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

The Outcomes of Care Proceedings for Children Before and After Care Proceedings Reform Study Interim Report.

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Introduction: the research context

The last five years have brought important reforms to care proceedings. The Judiciary made proposals for modernising family justice with a focus on strong judicial leadership, judicial continuity and better case management.² The [Family Justice Review](#)³ recommended that the duration of care proceedings should be limited to 26 weeks, that fewer experts should be instructed in proceedings and there should be more limited scrutiny of the care plan, with the court considering only the plan for permanency (care by the parents(s), placement in the extended family, long-term fostering, or adoption) and not matters such as services for the child and contact arrangements. The Review's recommendations were enacted in the [Children and Families Act 2014](#), supplemented by new procedural rules (the [PLO 2014](#)) and implemented on April 22, 2014. This date also marked the opening of the Family Court, replacing the triple jurisdiction of the Family Proceedings Court, the County Court and the High Court.

The study

The [Outcomes of Care Proceedings for Children Before and After Care Proceedings Reform](#) study⁴ is being undertaken by a team of socio-legal and social work researchers at the Universities of Bristol and East Anglia, funded by the Economic and Social Research Council. It was designed to find out how the changes introduced by the Children and Families Act 2014 and the PLO 2014 have impacted on the decisions made in care proceedings and on children's subsequent care, and to compare these with the decisions and outcomes for a sample of children subject to care proceedings in 2009-10. This interim report provides the initial findings from the first part of the study on court process and decision-making:

Analysis of a random sample of care proceedings, issued between July 2014 and the end of February 2015, focusing on the court process and decision-making. These cases are compared with cases issued by the same local authorities in 2009-10, which were included in an earlier study: [The Operation and Impact of the Pre-proceedings Process for Care Proceedings](#).⁵

The second part of the study, which will be completed in 2018, will examine these children's administrative and children's services records to see whether the reforms have impacted on their care, and the utility of these as sources for informing family justice professionals about the children's longer term outcomes.

The samples

The study includes 373 care proceedings cases, relating to 616 children. The cases were randomly selected from proceedings issued by six local authorities (five in England and one in Wales). **Sample 1** consists of 170 cases with 290 children issued in 2009-10; **Sample 2** consists of 203 cases with 326 children issued in 2014-15. The local authorities were two shire counties, two unitary authorities and an Inner and an Outer London Borough. These authorities are not named to maintain the

confidentiality of the children and families involved in the care proceedings, and the professionals, including judiciary, who made decisions about their care.

The method of selection could not ensure comparability of the two samples so checks were undertaken to establish this. There were very few differences between the two samples as a whole in terms of the age, gender, ethnic origin, numbers of children in each case and the circumstances giving cause for concern. There were *statistically significant* differences⁶ in the length of time children's services had been involved with the family, with fewer cases in sample 2 where children's services had been involved for more than five years (S1= 17%; S2 = 4%), and more where they had been involved for under 12 months (S1= 54%; S2=65%). The proceedings in Sample 2 were less likely to have been issued in response to a crisis than they had been earlier (S1 = 27.1%; S2= 12.8%).

There were some differences in the ages of the children in the two samples within individual local authorities, but these do not impact on the analysis of the samples as a whole, nor on many issues examined at the local authority/ Area level.

Findings: 1) The court process

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

a) Judicial continuity

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

Average duration for cases heard by one judge was significantly shorter (by three weeks) than for those heard by two or more judges.⁷

Just over one-fifth of cases in S2 were heard by magistrates, compared with nearly three-fifths heard in the family proceedings court in S1. It is unlikely that any of these cases was heard by the same magistrates throughout. The proportion of S2 cases heard by magistrates also varied substantially from 6.5% to 34.1% in the different study Areas. These data cannot explain the reasons for the decline in use of the magistracy for care work – whether the reduction in cases allocated to magistrates was the result of unavailability of magistrates or legal advisers, or the views of gatekeepers about the suitability of cases for hearing by magistrates.

b) Number of hearings

The PLO 2014 specified three main hearings: the CMH, the IRH and the Final Hearing but allowed for additional hearings, to hear applications for interim orders, for fact finding, a further case management hearing (FCMH), and the possibility that cases would be completed at the IRH. The mean number of hearings for S2 cases was 4.52, with a median of 5 and a range of 2 to 12. There

were significant differences between Area B, which had the highest average number of hearings: 5.97, and Areas A and E, which both had averages below 4. Data on the number of hearings were not collected for S1 but in the [Care Profiling Study](#),⁸ which used data from cases issued in 2004, the average number of *interim* hearings was 8.4, with total hearings exceeding 10.

