

# **Family Public Law**

## **User Profiles**

**May 2018**

Family Public Law involves 17 different users, depending on the **complexity** of the case and the **number of parties** requiring legal representation.

Some factors which make cases more complex include:


- learning difficulties of any of the parents. This will require an intermediary working with the solicitor.
- international cases will require translators
- litigant-in-person involved (a party representing themselves, not using a lawyer).

Everyone with parental responsibility or putting themselves forward as alternative carer will require a legal representative. The legal representative can be only one lawyer, or two (the solicitor and the barrister).


In an attempt to simplify the complexity, we have developed:

Simplified user profiles - simplified descriptions of 17 types of users that describe their role and pain-points.  
Illustrative story - an illustrative story that showcases how each of the users interact between each other and the context in which they operate and make decisions.


## User profiles – Judiciary

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


## User profiles – Local authorities

	<b>Social Workers – Local Authorities</b>	<b>Legal Department – Local Authorities</b>
<b>Why are they important?</b>	<p>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</p>	<p>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</p>
<b>Pain points</b>	<ul style="list-style-type: none"> <li>• Spending most of their time assessing risk to the child, rather than supporting parents needs</li> <li>• Wasting their time waiting at court</li> <li>• Short notice for kinship assessments</li> </ul>	<ul style="list-style-type: none"> <li>• Wasting time doing a lot of admin work (preparing and re-keying information: C110A, C2, CMO...)</li> <li>• Burden of case progression (have to chase and being chased) lies only on them</li> <li>• Communicating with the court (unless they get direct e-mail from the judge)</li> <li>• Not receiving Cafcass perspective on time</li> </ul>


## 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"><li>• Getting instructions from parents who are sometimes unengaged</li><li>• Not being paid for pre-proceedings / efforts needed for proceedings</li></ul>	<ul style="list-style-type: none"><li>• Instructed very late</li><li>• Parents barrister often only meets parents right before the hearing starts</li><li>• Not being able to identify their own client at the waiting room / no privacy</li></ul>	<i>Hypotheses:</i> <ul style="list-style-type: none"><li>• <i>Not having access to the bundle due to HMCTS security controls</i></li></ul>	<i>Hypotheses:</i> <ul style="list-style-type: none"><li>• <i>Very limited access to case content and progression</i></li></ul>

## 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"><li>• Legal and court processes are extremely difficult to understand</li><li>• Legal reps in court talk about them, not to them</li><li>• Repeatedly told of their parental failings rather than their efforts to improve</li><li>• Fear of losing their child can exacerbate dependency and mental health issues</li></ul>	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"><li>• Feel they are unwelcome in court, making them fearful and angry</li><li>• Capacity to understand their situation often under-estimated or ignored by professionals</li><li>• Scared to ask questions about their case or their future</li></ul>	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"><li>• Conflicted between wanting to support the parent and being set against the parent</li><li>• No clarity if they will get legal aid</li></ul>

## User profiles – Other parties

	Cafcass – national	Cafcass - Guardians	Translators	Expert Witnesses
Why are they important?	Cafcass allocates guardians from central and regional resources. Guardians manage cases via a centralised 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	They are required to understand the process by non-English speakers	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"><li><i>Lack of resources when cases hit</i></li><li><i>Little visibility of case loads and pipelines within local authorities</i></li></ul>	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"><li><i>Not having immediate access to the social worker and other key parties</i></li><li><i>Spending time waiting at the court for the hearing</i></li></ul>	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"><li><i>Lack of legal aid means that they are only able to translate during the hearing. Lack of context, makes their job more difficult.</i></li></ul>	<p><i>Hypotheses:</i></p> <ul style="list-style-type: none"><li><i>Time pressure to produce reports within the deadline</i></li><li><i>Imperfect access to bundle information</i></li></ul>

