One-to-one interviews, large group sessions & online survey
How many?	6 one-to-one 17 attending large group sessions	19 one-to-one 89 people attended large group sessions 58 answered online survey

User profiles – Legal representatives

	Parent Solicitors	Barristers	Litigants in person	Intermediaries
Why are they important?	Engage with parent throughout proceedings and instruct barristers to represent in court	Represent parents and local authorities in court, dealing directly with the judge and cross-examining witnesses	Parties who elect to (or cannot afford to) represent themselves in court; occasionally parents, but more often family members	Paid-for specialists to support parents who have capacity needs (eg. Cognitive and educational needs)
Pain points	<ul style="list-style-type: none"> Getting instructions from parents who are sometimes unengaged Not being paid for pre-proceedings / efforts needed for proceedings 	<ul style="list-style-type: none"> Instructed very late Parents barrister often only meets parents right before the hearing starts Not being able to identify their own client at the waiting room / no privacy 	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> <i>Not having access to the bundle due to HMCTS security controls</i> 	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> <i>Very limited access to case content and progression</i>
How did we interact with them?	One-to-one interviews	One-to-one interviews	--	--
How many?	2	3	0	0

User profiles – Citizens

	Parents	Children	Alternative carers
Why are they important?	Parents are represented in court and are encouraged to attend hearings to hear the evidence put before the court. However, they have complex needs (caused by drugs, alcohol, mental health and cognitive issues) that affect their capacity to engage with proceedings	Children with capacity are permitted, on the advice of guardians and care professionals, to attend court. They are represented by a Cafcass guardian	Local authority tries to identify alternative carers as early as possible in proceedings, usually from amongst immediate and extended family
Pain points	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> • Legal and court processes are extremely difficult to understand • Legal reps in court talk about them, not to them • Repeatedly told of their parental failings rather than their efforts to improve • Fear of losing their child can exacerbate dependency and mental health issues 	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> • Feel they are unwelcome in court, making them fearful and angry • Capacity to understand their situation often under-estimated or ignored by professionals • Scared to ask questions about their case or their future 	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> • Conflicted between wanting to support the parent and being set against the parent • No clarity if they will get legal aid
How did we interact with them?	Observed 6 hearings & 6 interviews with Family Drug & Alcohol court key workers	12 – via group session with Cafcass' Family & Youth Justice Panel to discuss their recommendations to improve the court experience	--
How many people?	Hearings attended - 6	12 children ranging from 9 – 17 years of age	0

 High interaction

 Medium interaction

 Low/no interaction

User profiles – Other parties

	Cafcass - national	Cafcass - Guardians	Expert Witnesses
Why are they important?	Cafcass allocates guardians from central and regional resources. Guardians manage cases via a centralized case management system	Effectively the voice of the child throughout proceedings. Guardian's report is critical to the court forming a realistic assessment of risk to the child	Instructed by both sides, in agreement with the court. They produce medical and psychiatric evidence which is tested in hearings
Pain points	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> • <i>Lack of resources when cases hit</i> • <i>Little visibility of case loads and pipelines within local authorities</i> 	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> • <i>Not having immediate access to the social worker and other key parties</i> • <i>Spending time waiting at the court for the hearing</i> 	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"> • <i>Time pressure to produce reports within the deadline</i> • <i>Imperfect access to bundle information</i>
How did we interact with them?	1 group session with Cafcass HQ	One-to-one interview	One-to-one interview
How many people?	8	1	2

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 - Research methods used in discovery
 - Mitigating methodology risks
 - Research visits
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 - What makes an ineffective hearing?
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Key findings – summary

Case loads
increasing

Resources
constrained

Professionals
adopting
technology

HMCTS
technology lags
behind

Manual, localized
work arounds

- ❖ All parties are dealing with increasing case loads and, often, more complex cases. These can involve parents in repeat care proceedings (with more than one child at risk) and can include parties outside the UK.
- ❖ Local authorities and HMCTS face ever-closer scrutiny of their capacity to complete cases within the 26 week deadline imposed by the Public Law Outline (introduced in 2014), whilst at the same time managing with diminishing resources.
- ❖ To mitigate these pressures, local authorities, solicitors and barristers are relying increasingly on collaborative technology to alleviate the burden of legal administrative tasks, manage case progression and deliver to Public Law Outline timescales.

- ❖ **However**, HMCTS and Judiciary lag technologically far behind their legal counterparts, affecting productivity, work flow efficiency, resource availability, and limiting efforts to deliver case management and case progression.
- ❖ Other parties are using a variety of work-arounds to overcome the absence of a seamless and integrated service from HMCTS, using personal relationships with judges and court staff to get what they need, proliferating localized and manual ways of working.

Key findings – What makes an effective hearing?

A first case management hearing is effective when:

Local authority drives effective case preparation	<ul style="list-style-type: none">Application supported with well-organized and sign-posted pre-proceedings documentationConvincing evidence if an urgent hearing is neededCafcass has been informed with enough time for the guardian to prepare their reportParent has followed the LA's recommendation and instructed a solicitorAlternative carers have been identified and assessed
Advocates' Meeting - Legal representatives agree issues to take to the hearing	<ul style="list-style-type: none">Advocates meeting happens at least 48 hours before the hearing, attended by all parties, who have complied with Standard Directions issued by the judge at applicationAll parties are ready with:<ul style="list-style-type: none">Positions and issuesExpert witness and disclosure requirementsList of alternative carersMeeting ends with agreement around which issues should be tested in courtAll parties agree on the draft Case Management Order prepared by the local authority
HMCTS prepare the Judge and the court	<ul style="list-style-type: none">Hearing is scheduled for sufficient time to deal with all the issuesHave received a court version of the bundle from the local authority the day before the hearing and judiciary are able to access itAll special arrangements requested by the local authority are in place, including security, confidentiality, interpreters and prison links
Judge understands the issues	<ul style="list-style-type: none">Have consumed key case content in the bundle and are assured that Standard Directions have been metHave read the draft CMO and understand issues that are agreed or contested
Parties attend the hearing	<ul style="list-style-type: none">Legal representative for the local authority, parents and the child are adequately instructed and parties are appropriately supported by interpreters and intermediaries



Key findings – what makes an ineffective hearing?

Ineffective hearings can result in adjournments or further hearings:

Case preparation	<p>Parties who are inadequately prepared are unlikely to cause an adjournment. But the risk of the 1st hearing concluding with the need for a further hearing increases when:</p> <ul style="list-style-type: none">• Local authority has not been able to plot fully the child's genogram, so increasing the risk of a further hearing to decide on alternative carers• Cafcass is unable to provide an informed assessment of risks to the child, so a further hearing is needed to consider the full assessment (62% of local authorities identified a missing or poor quality Cafcass report as key reason for further hearing)• Parent's solicitor is inadequately instructed, so is not ready with the parent's position
Advocates' Meeting	<p>Parties leaving the Advocates' Meeting unable to agree or resolve issues is likely to drive further hearings, particularly if:</p> <ul style="list-style-type: none">• Parties fail to narrow issues, increasing the risk that the duration scheduled for the hearing will be inadequate• Disagreement over expert witness evidence, leading to the need to hear new evidence from an expert• Alternative carers and connected persons come forward late, causing delays and further hearings to consider assessments (84% of local authorities identified late connected persons as a key reason for further hearings)
HMCTS	<p>Pressures on HMCTS admin resource often mean that officers have such a backlog of orders to issue that they have little time for assuring compliance. HMCTS also has no real-time visibility of case progression, meaning the Judge sometimes only hears about case progression issues in court, which requires further hearings to resolve. Typically:</p> <ul style="list-style-type: none">• Expert witness reports which arrive incomplete or late• Applications for DNA tests, drug/alcohol tests, etc which are not fulfilled by the parties• Delays in evidence disclosure• Inadequate provision for interpreters and intermediaries
Judges	<p>Inadequate IT provision can prevent judges from accessing documentation (eg. position statements, draft CMOs, case summaries) until the day of the hearing, often in paper format:</p> <ul style="list-style-type: none">• Judges often have to pause the hearing in order to be able to absorb the case content, generating knock-on delays to other hearings• Local authorities are unable to share the draft CMO with other parties in order to get agreement and judicial approval before the end of the court session
Parties at Hearing	<p>Parties who don't attend create different impacts, usually resulting in the need for further hearings:</p> <ul style="list-style-type: none">• For parents, non-attendance may be a sign of risk to the child increasing due to worsening in their parenting capacity• Cafcass input is critical for the judge to consider, and so another hearing may be set to ensure their contribution

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 - Research methods used in discovery
 - Mitigating methodology risks
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 - What makes an ineffective hearing?
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User needs by category

