

# Review of the Child Care Proceedings System in England and Wales



## Summary

- 1.1 This Review has examined the child care proceedings system in England and Wales with two aims: to improve the system for children and families subject to proceedings; and to ensure that all resources in the system are used in the most timely, effective way.
- 1.2 This is not the first examination of the child care proceedings system. This Review recognises the wealth of previous work in this area and the complexity of the issues involved. Both professional practice and policy initiatives are already driving improvements.
- 1.3 However, it is widely recognised that, building on the work that is already underway, more can and should be done to improve the child care proceedings system. The ongoing issues highlighted in this paper have been analysed many times before. More needs to be done to ensure that recommendations for change make it off the page and into practice. This Review will only be effective if a concerted effort is made to implement its recommendations over time, building on the many examples of existing good practice. In addition, the impacts of any changes to the system need to be monitored as there is currently insufficient performance management data to measure change.
- 1.4 The Review's analysis has identified the following issues as being significant in relation to outcomes for families and children and to the use of resources within the child care proceedings system. These issues are not new and much is already being done to address them. However, there are ongoing areas of serious concern:
  - forecast increases in the volume of s31 cases likely to come to court;
  - unnecessary delay, which is caused by a complex set of drivers, including poorly prepared applications to court, ineffective case management, scarcity of judicial resources; variation in quality of representation; expert evidence that takes a long time to commission and / or is requested late in proceedings and / or does not provide suitable guidance for the court; the late allocation of the children's guardian, delaying the start of their appraisal of the local authority's (LA) work in preparing the application; alternative carers emerging late in proceedings; and regional variations in practice;
  - families' lack of understanding of the process and their difficulties in engaging with it, including the impact of the focus on permanency through substitute family care (the perception that children are likely to be permanently removed from birth parents, potentially with no contact) and the ability of vulnerable families to understand local authority concerns and to be encouraged to address these as early as possible and before proceedings are issued;

- the complexity of cases (and the impact of this on other factors, such as children’s and families’ understanding, unnecessary delay and the volume of paperwork generated for practitioners); and
- the need for better inter-agency working to achieve holistic improvements in the child care proceedings system.

1.5 Reflecting these issues, the Review’s recommendations fall into five areas that aim to deliver improvements across the child care proceedings system, building on good practice already in evidence:

1. to ensure that families and children understand proceedings and are, as far as possible, enabled positively to engage with the system;
2. by encouraging, where safe or desirable, the exploration of alternatives to court proceedings;
3. by improving the quality and consistency of s31 applications to court;
4. by improving case management during proceedings; and
5. by encouraging closer working relationships between agencies in the system.

1.6 Recommendations are divided into “immediate recommendations” that could be implemented within 12 months under the current legislative framework, and longer term recommendations that form a broader strategic framework to drive continuous improvement in the child care proceedings system. Key to ensuring the positive impact of the recommendations will be their robust and timely implementation.

## 2. BETTER INFORMED RESOLUTION

**Ensure applications are only made after all safe, appropriate alternatives have been explored**

- Early interventions to engage parents and find kinship carers: Family Group Conferences
- Fixed fee early legal advice pilot for families

## 1. HELPING FAMILIES

**Ensure families and children understand proceedings**

- Simple language document drafted before issue of proceedings to explain local authority concerns to families
- Give parents list of local panel solicitors and / or local family law firms
- Examine options for restricting legal aid funding to Panel Solicitors
- Better information for parents and children
- Purposely informal approach by judiciary when talking to families and children

## 3. PREPARATION FOR PROCEEDINGS

**Improve quality & consistency of s31 applications**

- Effective scrutiny of applications to ensure the quality of local authority preparation
- Incentives to quality
- Local Authority performance in preparing applications to be monitored
- Judiciary to ensure local authorities pay for additional expert assessments when these are needed to ‘plug the gaps’ in core assessments

## 4. DURING PROCEEDINGS

**Improve case management during proceedings**

- Develop judicial case management role
- Change timing and scope of First Hearing to identify key issues earlier
- Identify likely care options and expert evidence requirements at First Hearing
- Summarise First Hearing decisions in a simple language document to help communication of issues to all parties

## 5. INTER-AGENCY WORKING

**Encourage closer professional relationships**

- Evaluation of joint targets and single funds to encourage shared priorities and planning
- Change listings procedures to facilitate appropriate Advocate’s Meetings during proceedings (without wasting judicial time)
- Implement common measures for data collection across the system

- 1.7 Where the recommendations in this report are concerned with legal aid, they are subject to the final report by Lord Carter of Coles, who is conducting an independent review of Legal Aid procurement. Lord Carter was asked by the Lord Chancellor to conduct a review which would produce a plan to implement a package of reforms to the way publicly funded legal advice and representation are procured by the state. The terms of reference were set out in the command paper 'A Fairer Deal for Legal Aid' and can also be found at [www.legalaidprocurementreview.gov.uk](http://www.legalaidprocurementreview.gov.uk). The final report by Lord Carter is expected later this spring and will make recommendations on family legal aid.

### Helping families

- 1.8 To make immediate improvements to families' and children's understanding of the process the Review recommends that:
- parents are provided, as a matter of routine, with a list of local Law Society Children Panel solicitors and / or local family law firms to improve their access to appropriate legal advice (the requirement to provide such a list should be included in the pre-court guidance proposed below);
  - the provision of legal help pre-proceedings is piloted. Subject to the outcome of Lord Carter's Review of Legal Aid Procurement and its recommendations on family legal aid, we propose that this ought to be funded through legal aid on a fixed fee basis, accompanied by evaluation of the impact of this pilot on the experiences of parents / carers, the number of cases that proceed to court, and the preparedness of those cases that do proceed to court;
  - children, of sufficient age and understanding, who are subject to proceedings should, on issue of proceedings, routinely be given detailed information, in language they understand, by their social worker in order to explain to them what to expect of the process, in accordance with current good practice;
  - through judicial training and best practice guidance, the judiciary are encouraged to address parents directly, listen sympathetically and show an interest in all the participants (including children, when they are present in court), and to avoid legal jargon; and
  - the short document outlining the aims of the case further to the revised first hearing is given and explained to parents and carers (and directly to older children) as a tool to ensure that the key issues in the case are properly communicated and understood.
- 1.9 In the longer term, more can be done to engage families in addressing local authority concerns earlier, with the aim of avoiding proceedings altogether where possible or desirable; ensuring they understand these concerns and how the process works; and that alternative care options have where possible been considered pre-proceedings.