c) Completion at the IRH

Two contrasting types of case completed at the IRH: cases that were agreed by all the parties, many of which resulted either children remaining with their parent(s) or continuing in the care of a relative; and cases where parents became resigned to their children entering care or being adopted. Although case completion at the IRH was a possibility under the PLO 2008, which applied to S1, this occurred in only one case in that sample. More than a third of S2 cases completed at the IRH. There was a wide variation between Areas with the proportion of cases completing at IRH ranging from 10% in Area F to 62.5% in Area A.

d) Length of final hearing

Half of the final hearings were completed within a single day. This raises a question whether any of these cases could have been completed at the IRH with a consequent saving of court resources. If all the courts had achieved the average rate of case completion at IRH, there would have been 12 fewer final hearings; if they had achieved the same rate as Area A there would have been 55 fewer final hearings.

Of the remaining S2 cases with final hearings 10% lasted two days, 20% three days, 10% four days and 10% five days or more, with the longest cases having final hearings of 13 days. Case length and final hearing length were highly correlated: S2 cases that lasted over 32 weeks were significantly more likely to have final hearings lasting more than three days.

e) Case duration

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

As might be expected, cases finishing at the IRH were completed significantly more quickly than those which had a final hearing. The average duration for cases completing at the IRH was six weeks less than for those completing at a final hearing. Appointment of experts in proceedings was also associated with significantly longer proceedings.

Findings: 2) Assessments

The care proceedings reforms sought to limit the reliance on experts in three ways: a more restrictive test for the appointment of experts was enacted in the Children and Families Act 2014; the PLO 2014 increased the preliminary work lawyers had to do to make an application for permission instruct an expert; and the President of the Family Court, Cafcass and the Association of Directors of Children's Services (ADCS) all acknowledged the social work expertise of local authority social workers and children's guardians.

a) Experts before proceedings

There were two main reasons why local authorities commissioned expert assessments before proceedings were started. 1) Where there were issues beyond the expertise of local authority personnel. In those cases medical assessments of children's health or injuries; psychiatric or psychological assessments for parents; and assessments of parents' litigation capacity if this was in doubt were sought from experts. 2) Where local authority staff resources were over-stretched, social work assessments were commissioned externally. All these external assessments were included in the study as 'by experts'. Additionally there were DNA and substance misuse tests: 25% of cases involved DNA tests to establish/ confirm paternity; 41% involved testing a parent for substance misuse.

In over half of the cases local authority social workers undertook all pre-proceedings assessments and experts were not used at this stage. One expert was commissioned in a quarter of cases and the remaining fifth had two or more. Psychological or psychiatric assessments of parents were most common.

b) Experts in proceedings

The courts appointed experts in three-fifths of cases, with only one expert being used in the majority. There was considerable variation between Areas in the appointment of experts in proceedings, ranging from under less than 40% to more than 80% of cases, with courts in three of the six Areas appointing two or more experts in almost half of cases. The majority of assessments were ordered at the CMH (or FCMH); there were only 38 cases where experts were appointed to conduct assessments after the final CMH. These late expert appointments were to assess parental capacity or for viability or full assessments of relatives who had been put forward late in the proceedings.

c) Refusal of expert appointments

Areas that made more use of experts also refused more applications to appoint them. It appeared that the culture of reliance on experts remained strong in one Area with the court's willingness to appoint experts (even late in the proceedings) being tested in more than one-third of cases. This Area also had the highest rate of appointment of experts in proceedings; the high rates of use and refusal suggest both that the 'necessary' test was being interpreted less restrictively, and that agreement about this test had not been reached between practitioners and the court.

d) Use and impact of appointing experts

In almost a quarter of S2 cases all professional evidence of the child's needs and the parents' capacity to meet them came from the social worker and children's guardian. In another 20% expert evidence was obtained by the local authority before the application but no external experts were used in proceedings. Experts were appointed during the proceedings for all the remaining cases, and in half of these experts had also been instructed before the proceedings.⁹

There was no statistical relationship between the use of experts and the orders made in proceedings. This does not mean that individual experts did not provide assessments which changed case outcomes but that appointing an expert should be viewed only in terms of providing necessary information, not increasing the chance of a particular outcome.