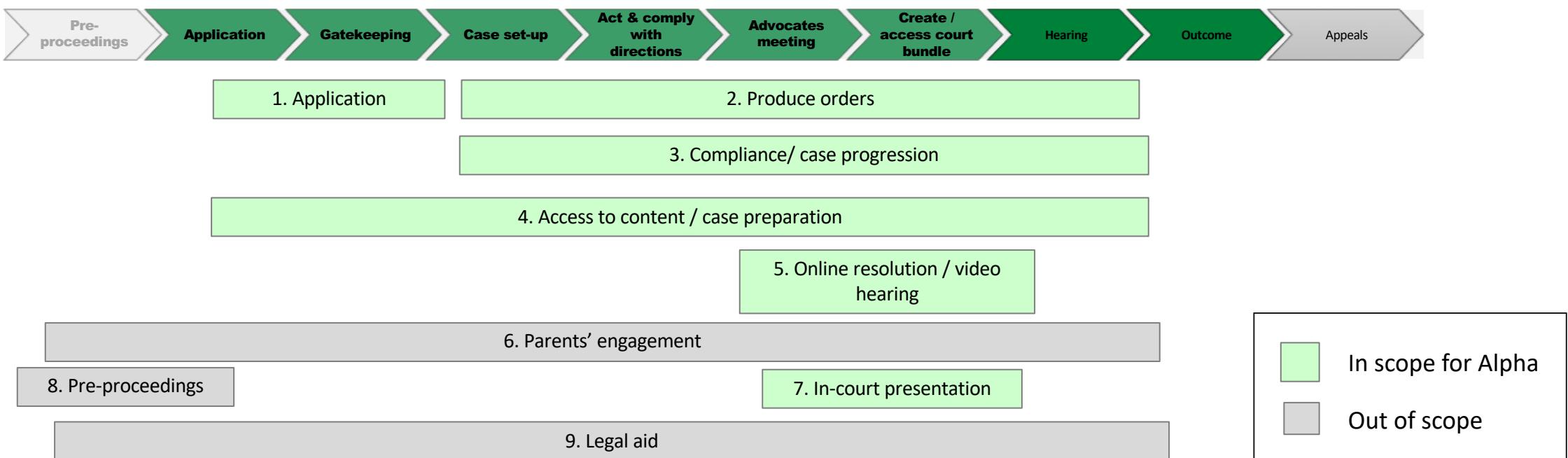
We have 9 user needs categories:

For Alpha:

1. Application
2. Produce Orders
3. Compliance / Case progression
4. Access to content / case preparation

Dependency on Reform capabilities / Out of scope / require policy changes:

5. Online resolution/video hearings
6. Parents' engagement
7. In-court presentation
8. Impact of pre-proceedings
9. Legal aid



User needs – in/out of scope

After we identified all the user needs, there has been an exercise of de-scoping some of the user needs for Alpha phase, based on the following drivers:

- HMCTS ability to influence those needs by themselves (vs depending on other agencies like LA)
- Needs that wouldn't be addressed in an MVP

In some cases an entire theme has been de-scoped (e.g. pre-proceedings), and in other instances, specific user needs within the theme have been de-scoped.

The following slides identify:

- Which user-needs are in-scope and **out-of-scope**
- Which user-needs require **policy changes**

1. Application & gatekeeping

APPLICATION

- PL-01 Spend less time filling in paper work
- PL-02 Get more flexibility from the court on hearing deadlines
- PL-03 Understand valid reasons for an urgent hearing
- PL-04 Have enough time and the right information to prepare my report
- PL-05 Submit other requests to the judge at any point in proceedings (*out of scope*)

GATEKEEPING

- PL-06 Understand the case complexity so it can be allocated to the right tier of judge
- PL-07 Use delegated powers to make a decision without a triage judge (*policy changes*)

PL-01 Spend less time filling in paper work

As a	I need to	So that
• Local authority	Spend less time filling in multiple forms, repeating the same data	I have more time to focus on preparing the case. ??

Pain points

- Local authorities currently submit their applications in a PDF, forcing them to re-key from other systems
 - Local authorities have devised their own work-arounds to try to meet this need themselves. Eg. Worcestershire County Council use 3rd party software that automatically fills in their application forms using common data such as children and parents' details.
- Local authority required to enter some information twice (eg. they add a care plan as an attachment but the C110a also asks for a summary)
- HMCTS admin need to re-key application data into other systems (Familyman, CMS) but data is not shared with any down-stream systems
- HMCTS admin spend time chasing the local authority for missing information and correct authorisations

Lots of duplication in the form - parent/child names, threshold assessments and care plans we've already filed.

Portsmouth LA

To further explore:

1. What is important to say / file / tick for each type of case?

PL-02 Get more flexibility from the court on hearing deadlines

As a	I need to	So that
<ul style="list-style-type: none">• Local authority• HMCTS	Get more flexibility from the court (eg: 3, 5 or 7 days after submitting application)	Local Authority isn't forced to apply for an urgent hearing

Pain points

- Local authorities know the pressure on the courts system and they are routinely given 1st hearing dates close to the 18 day deadline. But LAs can't wait as long as that for a first hearing
 - Eg. Hospitals won't hold new-borns for as long as 18 days, alternative care options can't be sustained, social services are too constrained to maintain supervision
- Local authorities feel compelled to make their application "Urgent" in order to get into court earlier than 18 days
- HMCTS try to accommodate urgent applications but this is putting considerable pressure on judges and court resources to meet a 3 day deadline

If they can't list the hearing the same day, we try to help the court, we tell them 'we have a 48 hours window, or a 72 hours window', if you provide information to the court, they'll do the best to assist.

Kirklees LA

PL-03 Understand valid reasons for an urgent hearing

As a	I need to	So that
<ul style="list-style-type: none">• Local authority• HMCTS	Ensure that HMCTS understands my reasons for an urgent hearing	The court agrees that an earlier hearing is needed

Pain points

- Local authorities endure push-back from HMCTS, requiring effort by LAs to justify the need for an early hearing
- Some LAs are already volunteering documentation at application to explain the rationale for urgency
- Other LAs are negotiating directly with their courts to trade-off cases in order to meet urgent needs, generating effort and friction
- HMCTS's resources are so strained that a hearing within 3 days pressurizes the system

All the judges are listed and the LA is saying that the mother is leaving hospital in a few days...well, that means the case isn't urgent.

Manchester HMCTS

But the mother hasn't anywhere to live and we don't have any accommodation.

Manchester LA

PL-04 Have enough time and the right information to prepare my report

As a	I need to	So that
Cafcass guardian	Have time to prepare the case (be notified on time)	I can produce a written report for advocates meeting.
Cafcass guardian	Be provided with the right information to prepare the case (e.g. social worker's contact name, case info..)	I can produce a quality report

Pain points

- 63% of LAs surveyed identified Cafcass guardian's report as one of the key pieces of information not ready for the 1st hearing. Judges rely on the guardian's view in order to conclude an effective 1st hearing
- Cafcass aim to interview parents and children before the 1st hearing but often there is not enough time to reach parties in time
- Cafcass can waste time trying to reach social workers if application data is not specific to social workers in the case

Sometimes I don't get contact details for the LA social worker...that sets me back several days, eating in to the time I get to sort out an interview with the parent. And that can takes weeks.

Cafcass Guardian

PL-05 Get other requests / orders agreed by the judge quickly (*out of scope*)

As a	I need to	So that
<ul style="list-style-type: none">• HMCTS• Local authority	Get other requests / orders (e.g. C2) agreed by a judge without extra admin	I can devote my time to preparing the case

Pain points

- Local authorities spend up to 1 hour keying applications for other orders and directions (eg. C2 applications for DNA tests, DWP information, immigration status, etc) which re-use much existing data from the case
- HMCTS have up to 3 months backlog of orders to be followed up, entered into Familyman and sealed, which can hold up case progression
- Many orders are straight-forward and require minimal/no legal intervention but they still need to be signed by a judge
- Geographical inconsistency in how HMCTS expect other orders to be applied for. Some courts will only accept formal C2 applications; other courts will carry through applications on the basis of email and telephone requests

Any of those applications require a draft order, parties' view in advance on that and consensus if everyone agrees on the application. If it isn't agreed, then you have to confirm the likelihood of a hearing. It's more than 1 hour to get the information for each C2

Kirklees LA

PL-06 Understand the case complexity so it can be allocated to the right tier of judge

As a	I need to	So that
Gatekeeper	Have application information in a logical, intuitive and concise presentation	I can make a quick assessment of the case complexity I can appropriate judicial tier I don't waste time searching through pages of an application looking for the relevant information

Pain points

- Key information in the C110a is buried in the form
- HMCTS admin often involved to re-present application data to the gatekeeper
- Information that relates to complexity is presented in a format that requires close scrutiny, even though the outcome required is binary/simple
- Local authorities don't always provide good summaries - but instead attach large documents which are difficult to scan
- Form is not designed for making decisions by legal advisers, nor for preparing the case, when solicitors will need to access it from the bundle

The C110a is 22 pages...most of them blank if it's straight-forward. I know where to go in the form to find the right information. But others must struggle to find it.

Legal Adviser, HMCTS

PL-07 Use delegated powers to make gatekeeping decisions without a judge (*policy change*)

As a	I need to	So that
Gatekeeper	Have the authority to make gate-keeping decisions on my own	We don't need to refer the case up to judge We can process applications more quickly and effectively

Pain points

- Legal Advisers already make gatekeeping decisions without a judge being present
- But those decisions still need to be signed off and approved by a judge
- Legal Advisers can waste time trying to find a judge and get approvals

I make the allocation decisions myself and the judge almost always gives the nod.