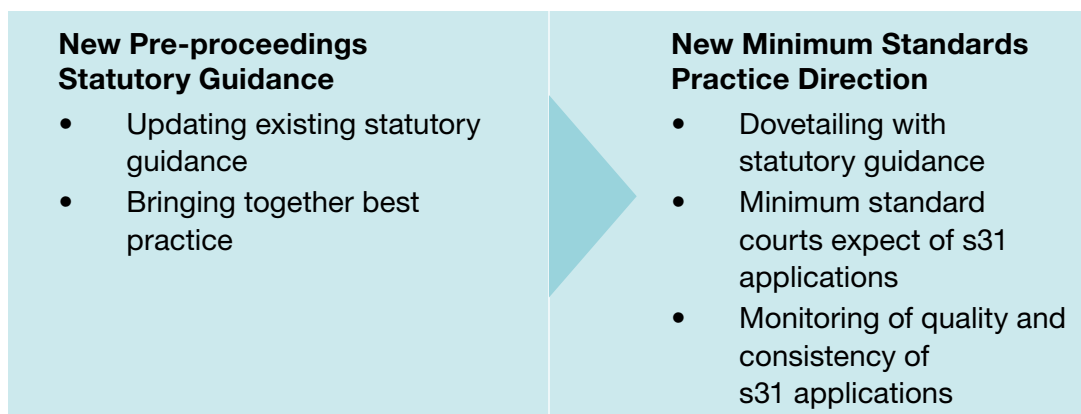
For the longer term the **Review recommends**:

- the provision of access to independent support for parents as their social worker becomes engaged in s31 proceedings (this could be achieved in conjunction with the roll-out of the pre-proceedings legal advice pilot recommended above);
- subject to Lord Carter’s Review of Legal Aid Procurement, we will carefully consider the options, including the practicalities and potential benefits, of restricting funding of solicitors for children and families involved in s31 proceedings to those solicitors who are on the Children Panel; and
- evaluation of the potential of new, accessible, tools to encourage families to engage with child protection agencies and explaining the process and advice sources, such as making available an explanatory DVD in appropriate language(s).

### Better Informed Resolution

1.10 For immediate action to ensure that s31 applications are only made after all safe and appropriate alternatives to court proceedings have been adequately explored, **the Review recommends that**:

- all existing pre-proceedings guidance and best practice on case preparation should be combined into one document (which could be used as a checklist) and issued to local authorities as statutory guidance;
- a Practice Direction covering the minimum the court expects of every s31 application in a way that dovetails with this statutory guidance should also be issued; and
- the best existing practice should be followed in regard to the use of pre-proceedings advice, support and advocacy initiatives such as Family Group Conferences (FGCs) and exploration of any appropriate kinship care opportunities for the child. This should be covered in the statutory guidance and Practice Direction on minimum standards for s31 applications.



## Preparation for proceedings

1.11 For immediate action to improve the quality and consistency of s31 applications the Review recommends that:

- in line with current good practice, local authorities should hold a 'gateway' meeting (face to face or virtual) prior to application to court to ensure that applications to court demonstrate adherence to the statutory guidance described in 1.10 above, and that the aims of their case and proposed care plan are clearly laid out in a short document in simple language to facilitate communication with families about the nature of the local authority concerns, what the key issues in the case are and the proposed interim care plan;
- this short document is provided and explained to families (and directly to older children) to ensure that they understand that the local authority is applying to court and the basis of the local authority's concerns. It should subsequently form part of the application to court and be revised and re-circulated, if necessary, in light of the key issues identified at the first court hearing;
- when an application first reaches the court it is scrutinised against the Practice Direction on minimum standards for s31 applications to ensure that it is fit to proceed promptly;
- as part of this stage, the potential benefits of different means of promoting compliance with the statutory guidance and the Practice Direction are explored, for example through: encouragement of greater use of existing powers on cost orders; use of the fees structure so that it better reflects the true costs incurred by poorly prepared applications; or wider use by the courts of the existing power to require the Chief Executive or other senior officer of the local authority to offer an explanation to the court if applications are consistently poorly prepared. These procedures would need to take account of cases where the welfare of the child requires immediate action;
- in scrutinising the fitness of applications, the court keeps a record of the level of compliance of applications with the Practice Direction (full / partial / not at all), as a means of measuring consistency and managing performance;
- adherence to the statutory guidance and the Practice Direction also forms part of independent performance monitoring of local authorities; and
- courts uphold much more strictly the principle that core assessments are the responsibility of the local authority and where they are not completed, or not completed to a high enough standard, legal aid should not be used to pay for remedial assessment activity to complete the core assessment.

## During proceedings

1.12 To make immediate improvements in the management of s31 court proceedings, **the Review recommends that:**

- the scope and timing of the First Hearing is revised to incorporate steps 1-3 of the Protocol for Judicial Case Management in Public Law Cases (2003). The additional aims of the hearing should be to identify the key issues in the case as early as possible, to examine the interim care plan for the child, to agree what expert evidence is required, and to agree the points that need to be included in a draft letter of instruction;
- the short, simple language document prepared by the local authority at the gateway meeting should form part of the application to court and be revised and re-circulated in light of the key issues identified at the first court hearing; and
- the listings procedures are changed to ensure that listing times take account of any time needed for the parties and their advocates to meet outside the presence of the judiciary and to avoid such meetings taking place whilst the judiciary is waiting.

1.13 **The Review also recommends** consideration of longer term strategic options to improve management of s31 proceedings including:

- development of a revised system of assessments in s31 cases. Based on the pre-proceedings statutory guidance and the minimum standards practice direction, it is expected that all local authorities will provide information from a core assessment as part of their information to support the application. This should be available in all the non-urgent applications before the court. These core assessments should comprise input from the range of professionals working with the child and family. In addition, where the core assessment has indicated the need for a further assessment in relation to a specific need, this information should also have been obtained by the local authority in advance of the application. The gateway meeting (paragraph 1.11 above) will be expected to ascertain that all such information, from a range of disciplines, is available for the court as part of the local authority's application;
- once the case is before the court, there may be a need for evidence in relation to the threshold criteria (see below). There may also be a need for further assessment – 'welfare assessments' – to assist the court in ascertaining what disposal will be in the best interests of the child. Specifically, the court will need to know in all cases how the parents have responded to the challenge of the court process and how able they are to make the necessary changes in order to parent successfully in light of the individual needs and characteristics of the child. Overall, the court needs to hear advice on what timescale may be needed to enable the parents to meet these changes and how this balances with the timescale of the child's needs. These welfare assessments are currently conducted by independent experts: in future they should consist of one



multi-disciplinary assessment of the family by a multi-disciplinary team of professionals over a limited timeframe (where the court feels that such an assessment is appropriate and necessary); and

- in cases where the threshold criteria will need to be proved, based on contested medical evidence, the court should take steps to ask for preliminary advice from medical experts as to the key issues and whether further medical information will be required in order to help the court reach a decision about the threshold criteria.