The appointment of an expert in proceedings was statistically related to case duration. Cases without any experts in proceedings were significantly more likely to conclude at the IRH. Cases with no experts in proceedings completed, on average, more than six weeks earlier than those with any

experts. The use of experts was also identified as one of the factors contributing to significant delay in 20% of cases.

e) Assessments of kin

There is now a greater emphasis on placing children with their kin. Factors in both local authorities and the courts are driving this change. Within local authorities, increased recognition of the advantages for children of family and friends care, in terms of placement stability and identity has combined with shortages of foster placements to encourage kin care. In addition, the creation of special guardianship as a framework for permanent kin care and increased support for special guardians has encouraged relatives to provide care on this more formal basis. Within courts case decisions have emphasised the value of being brought up with kin, including where there is no pre-existing social relationship with the child. Such an approach has also been the subject of recent criticism from the Court of Appeal.¹⁰

Over a third of cases in Sample 2 involved viability assessments of kin before the proceedings were started, with 11% of cases having two or more such assessments. Full kin assessments were completed in 10 cases before the proceedings. Viability assessments were ordered before the IRH in nearly 60% of cases, with a total of 152, and up to seven assessments in a single case. Full assessments were known to have been ordered in 82 cases at this stage, with eight cases having two full assessments and three cases having three. There were 15 viability and 21 full assessments ordered at or after the IRH, allowing little time within the standard timetable to complete assessments or test placements.

Findings: 3) Court orders

The reforms of care proceedings were not intended to change decisions about children's futures, only to change the procedures to produce more timely decisions. There were no differences in the orders granted before and during the Tri-borough pilot¹¹ (which demonstrated that cases could be completed within 26 weeks). However, shortly after the introduction of the President's pilot for the PLO, the decisions in *Re B* and *Re B-S*¹² challenged accepted practice. Although the courts in those cases did not reject adoption plans, they gave the impression that adoption was less likely to be a proportionate response in care proceedings and that return home or placement with kin should be given more consideration.

a) Final orders

The pattern of orders in S1 cases was very similar to that observed in the *Care Profiling Study* (2004), with 59% of cases ending in care and placement orders or care orders. A similar proportion of these orders was observed in S2 in only one Area, where far fewer special guardianship orders were made.

There were three major differences between S1 and S2 in the pattern of outcomes: 1) the proportion of cases ending with a placement order halved; 2) the proportion of cases with a supervision order increased by 50%; and 3) the number of children with special guardianship orders with SOs rose from two to 40 (but there was no change in the proportion of special guardianship orders made without SOs). Conversely, there was almost no difference in the proportion of cases ending with a care order or residence/ child arrangements order to parents with supervision.

A third of children in S2 who were made subject to a SGO had not lived with their special guardians

before the order was made. An alternative arrangement, making a care order and approving the potential special guardian as a foster carer was used for 12 of the 82 children placed with kin including five of the 27 who had never lived with their relative before the final order was made.

The use of supervision orders with SGOs varied markedly between the Areas with SOs being made for one-third of children where SGOs were granted in four Areas but for at least three-quarters in the other two.

As might be expected, the pattern of orders for cases completing at the IRH in S2 was significantly different from that for cases ending with a final hearing. Only one-third of children were made subject to a care order or a care and placement order at the IRH, compared with over half at the final hearing. Conversely, a third of children were made subject to supervision orders at the IRH compared with only one-eighth at the final hearing. Fewer SGOs (with or without SOs) were made at the IRH than at the final hearing (20% compared with 28%) underlining the contentious nature of some SGOs, which were not approved by the local authority and/ or not accepted by at least one of the parents.

b) Contact orders

Contact orders were significantly more common for children in S2, where they were granted in respect of one-third of children, than in S1 where they were made for only one-eighth. This reflects the pattern of primary orders: contact orders were commonly made where children were placed with a parent or with kin; where care orders were made contact was reflected in the care plan and subject to regular review but not made the subject of a court order.

Discussion

The PLO and court resources

The PLO has been successful in reducing substantially the length of care proceedings, but not quite in ensuring that cases are completed in 26 weeks. Average completion times, monitored and reported by HMCTS, do not identify key factors for timely completion – judicial continuity, concluding cases at the IRH and minimising the use of experts in proceedings, all matters which were identified as varying substantially between the Court Areas in this Study. Despite training and standardization there is very marked variability in the practice in different courts, which results in greater demands on the resources of all parts of the family justice system, the courts, local authorities, Cafcass and the Legal Aid Agency.

These findings suggest there is considerable scope for saving court resources by improving case management, particularly a clearer understanding of what makes expert evidence necessary, increasing the proportion of cases concluding at an IRH and improving judicial confidence and consistency in managing contested cases. Of course, there can be no expectation that parents accept all proposals for their children's future care but the overriding objective necessitates the fair use of court resources so there must be limits to the time given to weak or unarguable points or adjourning cases where parents do not attend.

Court orders

Changing the pattern of orders could produce better or worse outcomes for children, this is a question to be considered in the second part of the study. This was not an intended consequence of

the PLO, and was not done with sufficient knowledge of outcomes beyond the court order. Whilst case decisions, which did 'not change the law' ([Re R \[2014\] EWCA Civ 1625](#), per Munby P at para 44) have clearly been influential in the decline in the numbers of placement orders, they do not necessarily explain why supervision is seen as able to ensure adequate care for more children nor the new reliance on SGOs with supervision orders. Other factors are likely to have contributed to these changes.