Legal Adviser, HMCTS

2. Produce orders

STANDARD DIRECTIONS (court order produced after gatekeeping)

PL-08 Produce and send out standard directions in a more efficient way

PL-09 Be sure I'm sending out correct information in standard directions

PL-10 Serve the standard directions in a timely way

CASE MANAGEMENT ORDER (produced before the hearing to be modified and approved by the judge at the end of the hearing)

PL-11 Produce and send out the case management order in a more efficient way

PL-12 Only enter the essential content needed for case management order

PL-13 Use case management order as a tool to highlight what really matters **(to review)**

PL-14 Get the the case management order approved by a judge before leaving court

PL-15 Collaborate early with all parties to produce the case management order

PL-08 Produce and send standard directions more efficiently

As a	I need to	So that
Gatekeeper	Enter content only related to standard directions for each case	I spend minimal effort specifying the standard directions to the needs of each case
Gatekeeper	Have confidence that data, information and content has been validated before I send out the standard directions	Standard directions can be sent to the local authority with minimal further effort

Pain points

- Courts produce standard directions in different ways, mostly manual. Eg.
 - Portsmouth – gatekeeper sends the standard directions by e-mail to HMCTS admin, who will double-check information is right. Often gatekeepers use pre-populated templates which contain old dates and names from previous cases and these can be wrongly transferred into a new case
 - Cardiff – gatekeeper sends an email with instructions to HMCTS admin who then use a document template to produce standard directions
- HMCTS admin have to re-key all the information into at least one other system (Familyman) and then send to the local authority.
- Lack of system integration means that gatekeeper needs to rely on HMCTS admin to check standard directions for accuracy/consistency of application data and core case data
- Referrals and approvals need to be followed up via email and in person before standard directions can be sealed

By the time the Legal Adviser has typed up the standard directions and I've re-typed them into Familyman so they can be sealed, we've used up most of the morning after the gatekeeping meeting

HMCTS admin

PL-09 Send out standard directions in a timely way

As a	I need to	So that
Gatekeeper	Serve orders to relevant parties before certain deadlines	Local authorities have enough time to serve parents and other parties

Pain points

- HMCTS processes to produce sealed standard directions can be so lengthy that the deadline for local authorities to serve parties is put in jeopardy
- Email is the only channel to distribute standard directions but group email addresses are not reliable for ensuring that all parties are aware when documents are ready to serve
- Delays put downstream pressure on time parents' have to instruct a solicitor

For an urgent application, we receive Standard Directions fast. But if it's a standard application, 2-3 days, maybe up to 5 days. Our job doesn't finish when we issue the application, we need to serve the parents. If it takes more time, they won't have time to find a lawyer (taking into account they are not exactly pro-active).

Portsmouth LA

PL-10 Produce the case management order more efficiently

As a	I need to	So that
HMCTS	Enter content only related to the case management order for each case	I spend minimal effort specifying the CMO to the needs of each case
Local authority barrister/solicitor	Only enter essential content, in line with legal requirements	I focus my time on case preparation, instead of admin work

Pain points

- Case management order (CMO) is the next order produced after standard directions and uses much of the same case data already entered in standard directions; but lack of system integration necessitates re-keying, wasting time and introducing/perpetuating errors
- Local authorities already invest in 3rd party software to support templating and auto-population of the CMO; but HMCTS does not integrate with any external systems, meaning that email is the only channel for sharing the CMO, in draft form, with the court. HMCTS is often the last to be aware of last-minute changes to the draft CMO
- 3rd party software already supports many legal reps to collaborate over finalizing the draft CMO. HMCTS has none of this integration, meaning that courts spend admin effort to take in the final CMO for judicial approval
- CMO template is bloated with content which parties do not use or refer to; perfecting this content is time-consuming and prone to errors

We know when 26 weeks is, and that could automatically be input. We know that each case is going to need a CMH, IRH and a final hearing. All of that could be easily calculated and filled in the order.

Barrister, London

PL-11 Identify alternative carers as soon as possible (policy change) (out of scope)

As a	I need to	So that
Local Authority	Identify alternative carers before the CMH (or continue to identify alternative carers during proceedings if not identified earlier)	The child can remain within the birth family if at all possible

Pain points:

- PLO and Case Management Order don't place enough emphasis on the key reason why extra hearings are listed –identification of family and friends and kinship assessment
- Assessing alternative care requires 4 weeks initial viability + 16 weeks further assessment per person assessed.
- Too often, alternative care is identified during proceedings (instead of at pre-proceedings)
- Survey. To the question: what are the top reasons why a new CMH will be needed?
 - 48% of LA identified 'kinship assessment'(1st most important reason)
 - 36% identified family and friends identification (3rd most important reason)

We have a massive problem with family and friends identification and kinship assessments. The CMO doesn't give importance to this topic - it's a field you need to enter, lost in the form. It should be in the spot-light. You could also rethink the PLO, the same way that we have advocates meeting, we could have a specific session on family and friends identification '

LA - Leeds

PL-12 Get the the case management order approved before leaving court (*policy change?*)

As a	I need to	So that
All parties	Leave the court room with an approved order, signed by the judge	We can minimise time spent finalising the order and be able at the earliest to prepare for the next hearing

Pain points

- Current means to finalise the draft CMO at the end of the hearing require significant manual intervention but parties have other hearings to move onto
- Finalising the order outside court requires paying lawyers for the extra time
- Judges likely to spend more time approving an order from days/weeks ago than approving what they have just directed in court
- HMCTS systems do not integrate with 3rd party software that LAs use to draft and share orders, meaning that HMCTS and Familyman are the weakest link in the process to seal an order
- Some courts have 3 month backlog of orders requiring judicial approval

The only effective way right now is the analogue way, it's sitting down with pen and paper, and getting it done there and then. The problem is that when you are doing that you are not getting paid for it.

Barrister, London

If legal reps are not prepared to stay and finalise an order, they don't get the opportunity to change the order.

Judge - Manchester

PL-13 Collaborate early with all parties to produce the case management order

As a	I need to	So that
Local authority barrister/solicitor	Be able to share the case management order in draft form with the other parties	All parties can collaborate effectively to finalise and agree the order

Pain points

- Amending and agreeing the order across parties before sending it to the court is an arduous e-mail based process
- 3rd party software already supports LAs and legal reps to share draft CMOs but HMCTS does not have the technical capabilities to be a part of that process

It's a nonsense, you have 7 parties, everybody has something to say, even if it's the same thing

Barrister, London

I recorded that the court found that the child's safety demands 'continuous' separation from the parents. The parent's solicitor came back and insisted on the word 'interim' between continuous and separation. That took 3 or 4 emails back and forth.

Kirklees LA

3. Compliance & case progression

SPECIAL ARRANGEMENTS

PL-14 Comply with parties' special arrangements for a hearing (*out of scope*)

COMPLIANCE & CASE PROGRESSION

PL-15 Get a third party to disclose evidence

PL-16 Visibility of how all parties are progressing with their tasks (directions)

PL-17 Check whether everyone has done enough to go ahead with a hearing

PL-18 Send queries/decisions to a judge more effectively

TASK MANAGEMENT

JU-1 to 21 Public Law needs that overlap with those identified for Judicial UI

PL-14 Comply with parties' special arrangements for a hearing (*out of scope*)

As a	I need to	So that
<ul style="list-style-type: none">• Legal representative• Parent• HMCTS	Be sure that all special arrangements (eg. interpreter for the correct language or dialect, confidentiality needs) are complied with	Parties are able to engage fully in the hearing and react accordingly

Pain points

- Translators not arranged for the correct duration or in the correct language/dialect, leading to time over-runs, adjournments and further hearings
- Legal aid for translation is only provided in court (not outside court), means that parents only receive very limited information outside a hearing
- Protection is not arranged between parties who should not meet outside court, meaning that there can be violence outside the court and further hearings are required
- Video links with parties in prison fail and hearings are adjourned or delayed

Translators are needed in 50% of the cases. But many hearings can be delayed if they are not booked correctly. Courts sometimes fail to book an interpreter and so a new hearing is needed. Equally, courts may book an interpreter in the wrong dialect (eg. Somalia has 6 different dialects)

Camden London, LA

PL-15 Get a third party to disclose evidence

As a	I need to	So that
Local authority	Supply specific content from a draft or final order to a third party, (eg. Police, hospital, mobile phone company)	The third party is given the authority and information they need to disclose evidence as soon as possible

Pain points

- Local authorities can often get 3rd parties to initiate preparation of disclosure evidence, based on the draft CMO, but will only release the evidence once they receive the sealed order; any delays in producing the sealed order can have a knock on-effect on case progression
- HMCTS admin spend time extracting the order content relating to the 3rd party from the order and then producing a sealed version; this can add significant delay due to staff constraints

We can't get Vodafone to disclose the information unless we show a final stamped final order

HMCTS admin, Portsmouth

PL-16 Visibility of how parties are progressing with their tasks (directions)

As a	I need to	So that
All parties	Know in real-time the extent to which parties are complying with orders / standard directions	I don't need to contact HMCTS, or other parties to ask for updates and I can act on blockers or hold-ups in a timely way

Pain points

- Resource constraints and time pressures on all parties directly affect case progression and compliance. But, short of activating lengthy email exchanges, parties cannot easily communicate or share progress and/or blockers and therefore are often unable to take timely mitigation, risking further hearings
- Geographical inconsistencies in how judges and HMCTS monitor and enforce compliance, embedding progression and compliance behaviours that are hard to change. Eg.
 - Leaving the advocates meeting without a list of experts agreed – so it gets left to the hearing
 - Cafcass relying on oral evidence at the 1st hearing, impacting parent's ability to respond and therefore risking a further hearing
 - Failing to deliver the draft CMO until the hearing day, preventing parties from agreeing the CMO in court

All those extra hearings wouldn't be needed if we did case progression. In adoption, 9 times out of 10, we're on target because we do case progress. Case progress implies chasing parties. If something is late, you chase. But we just don't have time for care case progression.