### Inter-agency working

1.14 To make immediate improvements in professional relationships and inter-agency working, **the Review recommends:**

- further work looking at how greater use of joint targets and funds across agencies might encourage joint planning and shared priorities, whilst ensuring the agencies maintain appropriate independence;
- that Independent Reviewing Officers (IROs) receive, from local authorities, the court's judgments, the agreed care plans and relevant written directions as a matter of course in order to inform them of what was agreed with the local authority in court; and
- that consideration be given to the costs and benefits of implementing face to face hand-overs between children's guardians and IROs to ensure that key information is communicated properly.

1.15 To improve the robustness of performance management information and data, **the Review recommends** taking forward a programme of work to standardise data collection across the agencies involved in child care proceedings in order to facilitate monitoring of potential improvements and outcomes for children and families. This should include using a unique identifier for children in order to link data from all the agencies involved; and modifying the way data is collected by all agencies to ensure it can be used collectively using similar units of measure.

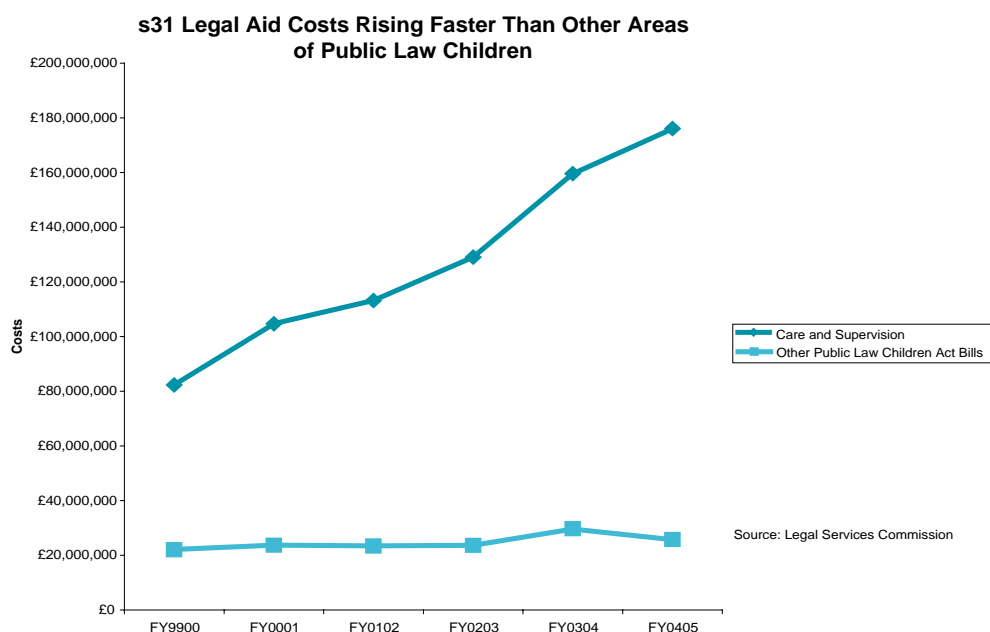
## Remit of the Review and Policy Context

2.1 The joint Department for Constitutional Affairs (DCA) and Department for Education and Skills (DfES) Child Care Proceedings Review (the Review) was announced in July 2005 in the Command Paper 'A Fairer Deal for Legal Aid'. Public Law Children Act (1989) proceedings were identified as a steadily growing area of legal aid spend. The need to ensure that legal aid makes the most effective contribution possible to safeguarding children at risk was highlighted.

2.2 The terms of reference of the Review are at Annex 1. The Review has focused on how to improve the child care proceedings system for children and families in England and Wales, while ensuring the sustainability of the system through better use of the resources for which DfES, DCA and the Welsh Assembly Government are responsible:

- local authority (LA) expenditure on care proceedings (within the overall budget for children's services);
- the running expenses of the Children and Family Court Advisory and Support Service (CAFCASS and CAFCASS CYMRU),
- the cost to Her Majesty's Court Service (HMCS) of providing a court based family justice service; and
- expenditure on family legal aid for public law (s31) Children Act 1989 cases provided through the Legal Services Commission (LSC).

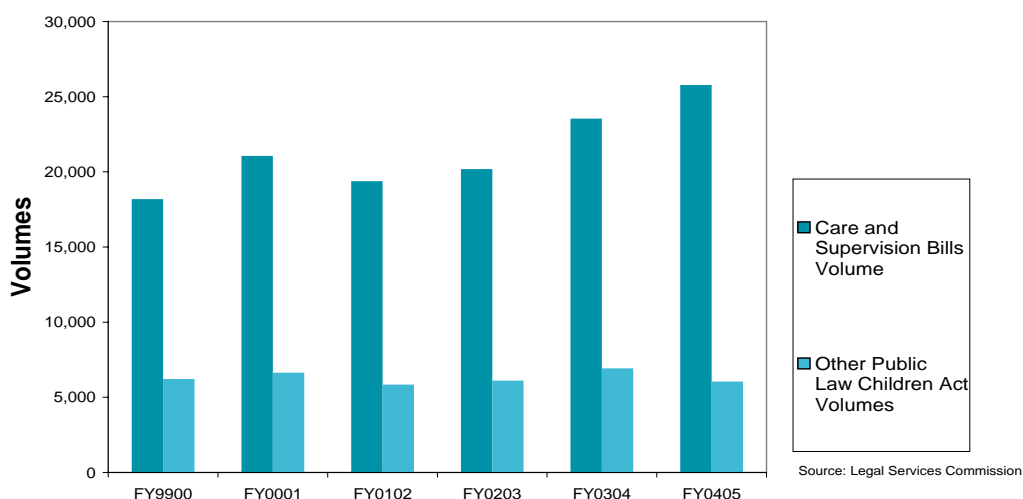
Chart 1



- 2.3 The Review has looked exclusively at s31 cases (care and supervision). These account for the majority of public law children legal aid bills in terms of both volume and expenditure and the proportion has been increasing faster than for other public law children bills (charts 1 and 2). Volumes of s31 bills have risen from 75% to 81% of all Public Law Children Act bills since 1999/00 and total expenditure on s31 bills has risen from 79% to 87% of all legal aid expenditure on Public Law Children Act bills over the same period. Volumes and costs of other public law children bills (such as discharge of care orders and appeals to higher courts) are relatively static.