First, the reduction in the appointment of experts means that the main evidence about the child's needs and the parents' ability to meet them comes from the local authority. Courts and parents may be more willing to accept that needs exceed capacity when this assessment comes from an expert appointed by the court. Certainly, the preference for experts over the case-holding social worker can be seen in reported cases, and *Re B-S* and the cases that followed focused on assessing the social worker's evidence by reference to its format, not his or her knowledge of the child and family. Secondly, shorter cases mean that fewer parents have ceased to engage with the court with the result that there is more potential for contest. Increased use of supervision orders by the court may be difficult to resist alongside greater emphasis on timely decisions and avoiding contests. Thirdly, the courts were more likely to lack evidence about children's day to day functioning away from parents because interim care orders were less likely to be granted and courts were less willing to allow children's removal under an ICO. Late presentation by potential kin carers leaves little time for thorough assessment or introductions for children (indeed a third of children subject to SGOs had no trial of this placement before the order was made). In this context, a supervision order may appear to provide some security for the child: at least if the order breaks down within the first 12 months the local authority should be in contact with the carer. Such an approach seems similar to that criticised by the Court of Appeal in [Re W \[2016\] EWCA Civ 793](#) at para 68, displacing a comprehensive welfare assessment with a preference for the family.

In many cases the local authority accepted the final order; there was only one case where the local authority appealed: supervision orders were replaced with care and placement orders. Most applications for orders followed a period where the local authority social worker had attempted to engage parents to provide better care; it was the failure of this 'voluntary' work which resulted in the court application. Given this and the limited powers supervision orders provide courts, Cafcass and local authorities all appear to be placing greater confidence in SOs to achieve change than they have done previously. Again it is not clear that there is an evidence base for this.

Impact on local authorities

There should be no doubt that the large number of assessments (both viability and full assessments) make very substantial demands on local authority resources. Limited resources necessarily mean that those expended on assessing numerous potential carers for a single child or relatives who withdraw, are not available to support children and families. Withdrawal by relatives who have been positively assessed was not uncommon, also a change of minds after withdrawing and asking to be reconsidered, sometimes in a different relationship. The speed with which the courts required some assessments and the inconsistency of some potential carers cannot give confidence in the continuation of some placements.

A realistic view has to be taken of the potential as carers of those who are unknown to the child and only come forward when an application for a placement order is made. Creating a court culture which supports identification of potential relatives before or at the CMH is important to give sufficient time for local authorities to assess kin carers, relatives to consider thoroughly what caring

for their child relative will mean for them and for children to be prepared. Such an approach is undermined by ordering assessments at or after the IRH, and is likely to encourage, not discourage, late applications. It will always remain open for local authorities to place children with suitable kin even after a placement order has been made.

Further work

There will be further analysis of these data, including examining whether the PLO has led to a delay in bringing proceedings, how interim orders are used during proceedings and what issues are contested. The second part of the study will examine longer term outcomes including stability of children's placements and subsequent entry or exit from care, and will include the perspectives of local authority staff and members of the judiciary.

The researchers acknowledge the assistance of Cafcass and the Welsh local authority in facilitating access to the records required for the Study. Ethical approval for the research was obtained from research ethics committees from the University of Bristol, the University of East Anglia, research governance committees at Cafcass and the participating local authorities and the project was approved by the President of the Family Division.

Footnotes:

- [1] For further details please contact Professor Judith Masson, School of Law University of Bristol Judith.Masson@bristol.ac.uk
- [2] The Judiciary (2012) Modernising family justice.
- [3] 2011, available at <http://bit.ly/18mKlwG>
- [4] <http://gtr.rcuk.ac.uk/projects?ref=ES/M008541/1>
- [5] Masson et al (2013) Partnership by Law? Available at <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/partnershipbylaw.pdf>
- [6] Where differences are said to be statistically significant $p = < 0.05$ (or smaller).
- [7] 25.1 weeks compared with 28.4 weeks. This analysis excludes three excessively long (unmanaged) cases in the single judge sample.
- [8] <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/care-profiling-study-report.pdf>
- [9] These cases included those where the same experts was appointed, approving the original arrangement which had not been completed before the application was made.
- [10] [Re M'P P \[2015\] EWCA Civ 584](#); [Re W \[2016\] EWCA Civ 793](#).
- [11] Beckett et al (2013) Concluding care proceedings in 26 weeks Available at <http://www.uea.ac.uk/documents/3437903/0/Triboro-Report.pdf/3ca637ea-543e-4354-869e-40bef566c021>
- [12] [Re B \[2013\] UKSC 33](#); [Re B-S \[2013\] EWCA Civ 1146](#).