HMCTS admin, Portsmouth

I don't deliver the CMO within 48 hours simply because no-one puts pressure for it.

Barrister, London

PL-17 Check whether everyone has done enough to go ahead with a hearing

As a	I need to	So that
All parties	Update HMCTS on the readiness of the case for its scheduled hearing date	Judge can prepare better for the hearing and react accordingly (eg. postpone hearing)
Judge	Know before the hearing the extent to which parties have complied with orders / standard directions in a timely manner	I can anticipate risks to a successful hearing and direct postponements / rescheduling appropriately

Pain points

- Success of the advocates' meeting in narrowing the issues and/or identifying delays and blockers is a strong indicator of the likelihood of successful outcomes to the hearing. But HMCTS have no visibility of the outcome of the advocates' meeting, leaving them blind to any issues that might impact the success of the hearing
- Parties' attempts to vacate or re-schedule hearings can fail due to HMCTS' inability to change listings and schedules at short notice

We're always the last to know how much the parties are going to contest in court, usually only on the day of the hearing

HMCTS admin, Manchester

PL-18 Send queries/decisions to a judge more effectively

As a	I need to	So that
Local authority	Engage the court to resolve queries / decisions relevant to my case	I get timely judicial input to avoid case progression delays
HMCTS admin	Assign incoming queries / decisions to a judge or decision maker	I help a judge to prioritise their box work and maintain case progression
Judge	Know which queries and decisions I need to prioritise within my case load	I manage my box work to resolve case progression issues

Pain points:

- Local authorities lack direct access to judiciary in order to resolve queries or get decisions which can lead to hold ups in cases. Eg. Notification of a change to an expert witness report delivery date
- Judges are forced to give parties direct access to their judicial email address if they wish to engage directly with parties over decisions which have case progression impacts
- HMCTS admin spend time in email chains to ask/chase a judge for a reaction/decision

When a judge gives a party their official email address, we get left out of the loop because we're not always cc'd. You can't chase a judge every time to make sure you're copied in.

HMCTS admin, East London

Task Management – Judicial UI needs that apply to Public Law

JU-01	Create a set of notes during my hearing preparation
JU-02	Annotate the bundle and create bookmarks to quickly access those annotations
JU-03	Understand my case load and see incoming and scheduled cases (also box work)
JU-05	Review all documentation associated with a case
JU-08	Make a direction or order for a case (also post-hearing)
JU-09	Know if a case urgently requires my attention (also box work)
JU-10	Be able to compare documents side by side
JU-11	When I receive a case as part of my box work, I'm aware of the work I need to do
JU-12	Having reviewed a case as part of my box work, I can issue my instruction
JU-13	List a case for a hearing (also in-hearing)
JU-14	Be able to access the case file in its entirety
JU-15	Have case documentation presented to me in an order that helps me to understand the context of the case (also box work)
JU-16	Review box work cases before they go before another Decision Maker
JU-17	JU-17: Understand my list for the day and those of my colleagues
JU-18	JU-18: View a summary of the annotations and bookmarks I've made on a case
JU-21	JU-21: See who has responded to directions I've made (also box work)

4. Access case content and prepare the case

ACCESS

PL-19 Be able to search the entire bundle

PL-20 Give bundle access to the right people (*policy change*)

PL-21 Be able to find key information on the case quickly

CASE PREPARATION

PL-22 Able to read key case content prior to advocates' meeting

PL-23 Know Cafcass point of view prior to advocates' meeting (out of scope)

PL-24 Be able to resolve issues without having to attend a hearing

PL-25 Get approval from judge to instruct experts (out of scope)

PL-26 Get better information from experts (*out of scope*)

PL-19 Be able to search the entire bundle

As a	I need to	So that
Solicitors	Be able to have access to the entire bundle (regardless of size) at any point in time (before and during hearing)	I can search for specific pieces of content

Pain points:

- All parties are required to access documentation and content during the court session but too often, IT is inadequate to allow for electronic sharing and so parties must resort to paper

Sometimes you are at court, and the judge asks for specific evidence. I'm able to respond immediately because I can search electronically within the bundle

Barrister, London

PL-20 Give bundle access to the right people (*policy changes*)

As a	I need to	So that
Solicitor	Be able to restrict and grant appropriate access to bundle content	<ul style="list-style-type: none">Everyone is able to have the latest content before the hearing startsMagistrates and litigant in person have read the same content.

Pain points:

- Electronic bundling raises questions about:
 - Litigant in person having access to it all documentation
 - Magistrates being able to look at documents on their phones
- Submission deadline mean that many of the last minute documents are not uploaded in the bundle. Parties attending the hearing will not have the same version during CMH

We've given magistrates encrypted laptops so they can access the bundle, getting round problems HMCTS have with security when magistrates are not on court premises.

Barrister, South London Legal Partnership

PL-21 Be able to find key information on the case quickly

As a	I need to	So that
All parties	Be able to have access to critical information to understand the case	I don't need to spend time searching for the critical information

Pain points:

- Position Statements, Cafcass report and case summary sometimes are filed separately or kept separately because they arrive at the last minute and are kept easily to hand
- As LA don't have time to edit, everything seems to be 'dumped' in the bundle.
- Hearings start late, waiting for the judge catching with information being sent last minute to their email
- Contextual information and chronology of past decisions and previous orders, becomes critical especially for new judges / social workers / solicitors picking up the case

This is another case that has hundred of pages but only 3 have been looked at throughout the proceedings, because there's only 1, 2 or 3 golden pages everyone focuses on. The social work statements are 30 pages long, it's nuts.

Worcestershire LA

PL-22 Able to read key case content prior to advocates' meeting

As a	I need to	So that
Judge	Focus at the hearing only on the topics that require my presence.	I don't waste time listening to discussions that should have happened prior to the hearing
All parties	Have time to access and read the content relevant to advocates meeting (specified in check-list document) and opportunity to prepare my response	I am able to be prepared for the CMH, having previously already agreed to a list of experts

Pain points:

- Parties arrive at the hearing without having agreed a list of experts, due to lack of access to or time to read documentation that allows them to know what is exactly that they need to request in part 25.
- During the hearing, time is wasted as solicitors challenge specific experts requested by other parties (instead of having had that discussion prior to the CMH)

After the first hearing everyone is sent scrambling around to do their part 25 applications rather than coming to the first hearing with an idea of the experts that they need. I think they simply don't think about it in advance

Manchester LA

PL-23 Know Cafcass point of view prior to advocates' meeting (*out of scope*)

As a	I need to	So that
Solicitors	Know Cafcass point of view before Advocates meeting	I am able to prepare a timeline, and react to that perspective ahead of the CMH

Pain points:

- Cafcass perspective is a critical element and all parties wait on what Cafcass is going to say
- Survey. What are the top 5 most important pieces of information missed / poorly prepared?
 - 62% of LA surveyed identified Cafcass analysis as the top 2nd piece of content missed / poorly prepared.
- When Cafcass report is not available, child's perspective is put forward orally at the CMH.
 - However, that implies that parents don't have time to react to that perspective during the hearing, which will impact in further hearings being listed

I don't recall a single time I had the Cafcass report ahead of CMH. Judges don't push for it, as they know Cafcass is under-resourced. If no report is available for the CMH normally no report will be available throughout the entire proceedings.

Worcestershire LA

Guardian's analysis is based on 1 phone call with the parent.

Parent Solicitor, Woking

PL-24 Be able to resolve issues without having to attend a hearing

As a	I need to	So that
Solicitors	Solve agreed non-controversial issues remotely	I don't have to travel to court

Pain points:

- Parties are comfortable with dealing with issues between professionals and with the court via online means. However, email is often cumbersome as trails end up long, do not always include the correct parties and are not legally documented or filed

On quite a lot of occasions, there is no need for hearings. We can between us draft a court order and send it to court, but because the court staff are slow in dealing with consent orders we are coming to court unnecessarily. We hand in the consent order, the judge approves it and we all go home again. That's thousands of pounds in legal aid wasted. Plus, however long the Judge has spent reading the paper, because they are not aware that we are agreed, it's really frustrating.

(LA – solicitor Camden)

PL-25 Get approval from judge to instruct experts (*out of scope*)

As a	I need to	So that
Solicitors	Get approval at the case management hearing to instruct experts	They have enough time to do a quality report before the Issues Resolution Hearing.