Chart 2

**s31 Legal Aid Bill Volumes Growing Faster Than Other Areas of Public Law Children**



- 2.4 The Review has considered the handling of s31 cases from start to finish (both before application to court and throughout the court process) including the court's consideration of care planning and implementation. The Review has also considered research on children and families' experiences of the system.
- 2.5 This paper sets out the Review's recommendations, based on views gathered from a broad range of stakeholders, analysis of available qualitative and quantitative data, and an academic literature review commissioned for this Review. These materials form the evidence base for the Review's recommendations and copies are available on request<sup>1</sup>. However, a recurring issue in this Review (and in previous work on the child care proceedings system) is the lack of available joined up, reliable, data. As a result some very basic questions on case outcomes and use of resources cannot be answered. This issue is addressed in the Review's recommendations.

<sup>1</sup> The material that are cited as the evidence base for the proposals outlined in this paper are contained in the following reports: the report of the qualitative and quantitative research analysis (which is referred to as 'Desk Research' throughout this paper); and Dr Brophy's Academic Literature Review ('Child care proceedings under the Children Act 1989' - referred to as 'Brophy ALR' throughout this paper - which covers larger scale empirical research on care proceedings, primarily but not entirely commissioned by government in the fourteen years following implementation of the Children Act).

2.6 Previous reviews of the child care proceedings system have identified its complexity and that there is no simple way to improve it. A range of work is already underway to improve the system and this Review seeks to build on it. This work includes, among others:

- the Protocol for Judicial Case Management in Public Law Cases (2003)<sup>2</sup> (the Protocol);
- the work of DCA's Public Service Agreement 4 (PSA4) Programme Board on reducing delay;
- the Judicial Resources Review, a joint Government / judiciary initiative aimed at optimising the use of judicial resources;
- the report of the Chief Medical Officer (CMO's Report) into the quality and supply of medical expert witnesses, which is currently being considered by ministers; and
- the Thematic Review of the Protocol for Judicial Case Management, which was completed in December 2005.

2.7 Any remedies need to be joined-up and multi-disciplinary in approach and build on existing good practice. All parts of the system need to work together better, in order to address more effectively the five outcomes for children set out in 'Every Child Matters' (2003)<sup>3</sup>:

- Be healthy
- Stay safe
- Enjoy and achieve through learning
- Making a positive contribution
- Achieve economic well-being

2.8 The current family public law system is intended to provide a high level of protection for children and to comply with the Human Rights Act 1998. At all times the Review has borne in mind the principles of the European Convention on Human Rights and the UN Convention on the Rights of the Child.

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<sup>2</sup> Practice Direction (Care Cases: Judicial continuity and Judicial Case Management) [2003] 2 FLR 798.

<sup>3</sup> And also the 7 core aims for children and young people adopted by the Welsh Assembly Government within 'Rights to Action' 2004. These are:

- have a flying start in life;
- have a comprehensive range of education and learning opportunities;
- enjoy the best possible health and are free from abuse, victimisation and exploitation;
- have access to play, leisure, sporting and cultural activities;
- are listened to, treated with respect, and have their race and cultural identity recognised;
- have a safe home and a community which supports physical and emotional well-being; and
- are not disadvantaged by poverty.

## Drivers of Cost and Case Duration

### Costs and cost drivers

- 3.1 Public spending on s31 proceedings is distributed among the LSC, local authorities in England and Wales, HMCS, CAFCASS, and CAFCASS CYMRU. In order for any changes to the system to allow the best use of existing resources (rather than merely transferring costs amongst these organisations), joined-up thinking and working is necessary.
- 3.2 Some key figures:
- in 2004 11,000 s31 applications resulted in an order<sup>4</sup>;
  - a s31 case takes, on average, 51 weeks in Care Centres and 42 weeks in Family Proceedings Courts (FPCs) from application to disposal<sup>5</sup>;
  - 55% of children subject to statutory intervention are aged under 5 years (and 27% under 1), so 51 weeks generally represents more than one fifth of their lives<sup>6</sup>; and
  - on average each s31 application costs £25,000 including legal aid (approximately 60% of total), local authorities' costs (25%), HMCS costs (5%); and CAFCASS costs (10%)<sup>7</sup>.
- 3.3 Whilst volumes of legal aid bills for Public Law Children Act 1989 cases have increased by 37% since 1999/00, expenditure has increased, in real terms, by 77%<sup>8</sup>. Of these bills, the legal aid cost of s31 care and supervision proceedings has grown even more rapidly over the same period. Volumes of s31 bills have increased by 42% while expenditure has increased, in real terms, by 102% (see chart 1)<sup>9</sup>.
- 3.4 Local authorities also report increasing expenditure on legal costs for these cases within budgets for looked after children, which are under increasing pressure.

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<sup>4</sup> Judicial Statistics

<sup>5</sup> HMCS Data. April – October 2005

<sup>6</sup> HMCS Data: Age at disposal in FPCs January - June 2005

<sup>7</sup> Note that statistics of local authority expenditure on the court process are not collected. The estimate used in the above chart assumes that local authority expenditure will be similar to that for a legally aided party. It was suggested at the stakeholder event that this may be an underestimate. This does not include the cost of accommodating the majority of children who will already be living away from home during proceedings.

<sup>8</sup> A Fairer Deal For Legal Aid, DCA July 2005

<sup>9</sup> These calculations are based on comparing closed case costs – that is costs of cases with a final main bill paid during the year. Three methodologies were used to check these figures and, regardless of methodology, the calculations produce broadly the same figures (Desk Research chapter 6). The figures quoted here take account of inflation for disbursements and the changes in solicitor fees and counsel fees in 2001. Note: the figures in 3.3 compare changes in the volumes of and expenditure on s31 bills over time. The percentages in paragraph 2.3 refer to changes in the split of public law children act legal aid bills between s31 cases and other public law case types and how this split has changed.

3.5 The Review has concluded that the key drivers of costs in the child care proceedings system are:

- **Unnecessary delay:** possibly the most important driver of cost to proceedings (Desk Research chapter 7). The DCA's PSA4 target and work in support of this is discussed below.
- **Volume:** the number of s31 legal aid bills has risen by 42% over the past five years and further increases are anticipated, so pressures on the system will continue. This highlights the need to think about the potential for advice, support and advocacy for families to avoid the need for proceedings where this is possible or desirable.
- **Complexity:** arising from the increased complexity of family backgrounds and lifestyles as well as improvements in our understanding of harm to children. Research suggests that the vast majority of cases contain multiple concerns and allegations, and multiple categories of child maltreatment (Brophy ALR). The proliferation of assessments in search of certainty where this may not be a realistic goal also drives complexity:

*“the pursuit of an unattainable level of certainty is a major factor in court delay and therefore a cause of avoidable harm to children”*

(Beckett & McKeigue 2003<sup>10</sup>)

A further driver is delay in receiving assessments and reports from expert witnesses and the attendant increases in paperwork and case duration. As identified in the Thematic Review (paragraph 41), not identifying key issues early in the case can also negatively impact on case duration (Desk Research chapter 8).