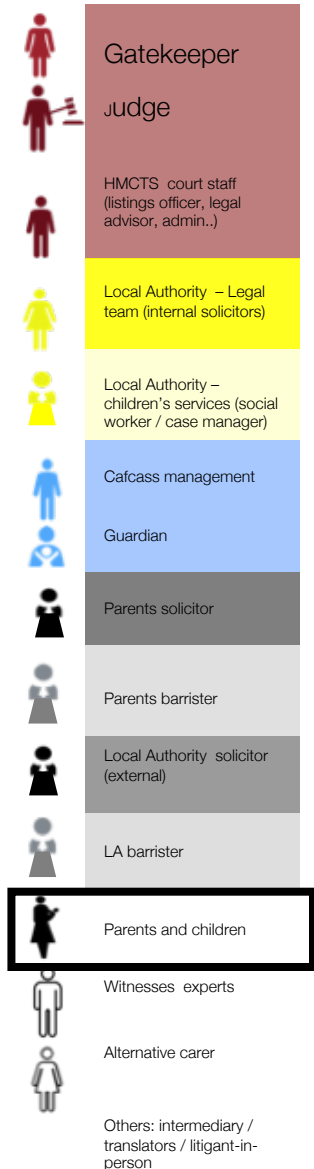
## Illustrative story:

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

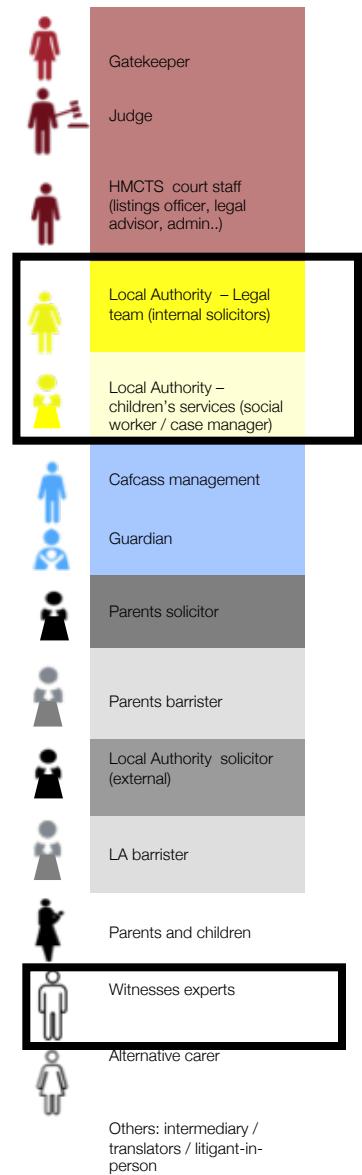


- **Anna** is a 25 year old single mum and works part time. She was sexually abused as a child and, as a way of protecting herself, often ends up living in unhealthy conditions.

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

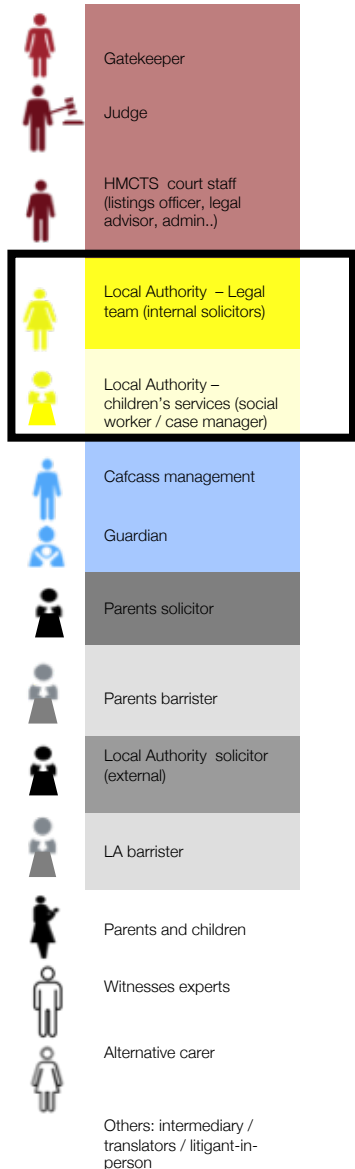
- One day, Anna met a new partner **Jason**, who has a history of alcoholism. Even though Anna wasn't an alcoholic before, her low self-esteem leads her into drinking heavily with Jason.
- She becomes pregnant during her relationship with Jason and gives birth to another boy, **Tom**.
- Jason lives with 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