Pain points:

- Experts instructed late can hold up proceedings and/or cause adjournments

If the expert is instructed at the first CMH, they have plenty of time to do their work. However, the experts are instructed later, and we are under time pressures

Solicitor - Camden

Expert reports have become delaying tactics

Service manager - Flintshire

PL-26 Get better information from experts (*out of scope*)

As a	I need to	So that
Solicitor	Identify questions to be answered (as opposed to reports to be delivered)	We get the key information we need rather than pages of irrelevant content.
Solicitor Judge	Get a multi-disciplinary perspective in an expert report	I am able to have several points of view in one single report

Pain points:

- Number of experts requested is not always needed. But parties feel they need back-up evidence and sufficient witness authority to resist challenges
- Survey. What are the top 5 reasons why a further CMH will be needed?
 - 41% of Local Authorities identified 'expert reports assessments' as one of the key top reasons (3rd most important reason, after kinship assessment and need for interim contested hearing)
- As cases nowadays are more complex, parties challenge expert expert evidence because it is too generic. But experts don't always have direct access to the child or parent and so are basing their analysis on documentation only

We now have an agreement with Tavistock Clinic. We call them the 'complex assessment team. They are effectively 4 experts in 1 hit.

Camden, London LA

'The problems with the way experts are instructed are not just the timings, but the fact that they provide a de-contextualised perspective.

Key worker, Family Drug & Alcohol Courts, London

5. Parents' engagement

PARENTS

PL-26 Feel emotionally supported (*out of scope*)

PL-27 Able to understand what is expected of me (*out of scope*)

PL-28 Able to change my behaviour during proceedings (*out of scope*)

PL-26 Feel emotionally supported (*out of scope*)

As a	I need to	So that
Parent	Feel emotionally supported	I can face going to court

Pain points:

- Parents not being present at CMH makes judges in many cases feel forced to postpone the hearing (e.g. 1 in 3 cases in Camden)
- Survey. Top reasons for listing an extra hearing at CMH stage:
 - 25% of LA identified parents not being present
- The reasons for parents not engaging seem to be less rationale and more emotional.
 - Eg. Pause mentioned that parents react to letters where the address has been handwritten, FDAC mentioned that even when parents have had the transportation costs covered for them and clearly explained how to arrive at the court (one of the reasons for parents not attending hearings), they still didn't attended, as they were too emotionally overwhelmed

'The first hearing really sets the tone for how the case is going to go. If at the onset, the parents are not engaging, it's rare for them to engage later. That's why the judge will list another hearing if parents are not there at the first one'

Camden, London LA

'We asked her: why you didn't come to court? And she said: I was at the door and I came back home, I just couldn't face it'

FDAC Key Worker

PL-27 Able to understand what is expected of me (*out of scope*)

As a	I need to	So that
Parent	Understand what is expected of me, so that I can instruct my solicitor	They represent me

Pain points:

- Parents can't clearly follow what is happening during the hearing and / or what is expected from them. We have witnessed parents at the end of the hearing shouting '*Why am I here?*'
- Judges have different degrees of empathy with parents:
 - Judges trained by FDAC who will directly engage / communicate with parents in plain simple English.
 - Judges who intuitively understood that recognizing and acknowledging parents at court had a positive effect in their collaboration during proceedings.
 - Judges who ignore parents presence, or only acknowledge them for 'ultimatums'

'Most of the time parents don't understand what is going on during the hearing'

Barrister, London

PL-28 Able to change my behaviour during proceedings (*out of scope*)

As a	I need to	So that
Parent	Have time to react (now that the reality kicked in)	I still can save the situation

Pain points:

- Most experts acknowledge that often parents do not react to / realise the situation they are in until they are at court, and there reality kicks-in
- In some cases, the real process of change starts at proceedings. In this context, 26 weeks is not enough time for parents to make the changes that their parental incapacity requires
- FDAC is part of a completely different angle to managing proceedings, where the judge is the key role (authority with empathy) in a therapeutic process that drives parental change (this happens at proceedings, because pre-proceedings lack of funding focuses on risk management)

'The trauma of removal can set parents back and return them to the cycle of incapacity. Why can't the 26 weeks end with an interim arrangement which is reviewed at 6 & 12 months? This could keep parents engaged in the change process and avoid child care arrangements which are neither long-lasting or adequately assessed

Parent's Solicitor

LAs can "confuse" parents by dropping their scrutiny for a period, lulling them into some sense that the removal risk has disappeared. Out of the blue, the LA pick the case back up. Parents who have returned to old behaviours during the lull are then scrutinised more harshly and LAs may push the case forward as urgent.

Parent's Solicitor



7. In-court presentation

PL-28 In-court presentation

PL-28 In court presentation

As a	I need to	So that
Solicitors	Be able to show to all parties relevant content (e.g. evidence like video, docs, etc) to the issues in court	We are all sure that we are looking at the same piece of content (latest version)

Pain points:

- Each party at court follows the hearing from their own notebook, laptop, or tablet, (sometimes from a different version of bundle content).
- Relying only on oral conversations in the discussions (as oppose to visual support) makes the process less efficient.



8. Impact of pre-proceedings on proceedings

PL-29 Able to identify friends & family in a timely way (*out of scope*)

PL-30 Ensure quality of pre-proceedings (*out of scope*)

PL-29 Able to identify friends & family in a timely way (*out of scope*)

As a	I need to	So that
Solicitors	I need to be able to identify alternative care in pre-proceedings	I prepare proper genograms/econograms for the case summary, and kinship assessments are conducted prior to CMH

Pain points:

- Data from survey: During a non-urgent 1st hearing or CMH, What are the pieces of information often missed, poorly prepared or arriving too late to be considered?
 - 84% - friends & family
 - 63% - kinship assessment 63
- Lack of friends and family and kinship assessment represent one of the key reasons for listing new hearings. Hypotheses:
 - Social workers perceived as the enemy (pre-proceedings focus on risk assessment mainly)
 - No willingness to disclose private information with friends and family (sense of shame)
 - Family are 'competitors' if they come forward as carers
- Assessing alternative carers requires 4 weeks per individual

In Leeds 'alternative care' has become such an important topic, we've set up a working group to work out why they come forward so late

Leeds LA

PL-30 Ensure quality of pre-proceedings (*out of scope*)

As a	I need to	So that
Social worker	Support (specialised knowledge and resources)	I am able to prevent cases going to proceedings in the first place and / or produce quality documentation that the judge won't challenge when proceedings start

Pain points:

- Even though there is the expectation that some assessments will need to be repeated. It is unclear whether the reason for this is a matter of habit (starting from scratch), assessments in pre-proceedings being outdated or a perception of low quality pre-proceedings
- It has been pointed out, that in some cases, the lack of resources and specialist support for social workers generates low quality pre-proceedings (e.g. social workers not having the breadth / depth of skills required to identify certain types of evidence),
- Organisations like FDCA have multi-disciplinary teams collaborating together.

Sometimes the social worker disappears for weeks, disorienting the parents, because their priorities have shifted, and then suddenly they pick up the case and they put all the pressure back on

Parent's solicitor

We are trying to move from risk management to parents assessments to improve the quality of pre-proceedings

Service manager, Flintshire

9. Legal Aid

PL31 Legal aid for family members (*out of scope*)

PL32 Legal aid for legal reps (*out of scope*)

PL-31 Legal aid for family members (*out of scope*)

As a	I need to	So that
Alternative carer	Know if I will be represented	I assess if I am putting myself forward
All parties	Be able to explain / understand when and how legal aid will provided for alternative carers	Decisions can be made faster

Pain points:

- There is confusion around when / how family representatives / alternative carers will get legal aid

There's no legal aid for other family reps - seems unfair, they are placed at a disadvantage, grandparents might be able to argue to take the child under special guardianship but they don't feel heard. This can lead to a sense of grievance and ultimately lead to an appeal

Independent social worker

PL32 – Legal aid for legal reps (*out of scope*)

As a	I need to	So that
Local authorities	Have a more effective and clearly explained legal aid	I can offer the proper engagement that my client deserves
Solicitors		

Pain points:

- Lack of solicitors engagement could be explained prior to hearings not only because of parents non-engagement, but because it is not covered in their legal aid hours
- Parents solicitors not being instructed and / or parents showing up at court without any legal representation could be partially explained by the lack of legal aid

What is the legal aid provided to solicitors in pre-proceedings? They send their junior solicitor, who is completely unable to provide any useful input

Parent's Solicitor

There should at least be more clarity around what exactly you are expecting to deliver with the legal aid provided. The judge should ask: what efforts have you made to meet with your client?

Exeter, local authority

Contents

- Project background
 - What is Family Public Law?
 - From inception into discovery
 - Core journey - As Is
 - Understanding Users
 - Prioritising user groups
 - Research methods used in discovery
 - Mitigating methodology risks
 - Research visits
 - User profiles – Judiciary, HMCTS, local authorities, legal representatives, citizens, other parties
 - Key findings
 - What makes an effective hearing?
 - What makes an ineffective hearing?
 - User needs
-
- Annex – the story of a mother in care proceedings

Illustrative story:

The following story gives a detailed insight into the care order process from a mother's perspective.