- **Permanency:** there is at least a perception amongst practitioners that some cases are more adversarial than they need to be (clearly there are cases where an adversarial approach is justified by the difference of views between the parties to a case about the serious matters at issue, perhaps linked to a local authority's proposal to permanently remove a child from the birth parents, with no future contact). But it seems possible that in some cases proceedings become highly adversarial because parents fear losing contact with their child permanently, in situations where these fears may be unfounded. The stigma of having a child taken into care and being labelled an unfit parent can also be a driver of an adversarial approach. 'Reporting to Court' (Department of Health 1996) advises that unless restoration to the family is not a viable option, care plans should be made with the possibility of eventual return in mind. However, in about 70% of cases, the result of proceedings is the permanent removal of the child(ren) (i.e. the court agreed care plan involves the child remaining in, or moving into, long term foster care or residential care or adoption) (Brophy ALR).

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<sup>10</sup> Chris Beckett and Bridget McKeigue (2003) 'Children in Limbo: cases where care proceedings have taken two years or more,' *Adoption and Fostering*, 27 (3), 31-40.

- 3.6 All these drivers are inter-linked. Complexity and the proper pursuit of permanency can lead to delay, as can increased volume, if the capacity of the judicial system is insufficient to meet it. Equally, delay can itself increase complexity if it leads to further assessments needing to be undertaken, perhaps by staff drawn from different disciplines to those previously involved in the case or changed personnel. As time passes, family circumstances may change so that different or more complex factors are introduced into what might earlier have been a more straightforward case, adding to delay.

### Drivers of delay

- 3.7 Unnecessary delay in court proceedings is associated with poorer outcomes for children and families<sup>11</sup>. The Children Act 1989 (section 1(2)) states the general principle that delay is likely to be prejudicial to the child's welfare. Whilst it was originally anticipated by some, at the time of the initial implementation of the Children Act 1989 in 1991, that child care proceedings cases would take an average of 12 weeks in the courts, this has proved unrealistic<sup>12</sup>. However current case durations are often unacceptably long.
- 3.8 PSA4 aims to increase the proportion of s31 cases completed within 40 weeks and progress is being made in reducing the proportion of cases taking longer than this. The recent House of Lords judgment in the case of *Re: G* re-emphasises the original intention of the statute that care proceedings should extend over a relatively short period (2-3 months) and that assessments must be of the child, not of the parent:

*"It is for the court to ensure that the application is processed without delay"*  
(*Re G*: Lord Scott at paragraph 32)

- 3.9 The principal drivers of delay have been explored extensively in previous research<sup>13</sup> and by the PSA4 Programme Board. The following factors appear to be most significant:

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<sup>11</sup> See Ward H., Munro E., Dearden C. and Nicholson d. (2003) *Outcomes for Looked After Children: Life pathways and decision-making for very young children in care or accommodation*. Centre for Child and Family Research, Loughborough University. The Children Act Report 2003 stated that "delays in the court processes, which had a knock-on effect on the number of changes of placement the children experienced and their opportunities for making stable attachments. A number of children were still displaying evidence of insecurity several years after they had been placed permanently." Families are also critical of how long proceedings take (for many of the same reasons as articulated by practitioners) (Brophy ALR).

<sup>12</sup> *Children Act Advisory Committee Annual Report 1991/92, p.2; Scoping Study on Delay in Children Act Cases* Lord Chancellor's Department (LCD) 2002

<sup>13</sup> Booth, Dame Margaret, 1996. *Avoiding Delay in Children Act Cases*. LCD, 2002. *Scoping Study on Delay in Children Act Cases*. Beckett, C, McKeigue, B, 2003. *Why are we waiting?* Community Care, May 42-43

3.10 The quality of local authority applications to court. When core assessments, (the local authority's assessment of the family and the parenting issues, the outcome of which has prompted the application for an order) and interim care plans (the local authority's initial proposals for the child's future care) are not prepared in a timely way or to a high enough standard, the courts through other means seek to 'plug the gaps' which takes time and may add to the total costs:

*“better assessment work and preparation for court on the part of local authorities would ease pressures on judges and help speed cases up through the courts – which would benefit children”*

(Designated Family Judge, County Court)

3.11 Management of proceedings. Where identification of key issues and expert evidence requirements are not addressed early on, unnecessary delay and complexity may well ensue. The Thematic Review team have also drawn attention to this issue (Thematic Review, paragraph 41).

3.12 Judicial resources. All s31 cases commence in the FPCs (unless linked to existing proceedings in a higher court) where a decision is taken, on the basis of case complexity and likely length of hearing, on whether the case should be transferred to a Care Centre, the High Court, or remain in the FPC.

3.13 Currently 66% of disposals occur in Care Centres<sup>14</sup> though there are severe capacity issues at this level; stakeholders have suggested that these capacity issues relate mainly to a lack of judicial availability. There is greater capacity at FPC level but most cases are transferred and the proportion of transferred cases has been increasing (Desk Research chapter 9). The transfer of cases between courts and tiers of the judiciary can lead to delay as can the availability of the right judge and court facilities (this is also discussed in the Judicial Resources Review and by the Thematic Review e.g. paragraph 25).

3.14 Expert evidence can take a long time to commission and be received, largely due to the lack of availability of experts. Assessments are sometimes requested late in proceedings (even in final hearings) and take time to produce as they may involve meetings with a number of parties and observation over time. There can also be problems in making the most effective use of expert reports, especially where named experts have been poorly instructed or do not draw firm conclusions to guide the court (Desk Research chapter 8). The CMO's report, currently being considered by ministers, reviews the quality and supply of medical expert witnesses to the family courts.

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<sup>14</sup> HMCS Management Data (2004/05)



3.15 The allocation of the children's guardian. Whilst this is not an issue in all regions, Review stakeholders have suggested that delays in allocation of a guardian can impact on case duration<sup>15</sup>:

*"Despite recent improved performance CAFCASS is still contributing to delay in some cases... However CAFCASS is only one agency amongst many, and only one cause of delay amongst many."*

(*'Every Day Matters'*<sup>16</sup>, paragraph 29)

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<sup>15</sup> Performance on CAFCASS allocations at 31 October 2005: 90% of cases were allocated to a children's guardian within 28 days (target is 98%) and 47% of cases were allocated within 2 days (target is 70%). CAFCASS CYMRU have addressed this issue and are allocating children's guardians to cases within the specified guidance noted in the Protocol.