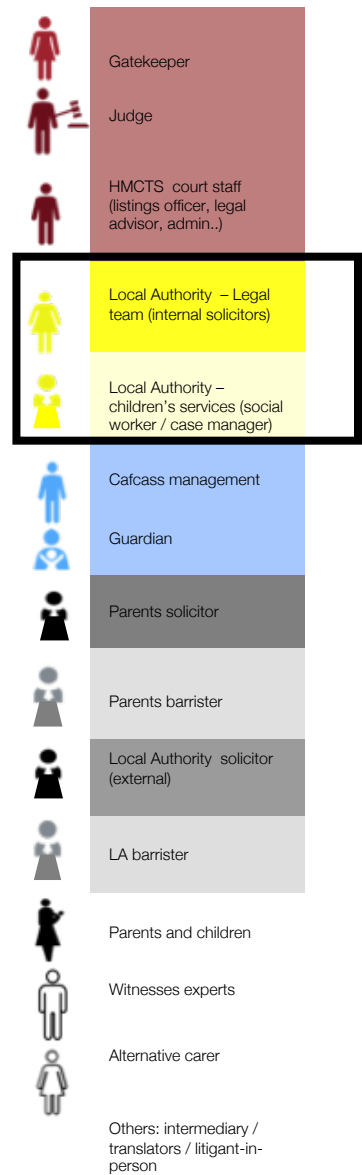
- The **school** begins to notice that Alan (the 5 year old) is coming to school not having eaten properly, and looking unkempt/unwashed. The school reports this to children's services at the local authority who carries out family assessments.
- The local authority instructs a **psychologist** to assess 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



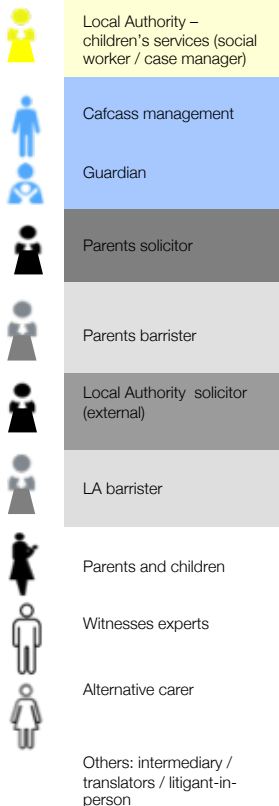
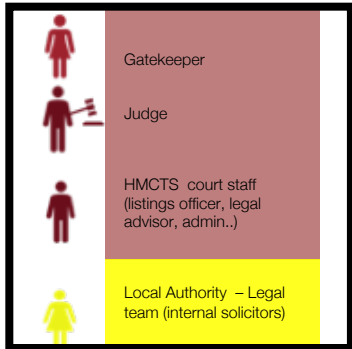
- With her increasing case load, the social worker has to reduce time spent on Anna's case. Given Anna's drinking has reduced, the local authority stops visits for several weeks.
- Eventually, the social worker visits Anna again and discovers that Jason is back in her life. Anna returns to the heavy 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 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



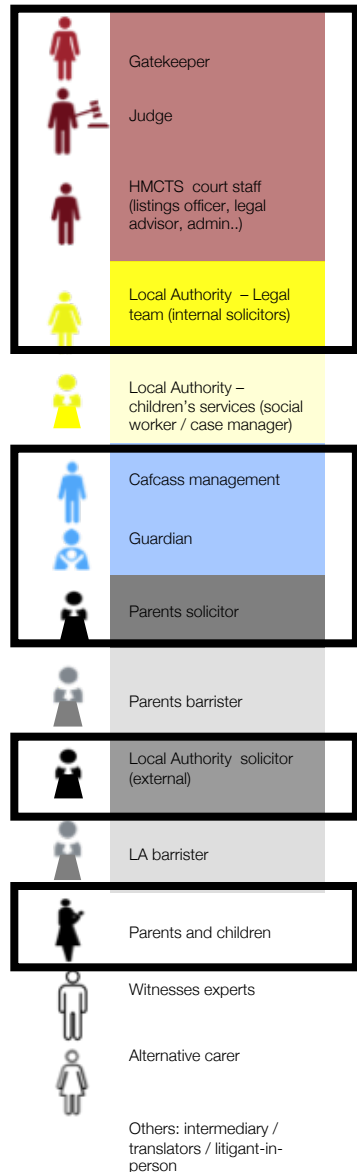
- The **solicitor at the local authority** starts the application for court. He gets the school evidence, case summary, the genogram (family tree) etc, so that he can put together the attachments and complete the C110a form. He needs to pay attention to confidentiality, as 2 different fathers with 2 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