It also shows how the various parties and people interact during a care order case.

Background

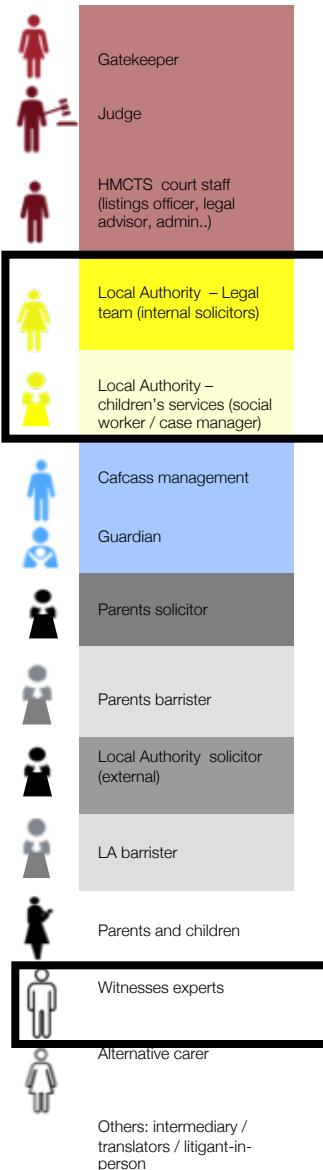


- **Anna** is a 25 year old single mum and works part time. She was sexually abused as a child and, as a way of protecting herself, often ends up living in unhealthy conditions.

She lives with her 5 year old, **Alan**, her son from a previous relationship.

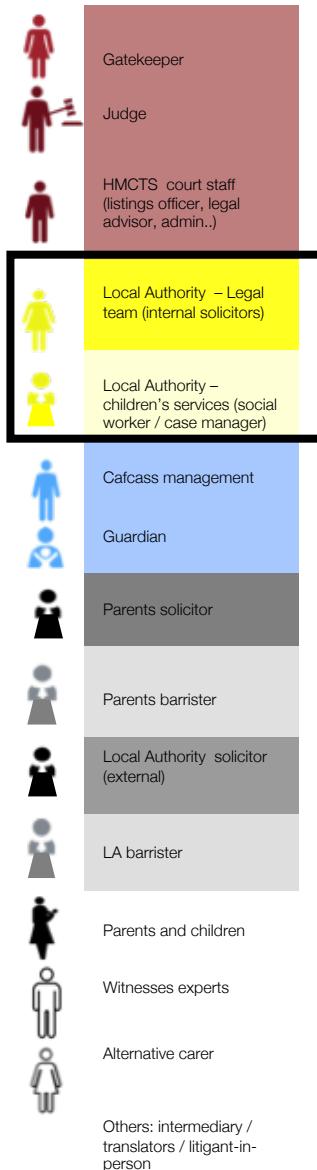
- One day, Anna met a new partner **Jason**, who has a history of alcoholism. Even though Anna wasn't an alcoholic before, her low self-esteem leads her into drinking heavily with Jason.
- She becomes pregnant during her relationship with Jason and gives birth to another boy, **Tom**.
- Jason lives with them very briefly but the relationship is highly unstable and chaotic. He disappears for weeks, returns home for a couple of days and then disappears again.

Early intervention



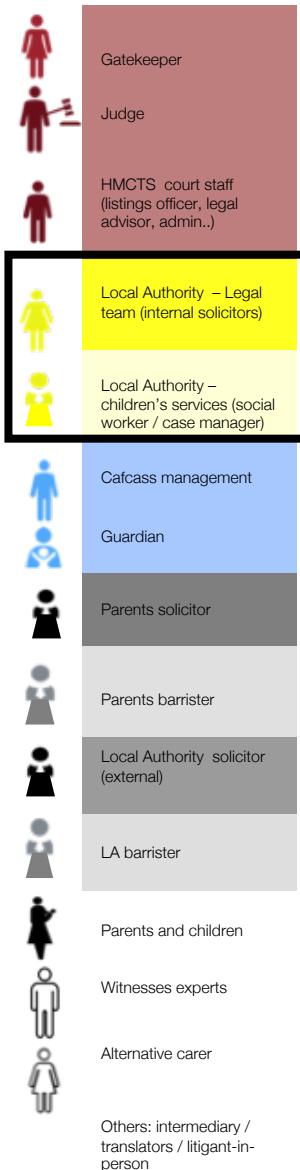
- The **school** begins to notice that Alan (the 5 year old) is coming to school not having eaten properly, and looking unkempt/unwashed. The school reports this to children's services at the local authority who carries out family assessments.
- The local authority instructs a **psychologist** to assess Anna (which she agrees to). The report points to some signs of her deteriorating mental health, but doesn't manage to uncover the sexual abuse in Anna's childhood.
- Due to local authority cuts, the social worker only has time to focus on managing immediate risks - child neglect, controlling Anna's alcohol intake and trying to get her to follow parenting guidance.
- Anna manages to reduce her alcohol intake but the underlying abuse issues which cause her to neglect the children still aren't addressed.

Pre-proceedings



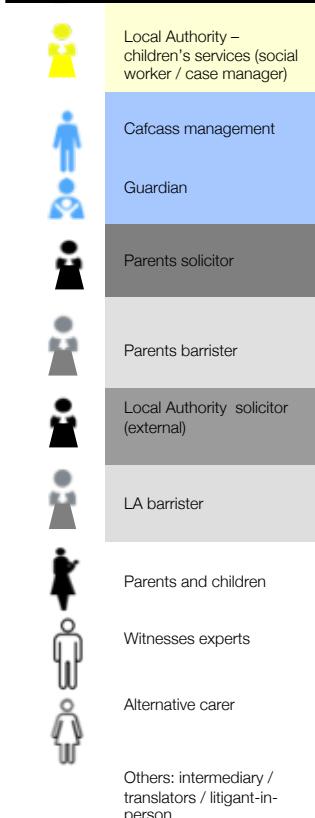
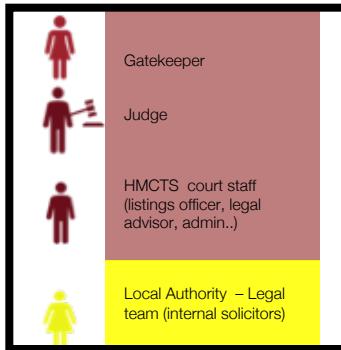
- With her increasing case load, the social worker has to reduce time spent on Anna's case. Given Anna's drinking has reduced, the local authority stops visits for several weeks.
- Eventually, the social worker visits Anna again and discovers that Jason is back in her life. Anna returns to the heavy drinking and the children appear neglected again.
- The social worker and her managers increase their scrutiny and send out a '**letter before proceedings**' to Anna. This leads to a **pre-proceedings meeting** with Anna to discuss concerns, set up an action plan and try to identify any alternative carers within the family who can be assessed. They also give her a warning that if she can't meet the action plan, they may start court proceedings.
- When asked about alternative family members, Anna felt threatened and said she didn't know the whereabouts of the rest of her family.
- After no improvements and no alternative carer coming forward** the social worker meets with her legal team and service manager, and **they decide to start proceedings**. This way, they can **share the cost of the father's DNA testing and complex psychiatric assessments** with all other parties, (that the local authority is unable to pay for right now).

Proceedings – starting a case



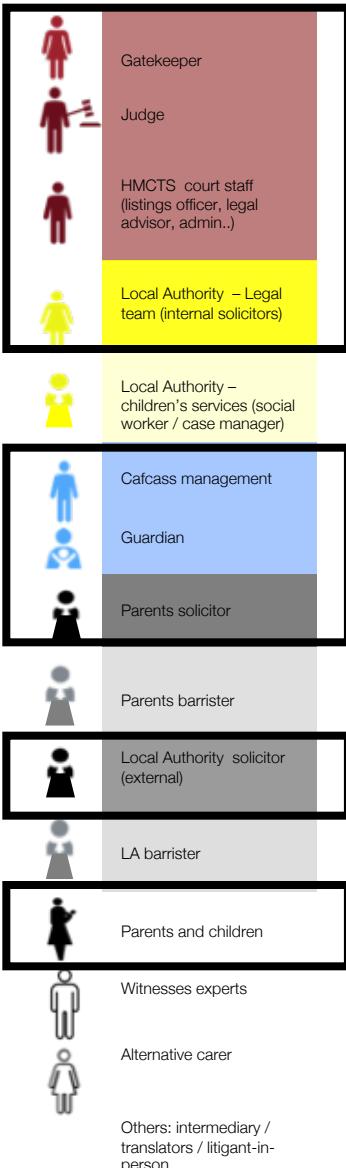
- The **solicitor at the local authority** starts the application for court. He gets the school evidence, case summary, the genogram (family tree) etc, so that he can put together the attachments and complete the C110a form. He needs to pay attention to confidentiality, as 2 different fathers with 2 different children are involved.
- He can't complete the application fully because, even though the social worker tried to draw a genogram with Anna to find alternative carers, Anna was reluctant to disclose any information.
- The solicitor emails **HMCTS admin** with the C110a form, attachments (case summary, threshold document, evidence from school etc) and payment details. He waits for the court to get back to him with the date of the first hearing but doesn't hear anything. He chases the court again to get an update on when the first hearing will be.
- HMCTS admins are overwhelmed with work, and don't reply to the solicitor's emails or answer his calls.
- Later that day, the solicitor finally gets an email from a HMCTS admin, asking for the the social team manager's signature - he forgot to include it on the form. Local authority staff scan the signature and email the application form back.