<sup>16</sup> Note: this document does not relate to Wales and to CAFCASS CYMRU

## Opportunities to Improve s31 Proceedings

- 4.1 There is no single cause driving the inter-linked trends in duration and cost. The areas for improvements identified by this Review are that:
- more could be done, building on existing good practice, to ensure that s31 applications are only made after all safe and appropriate alternatives to court proceedings have been explored;
  - the consistency and quality of s31 applications to court could be improved;
  - there are opportunities for enhanced management of proceedings;
  - professional relationships and inter-agency working could be improved; and importantly
  - more could be done to ensure that families and children understand proceedings and are, as far as possible, able positively to engage with them.

### Helping families

- 4.2 It is widely acknowledged that the active participation of families in the process, and their understanding of it, is not only significant in reducing delay, but can be vital in securing the best possible outcomes for the child.
- 4.3 Families' understanding of the issues in the case and how they could address these (for example, through co-operating with child protection agencies and court assessments) could be improved. Research amongst children and parents highlights that they can feel confused, insignificant and 'unheard' during the court process. Where legal representatives for parents / families are experienced in public law cases they are often able to reassure their client(s) which can help in achieving an outcome in the child's best interests (Brophy ALR).
- 4.4 Whilst 60% of parents report that they received prior warning that the local authority was considering court action, there can be an element of 'brinkmanship' with social workers not always giving sufficiently clear and authoritative messages while parents disregard or 'test out' the seriousness of the intent to take firmer action (Brophy ALR).
- 4.5 Review stakeholders report that parents / carers are particularly vulnerable and unsupported during the period of time between when the local authority decide to apply to court and when the parents / carers secure legal advice and representation (non means, non merits tested legal aid is available to the key parties from the issue of proceedings).

- 4.6 Research amongst families and children subject to proceedings reveals confusion around the process and the parties involved as well as the nature or severity of the concerns that resulted in court action (even after due process and the threshold was found to be met) (Brophy ALR). This suggests that more needs to be done to engage families and ensure they understand the proceedings.
- 4.7 In a small minority of cases the threshold is found not to have been satisfied. In the majority of cases the threshold of harm is satisfied and the focus of proceedings is around the right outcome for the child(ren) (Brophy ALR<sup>17</sup>).
- 4.8 Outcomes in s31 cases are potentially draconian for parents. Birth parents can lose any future contact with their child. This can motivate parents to fight care proceedings vigorously, especially when they are not clear about whether they may permanently lose contact with their child(ren).

#### **Better Informed Resolution**

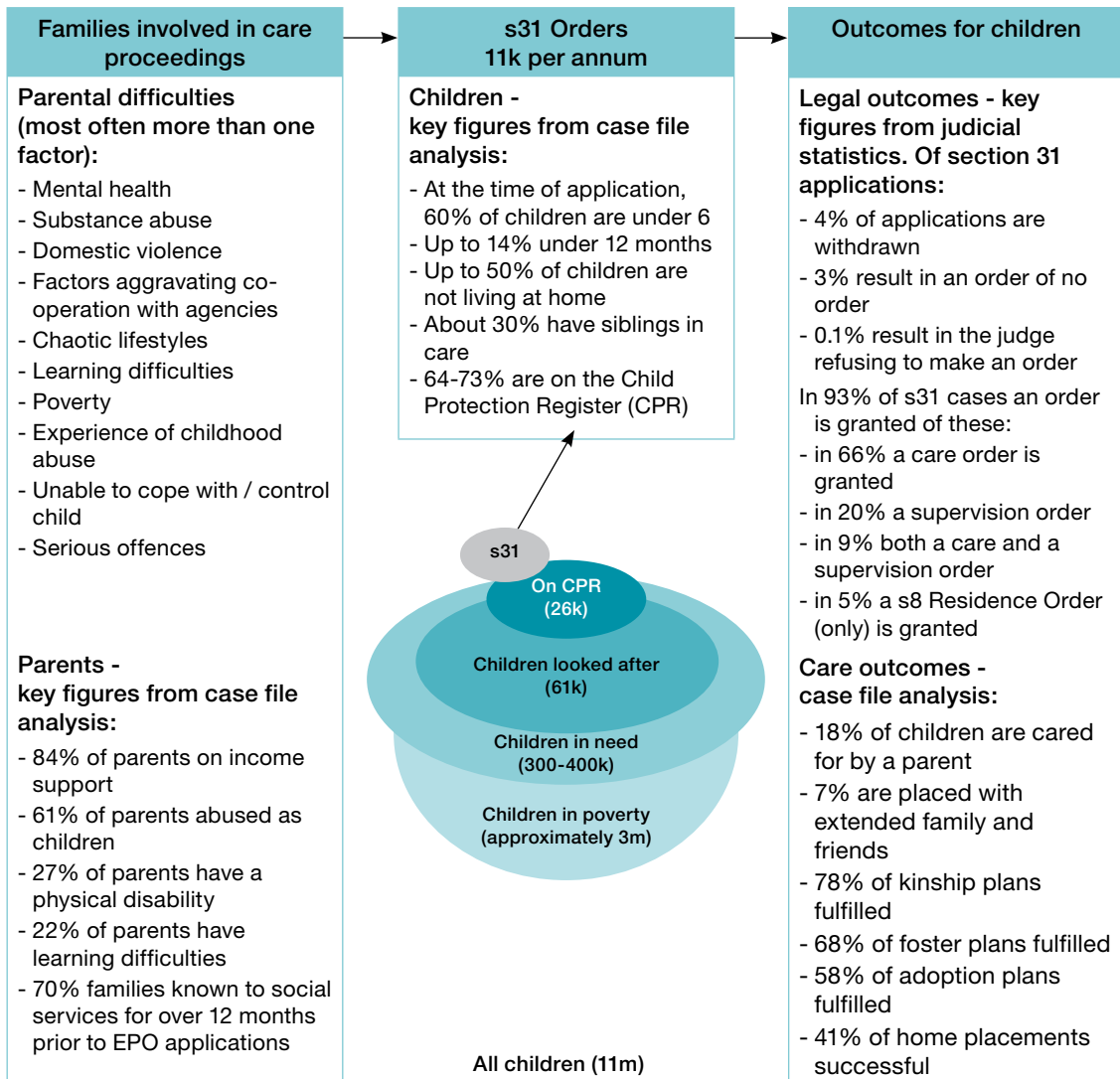
- 4.9 Families subject to child care proceedings are often highly vulnerable and leading complicated, fragmented lives with multiple problems and needs. Families in this position may find it difficult to engage with the issues effectively without support and assistance. Co-operation with agencies is a key issue (Brophy ALR).
- 4.10 Whilst the majority (about 70%) of children who are subject to s31 proceedings are permanently removed from their parents, a substantial number do return to live with a parent (not necessarily the parent the child was originally living with at the time when proceedings were commenced) or with extended family or friends (18% and 7% respectively in Brophy, Bates and Wales 1999). Research indicates that kinship care (with extended family or friend networks) provides children with greater stability than other types of care placement, in particular those involving children's homes or stranger foster carers<sup>18</sup>. In addition, in 7% of cases applications are withdrawn, no order is made, or an order of 'no order' made<sup>19</sup>. This could suggest that in a minority of cases the same outcomes might have been capable of being achieved without recourse to the courts.