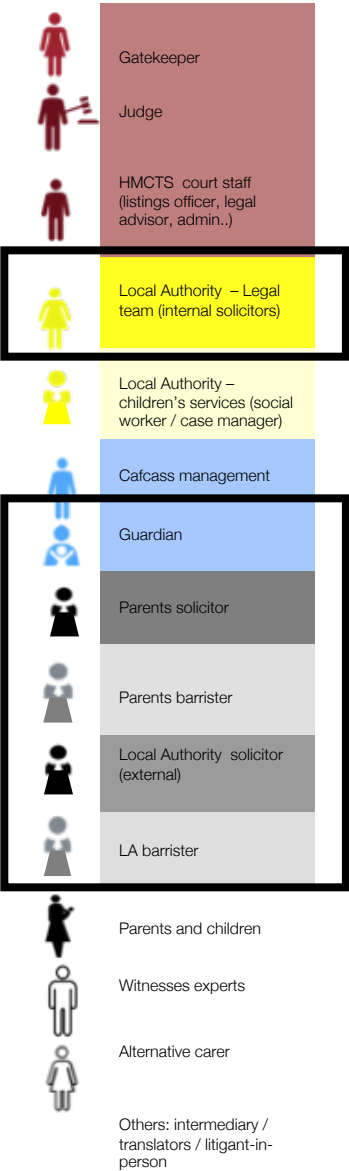
- After fixing the signature error, HMCTS admins are now able to send the application to the gatekeeper (legal adviser).
- At 9.45am, gatekeeping starts. The legal adviser receives all applications by email and she takes a first glance trying to understand the level of complexity in this case.
- She 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



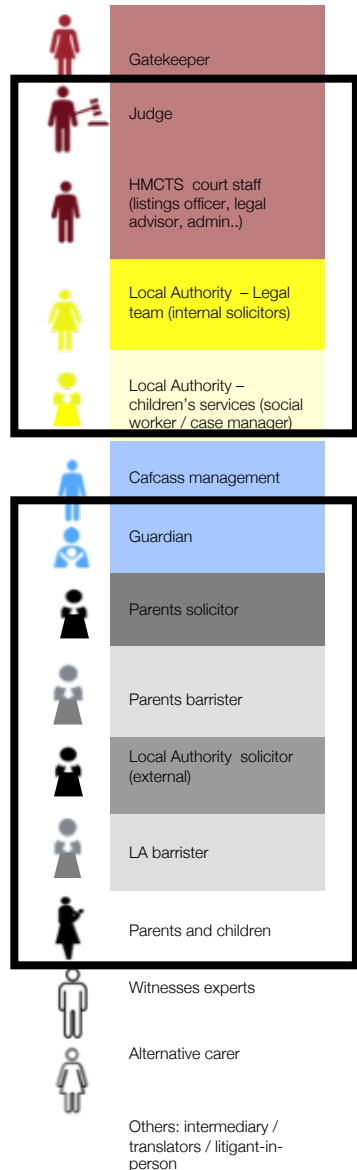
- The solicitor receives the standard directions the next day - the first hearing will be in 12 days and will be heard by a district judge. He’s now in a position to **notify all the other parties involved**.
- The local authority hand-delivers a letter to Anna. She receives it at home, 4 days after 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.