Proceedings – gatekeeping and standard directions



- After fixing the signature error, HMCTS admins are now able to send the application to the gatekeeper (legal adviser).
- At 9.45am, gatekeeping starts. The legal adviser receives all applications by email and she takes a first glance trying to understand the level of complexity in this case.
- She decides that it's a relatively complex case, as it has a mental health element, there's more than one child, 2 different fathers and an international element (one father is from Kenya). She assigns it to the appropriate tier of judge.
- The gatekeeper tries to find a **district judge** to approve her allocation decision but can't find the designated allocation district judge for that day. She decides to make an executive decision on her own.
- She writes up the standard directions order, and sends it to HMCTS admin to review before forwarding it on to the local authority. **HMCTS admin** realise that there are errors in the standard directions (the gatekeeper has left in names from a previous template and no judge had reviewed the order). It takes several emails between the gatekeeper and the admins before the standard directions order is finally ready to send out to the local authority.

Proceedings – notifying the parties



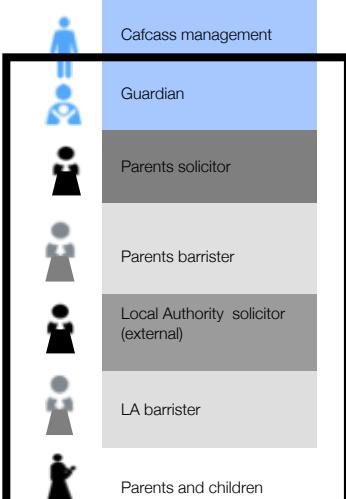
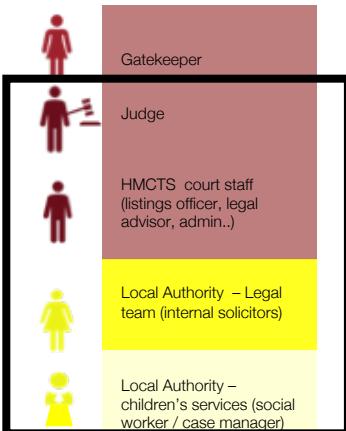
- The solicitor receives the standard directions the next day - the first hearing will be in 12 days and will be heard by a district judge. He's now in a position to **notify all the other parties involved**.
- The local authority hand-delivers a letter to Anna. She receives it at home, 4 days after the court application was made. But she only acknowledges it on day 5. She understands the letter but feels completely overwhelmed. She didn't really believe the social team would take her to court. She now has 7 days to call one of the parent solicitors listed in the letter. She feels overwhelmed trying to find childcare and work out how to get to the court, which is an hour away from where she lives.
- She finally appoints a **solicitor**. It's day 9. She has a brief phone conversation with her solicitor over the phone, where she shares her anxiety about going into proceedings. The solicitor then instructs a barrister who'll represent Anna at the hearing. As legal aid for solicitors doesn't allow for much time, that short phone call between them will be the only engagement.
- Cafcass is also notified of Anna's case. Lack of resources at Cafcass means they can't appoint a **guardian** immediately. The papers they've been given don't include the social worker's direct phone number. By the time a guardian is available and able to contact the social worker, it's already day 7. The guardian gets in touch with Anna on day 8. He manages to visit the children for an assessment on day 10 – only 2 days before the hearing.

Proceedings – advocates' meeting



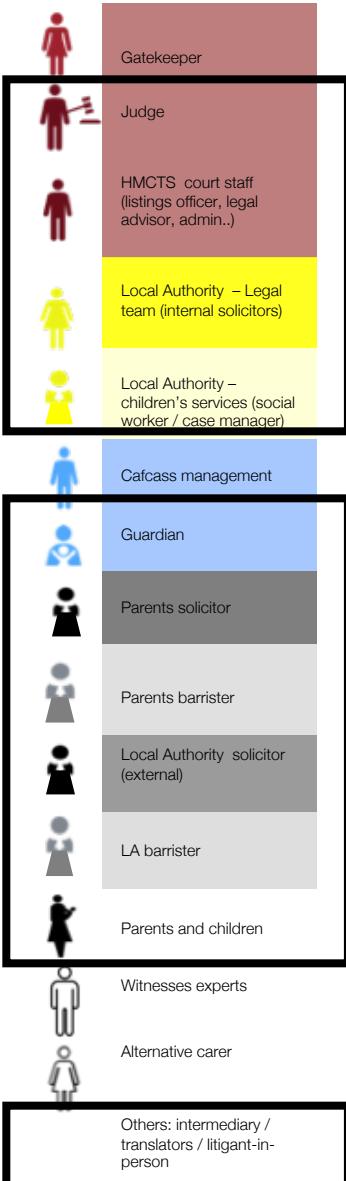
- Advocates' Meetings should take place 48 hours before the first case management hearing, with all solicitors and the guardian present. However, in this case, it happens the night before at 5pm by phone, with Anna's **solicitor** not fully instructed, no position statements available and the **guardian** not present.
- During the phone call meeting, the local authority solicitor says he wants to track down Alan's father, Jason (who has disappeared) through the **Department for Work and Pensions**. There's also possible **Home Office** information on Jason's immigration status and he wants to carry out further psychological and alcohol / drugs assessments. Anna's solicitor agrees to these things. They don't discuss which **expert witness** should carry out psychological assessments.
- The local authority solicitor ends up drafting the **case management order** (CMO) late that night and adds all requests and issues from the advocates' meeting to it.
- There's still no clarity on the part 25 application (to instruct expert witnesses) and no guardian's perspective is available. So the local authority solicitor ends up finishing drafting the case management order just before the hearing in the waiting room the next day, where he can meet with the rest of the parties, and get final information to complete the CMO.

Proceedings – before the hearing starts



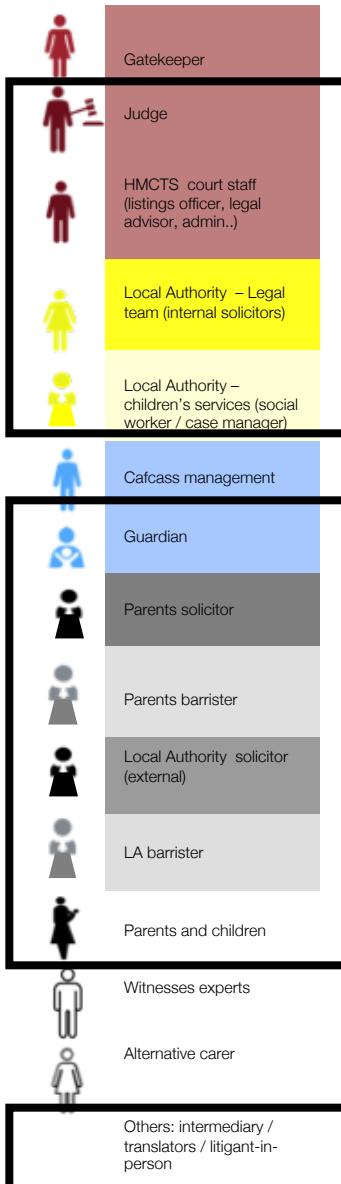
- The **judge** receives the bundle by email on the morning of the hearing and also has a paper bundle version delivered to court. The judge still doesn't have the guardian's report, nor the CMO, given that it was drafted the night before. (It's not possible to add any further documents to the bundle after 4pm on the day before the hearing). The judge wouldn't have had time to review all these documents anyway.
- Anna's anxiety was extremely high the day before the hearing - she didn't know who she'd be meeting at court, what her barrister would look like, what would be expected of her during that hearing and the idea of trying to find the court was overwhelming. She spent all night drinking and called Jason to tell him what was happening, as she hadn't told him anything until now. Jason says he wants to put himself forward as main carer. She feels a sense of competition and decides she must show up in court, even if half drunk. Anna manages to arrange for her **neighbour to care for the children**.
- The parties have trouble finding each other at court but all are present. There are no private rooms to talk. Anna tells her barrister that she doesn't want Jason to have Alan, as Jason is an alcoholic. The local authority barrister updates the case management order with Anna's latest position, as well as the local authority's request for DNA testing to confirm if Jason is the father (even though both Jason and Anna both agree that he is). The barrister sends the case management order to the judge with all the last minute updates by email at 11am, right when the hearing is due to start.
- Even though the hearing was listed at 11am, it ends up starting after lunch, as there have been several delays due to urgent hearings that the judge had to attend to in between. Everyone's been waiting 2-3 hours by this stage.