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<sup>17</sup> In Freeman and Hunt's 1998 study (reviewed in Brophy ALR), although a proportion of the cases in their sample did not result in a public law order, none failed because the threshold were not met. In Brophy et al. (2003) for those cases which proceeded to a final hearing without any change, the threshold was contested in only 5% of cases (4/86).

<sup>18</sup> In Harwin et al.' Making Orders Work' (2003), it is stated that under the principles of the Children Act care within the extended family or close friend was considered the second best option to rehabilitation. Several studies published prior to the Children Act showed that placement with extended family or friends could give children stability, continuity and a positive sense of identity (Harwin et al. p 212 citing Rowe et al. 1984; Millham et al. 1986; Berridge and Cleaver 1987)

<sup>19</sup> Judicial Statistics 2004



Sources: Case file data – Brophy ALR; Legal outcomes – Judicial Statistics & FamilyMan (DCA); National figures on numbers of children on CPR, LAC, in need, in poverty – DfES

4.11 The majority (70%) of families subject to proceedings have been known to social services for some time and most children subject to proceedings are on, or have been on, the Child Protection Register. For most families who become the subject of care proceedings, it is a ‘trigger’ event - decline in parenting or ending of agreements between parents and social workers - that leads to proceedings to protect and safeguard children (Brophy ALR).

4.12 Some local authorities have established means by which advice, advocacy and support can be provided to families at this ‘trigger’ point with the aim of avoiding proceedings and shoring up parental engagement where this is in the best interests of the child.

### **Case Study: Early Advice, Advocacy and Support**

Since 2004, Islington Council Children's Services has routinely used Family Group Conferences (FGCs). These are meetings in which an independent coordinator works with the family, drawing on information from social services and other agencies, so that the family may devise a plan for the child's care which the local authority can agree to. All plans are reviewed by the local authority once they have been agreed and implemented. Every family with a child at risk of becoming looked after is offered a FGC. Of the 79 referrals made between April and December 2005, 45% of qualifying families have completed a FGC (28% are ongoing). In 13 of the cases (37% of those cases for which an FGC was held) the child remained at home with additional support. Only 6% of the FGCs (2 cases) resulted in the child becoming Looked After by the local authority.

The cost to Islington of each FGC is £1,100 (plus £500 for a review a few months later). This is in the context of Islington's costs for foster care of approximately £800/week (£41,600/annum) and residential care of £2,000/week (£104,000/annum). So if the 13 successful FGCs result in those children remaining at home in the long term, Islington could save £540,800 a year in foster care costs (excluding the cost savings from not bringing proceedings). These savings would be greater if any of the children had gone into (more expensive) residential care instead of remaining at home. Of course this is an estimate based on the assumption that these children might otherwise have ended up in foster or residential care and doesn't take account of further local authority support these families might receive.

Source: Islington Council Children's Services

### **Case Study: Local Authority Performance Improvement**

In 2004, Bedfordshire Social Services was performing poorly. It received adverse Commission for Social Care Inspection (CSCI) reports in 2002 and 2003, identifying “serious deficiencies” and rated as a “no star” service. The problems identified included:

- High numbers of children in care
- High numbers of children on the Child Protection Register
- High numbers of looked after children (25%) in out-of-county placements
- High numbers of unallocated cases
- Low numbers of children in need
- Low spend on family support services
- Little preventative work
- Low numbers of children adopted
- Significant overspends on budgets
- Staff shortages, high staff turnover and low morale
- Significant areas of poor practice
- Policies and procedures were out of date and in some cases had not been produced

A major programme of “refocusing” commenced in 2004. The following were key factors in this programme:

- Good leadership at every level;
- Getting ‘back to basics’ - a clear focus on the needs of the child and listening to what young people had to say about the services provided to / for them (and acting upon it);
- Better commissioning of resources – this enabled £1.7 million to be diverted into preventative work, family support packages;
- More resources put into preventative work to prevent children entering the care system;
- Improved ‘tracking’ of cases and the way resources were used in order to avoid ‘drift’;
- ‘Gatekeeping’ in relation to allocation of resources, placement of child in local authority accommodation and commencement of care proceedings via the Bedfordshire Allocation Panel, a multi agency panel set up specifically for this purpose;
- Greater use of FGCs and exploration of placement options within the extended family;
- Seeking to involve all agencies in the task of child protection at all levels (other agencies had become increasingly ‘disengaged’ as the performance of Social Services declined), in particular through the setting up at an early stage of the Local Safeguarding Children Board;
- Improving training and development opportunities for social work staff; and
- A determination to raise standards and eliminate poor practice.

Continued

The outcome of this programme was that Bedfordshire was taken off special measures and was rated “one star” with “significant and substantial improvement” by CSCI in 2005. The number of ongoing s31 proceedings have reduced from 56 (November 2004) to 28 (November 2005). Staffing is now more settled and morale improved. Client satisfaction has also increased.

Source: Bedfordshire County Council

- 4.13 It is, however, recognised that the initiation of s31 proceedings does galvanise most mothers and some fathers to take seriously the concerns of the agencies involved and the court can provide a safe space in which some change is achieved in some cases (Brophy ALR). The Protocol envisages Advocates’ Meetings during the course of proceedings to give parties an opportunity to address issues prior to hearings. The FGC model can also be used in addition to or in place of such meetings, with parties able to invoke an FGC where they feel that things have changed enough to allow them to agree care outcomes for the child outside the court.