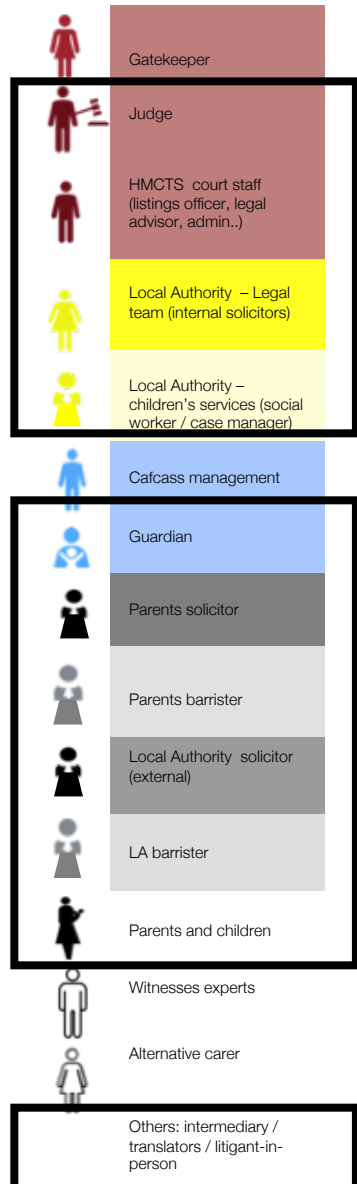
## Proceedings – before the hearing starts



- 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.

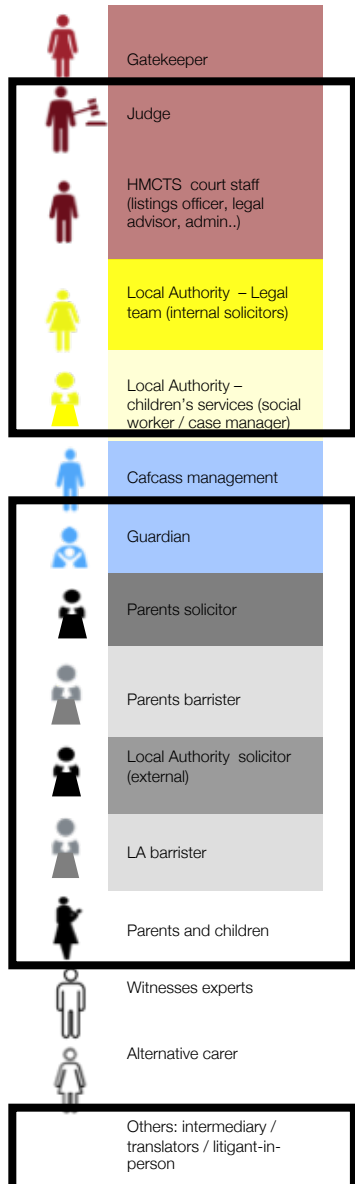


## Proceedings – discussion during the hearing



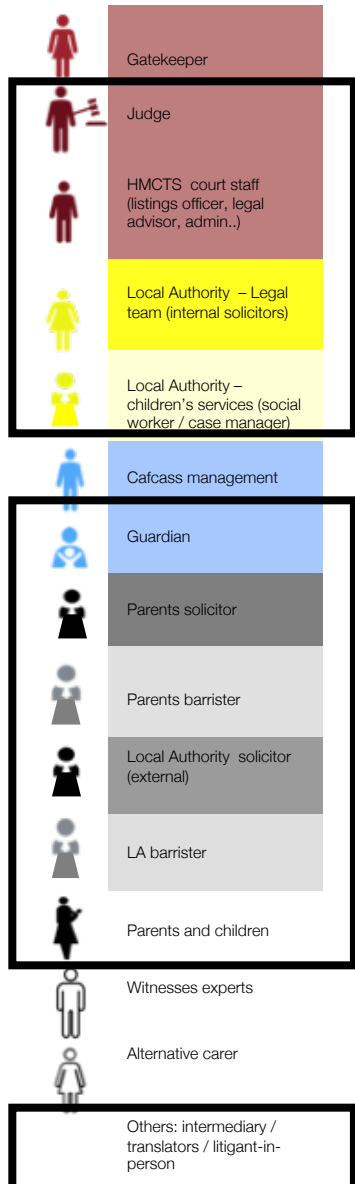
- All professional parties enter the hearing with their laptops but with outdated information in the bundle. The latest CMO isn't in there, as the latest version had to be emailed to everyone at 11am today.
- The judge arrives late to the hearing, as she needed to catch up with all the last minute information 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