Proceedings – discussion during the hearing



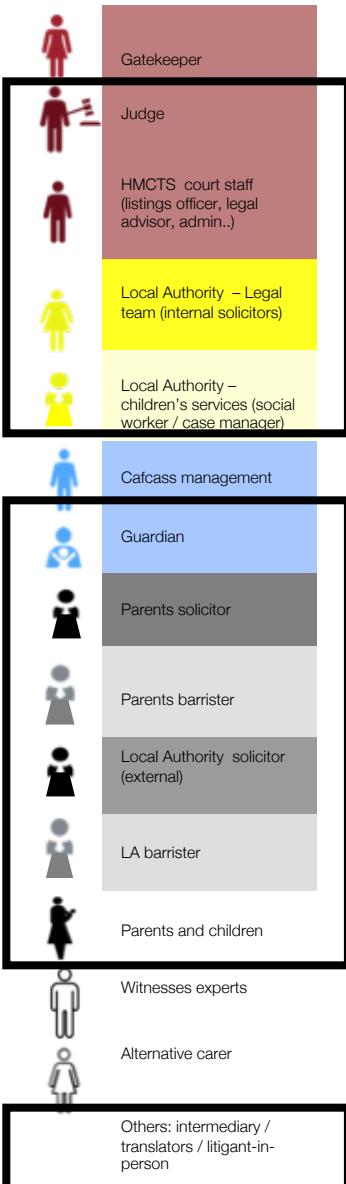
- All professional parties enter the hearing with their laptops but with outdated information in the bundle. The latest CMO isn't in there, as the latest version had to be emailed to everyone at 11am today.
- The judge arrives late to the hearing, as she needed to catch up with all the last minute information sent.
- The local authority explains that Jason is in court, and wants to be a **litigant-in-person**, as he can't get legal aid until his parental responsibility is confirmed. The judge accepts that Jason can be present at the hearing.
- All eyes are on the guardian, as no-one knows what he's going to say in his assessment. The guardian apologises for not having a report and gives a verbal assessment instead - he considers that the children are traumatised after long-term neglect, and suggests long-term plans for adoption or foster care proceedings, which weren't considered by the local authority in the first place.
- Anna doesn't fully understand, partly due to being drunk. She doesn't react immediately but Jason yells at the guardian when he understands what the guardian is suggesting. The judge calls for order.
- The different parties share their perspectives verbally, and also take notes on their laptops.
- Anna's barrister disagrees with the local authority's suggestion that a multi-disciplinary expert team assess Anna on the grounds that Anna's solicitor has never worked with this team. (This should have been discussed at the advocates' meeting, instead of at the hearing). Anna's barrister also requests the disclosure of a text message conversation that shows how much she cared for her children.
- The judge juggles between reading the positions at the screen and looking at people's faces. She makes notes in her paper notepad.

Proceedings – judge's orders at end of the hearing



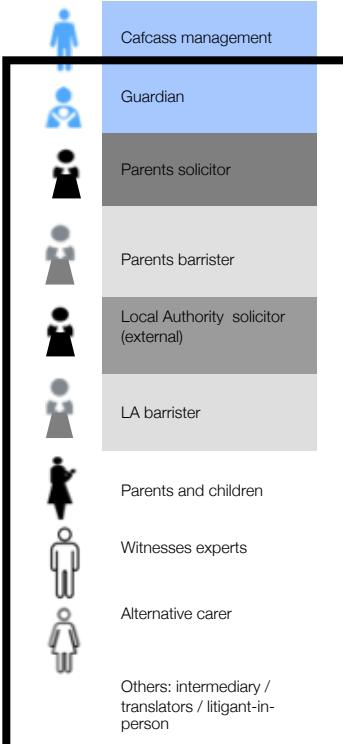
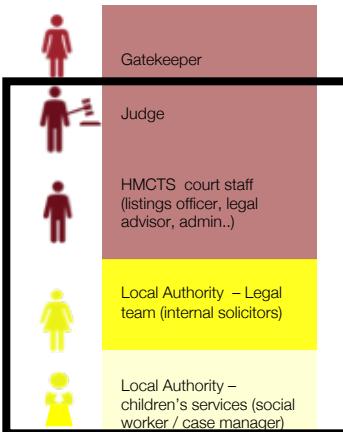
- Anna begins to understand the guardian's position and instructs her solicitor to object
- At the end of the hearing, the judge gives orders verbally:
 - **DNA testing** needs to be ready by 12 May
 - local authority will need to file a **request (C2 application)** to include the father as a party to get him **legal aid**
 - the request to instruct a multi-disciplinary team is accepted – objections denied
 - the judge asks the local authority to conduct a **family assessment conference** to assess alternative carers
- The local authority solicitor updates the CMO with the judge's orders, but doesn't have time to finish it in the hearing and get the judge's approval, as all parties need to rush to other hearings.
- Anna accepts the Family Group Conference and finally discloses the names of all her relatives in the hope of avoiding her two children being sent to foster care or adoption.
- A new hearing is now needed to review Jason's parental responsibility, possible Home Office disclosure, potential kinship assessments etc.
- The judge asks her **clerk** to check when she'll next be available and offers a couple of alternatives for a further case management hearing.

Proceedings – getting orders agreed, approved and acted on



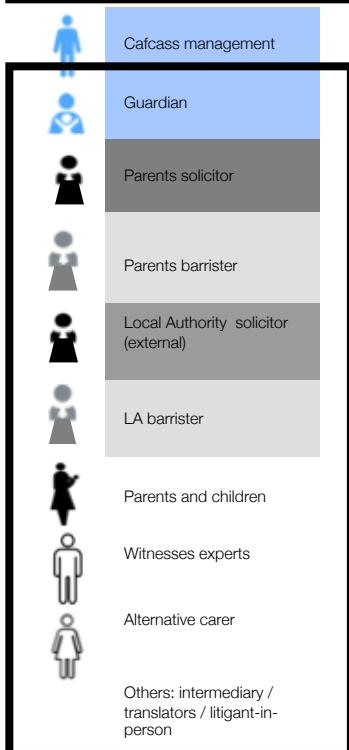
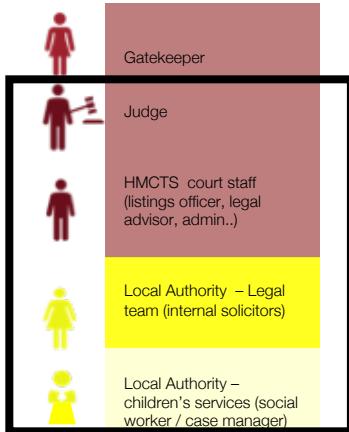
- The local authority solicitor updates the case management order (CMO) and the bundle with the latest information given at the hearing.
- The guardian's verbal position is the only information from Cafcass noted in the case management order, as no written analysis yet exists.
- The local authority solicitor shares the CMO with all parties by email to get their approval. After 10 emails back and forth with comments, the solicitor finally has a version he can send to the judge for her approval (7 days after the first hearing concluded).
- When the judge receives the CMO, she needs to go back to her hand-written notes to double check what directions she ordered in the hearing.
- In parallel, the parties have been working with the DNA test lab, calling Vodafone to disclose text messages, etc. The parties have had to use the semi-drafted order to update these third parties, even though it wasn't finalised and 'sealed' (approved) by the judge. It turns out that Vodafone is not willing to disclose the messages until they get the officially sealed order from the court.

Proceedings – extra hearings listed



- Vodafone's and the Home Office's evidence doesn't arrive on time for the next hearing but does arrive much later on in the proceedings.
- The DNA testing came back positive, confirming Jason as a parent to be assessed.
- In the meantime, the local authority had filed the C2 form, requesting Jason to be made a party to the proceedings. They managed to get the judge's approval for this via email (even though this isn't a formal way to get orders approved, it often works for them).
- The local authority has a list of 5 potential family carers for Tom (the baby) and in this new hearing, they want permission to assess these carers' viability.
- Anna's **assessment report** has also been completed, and the LA added it to the **bundle**. The reports suggests that, in the short-term, she won't be able to be a functional mother since she's also started taking drugs since the court process started.
- The local authority asks the judge to make an Interim Care Order (ICO) to safeguard the children until the final hearing, and the judge grants this order.
- The police are ordered to takes Anna's children from her neighbour's care before she gets back home. She screams at the judge. Even though she's started attending AA and psychiatric monitoring, she feels it's now too late for her and that she doesn't have any true support.

Proceedings – Final hearing



- At the final hearing everyone is present, except Anna.
- The judge starts the case in court without Anna and has a list of witnesses to hear. These include a teacher, a psychiatrist and a neighbour - some of these need to attend via video link.
- Events are delayed as the video link technology break downs initially.
- Jason's sister then arrives with her legal representative and an interpreter. However, the translator speaks a different dialect to the sister, so the hearing is delayed again until they find another interpreter by phone.
- Eventually, the hearing goes ahead and takes place over 5 days.
- On the last day, the judge decides to grant a special guardianship order to Jason's sister.

Aftermath of the case for Anna



- Anna's emotional state worsens after having lost her 2 children, and she becomes more dependent on drugs. She loses her job and ends up claiming benefits.
- In the years after, Anna has 3 more babies, each of them removed directly after birth at the hospital via urgent care orders.