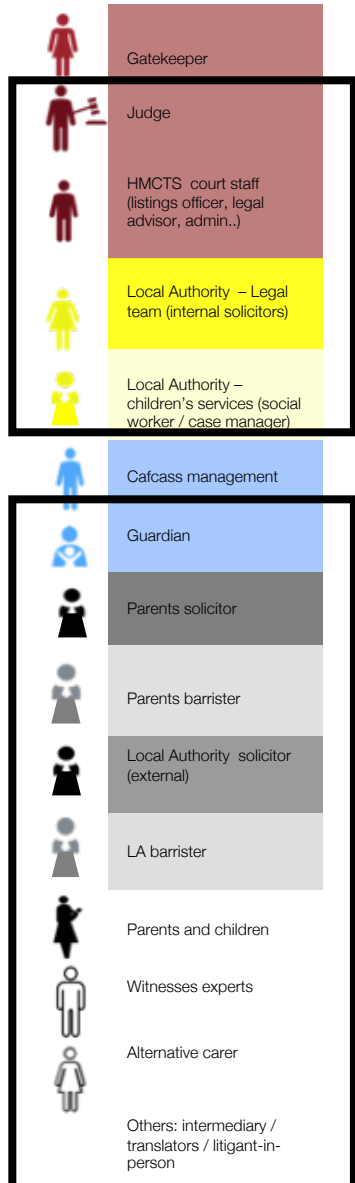
- Anna begins to understand the guardian’s position and instructs her solicitor to object
- At the end of the hearing, the judge gives orders verbally:
  - **DNA testing** needs to be ready by 12 May
  - local authority will need to file a **request (C2 application)** to include the father as a party 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



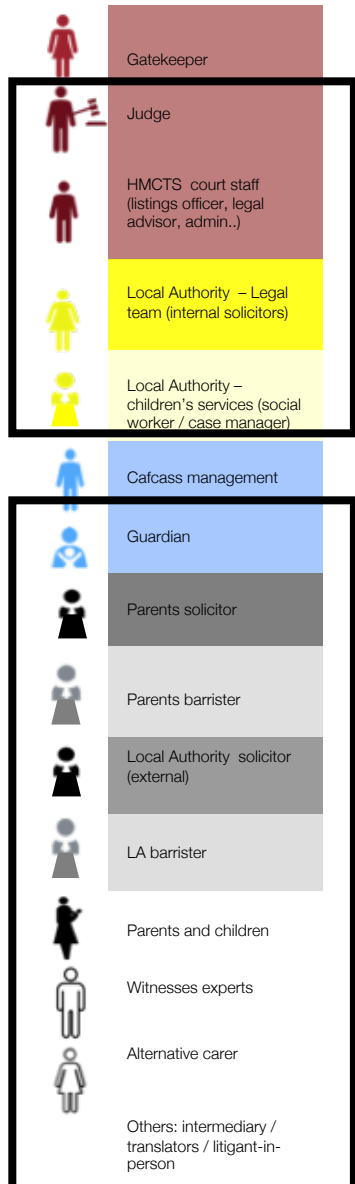
- The local authority solicitor updates the case management order (CMO) and the bundle with the latest information given at the hearing.
- The guardian's verbal position is the only information from Cafcass noted in the case management order, as no written analysis yet exists.
- The local authority solicitor 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



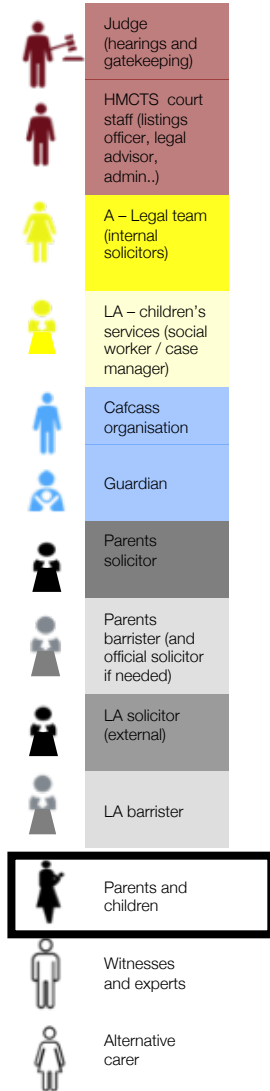
- Vodafone's and the Home Office's evidence doesn't arrive on time for the next hearing but does arrive much later on in the proceedings.
- The DNA testing came back positive, confirming Jason as a parent to be assessed.
- In the meantime, the local authority had filed the C2 form, requesting Jason to 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.