#### **Preparation for proceedings – variation in local practice**

- 4.14 Stakeholders have highlighted the wide variation in the quality of applications from different local authorities and the lack of a consistent approach. In cases that start with an Emergency Protection Order (EPO) limited preparation time may be available, which may impact on the quality of applications. However, academic studies suggest that only about a third of care applications coincide with the expiry date of an emergency order (Bates and Brophy 1996; Brophy et al 2003 cited in Brophy ALR). Local variation is equally evident in the performance of individual courts, both as a result of local authority preparation for proceedings and the court’s own practices.
- 4.15 Variations in regional practice of local authorities, CAFCASS and the judiciary “are too great to simply be reflecting the demands of each case” (CAFCASS Consultation ‘Every Day Matters’ paragraph 34.4). Greater consistency in practice and promulgation of best practice could improve overall performance and, in turn, improve outcomes for children and families.

4.16 In addition to stakeholder views, there is wide variation in the statistics relating to s31 proceedings pre and during court proceedings, even when comparing areas with similar social and economic characteristics. Some examples:

- average duration from application to order for cases disposed of in the Care Centre (CC): 52 weeks in Greater Manchester and Merseyside and 67 in the West Midlands<sup>20</sup>;
- average duration from application to FPC to transfer to CC: 3.4 weeks in Greater Manchester, 6.2 weeks in Merseyside and 8 weeks in London<sup>21</sup>;
- proportion of cases completed in 40 weeks (PSA 4): for the 10 largest courts, this varies between 27% and 78% for FPCs and 31% to 69% for CCs<sup>22</sup>; and
- children looked after under a care order per 10,000 under 18s: 49 in Birmingham, 77 in Liverpool and 98 in Manchester<sup>23</sup> (see map).

#### During proceedings

4.17 The volume of paperwork in cases has increased. There are no statistics, but many practitioners have raised this with the Review. The Thematic Review also highlights this (paragraph 7 c) and is concerned to reduce duplication and inconsistency in submissions and evidence filed with the court, primarily as a consequence of the failure to identify issues, and in particular the key issues, that the court needs to determine.

4.18 If, because of inadequate case preparation, further expert reports have to be commissioned by the court or extra input is required from the children's guardian this can cause unnecessary delay. Stakeholders report that this currently happens in a substantial number of cases. The use of sequential assessments also drives delay.

4.19 The recent House of Lords judgment in the case of *Re: G* draws attention to the significant impact of rehabilitative assessments on the duration of cases and sets out a framework for the use of expert evidence in future. Their Lordships' opinions emphasise that the court process should be a dynamic but short-term part of a wider system of caring for children.

4.20 The Judicial Resources Review 'Focusing judicial resources appropriately – the right judge for the right case' has recently consulted on further issues around the management of cases, including their allocation and transfer in order to improve the efficiency of management. This consultation ended on 20th January 2006. HMCS are currently analysing responses with the aim of publishing a report on the findings in Spring 2006.

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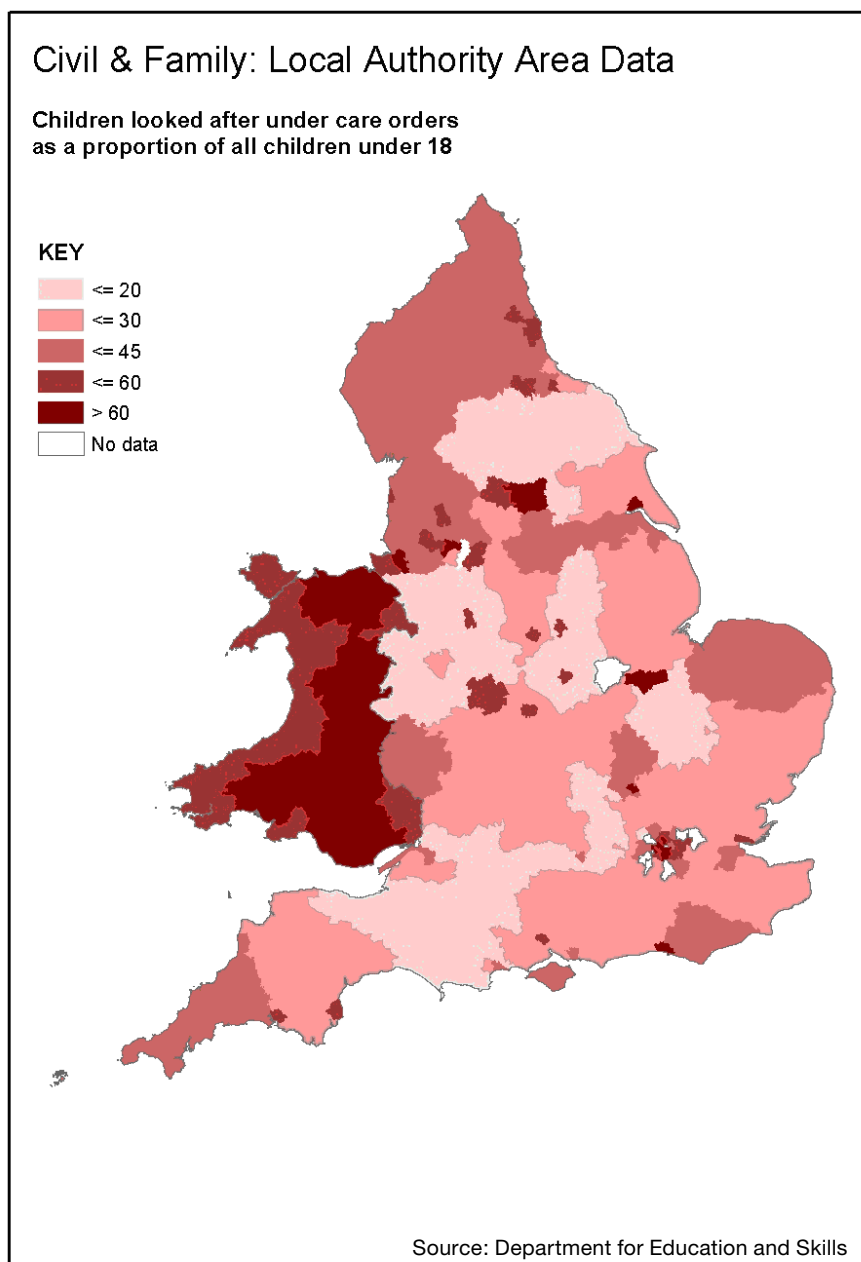
<sup>20</sup> Source: HMCS Performance Monitoring (FamilyMan) 2004

<sup>21</sup> Source: HMCS Performance Monitoring (FamilyMan) 2004

<sup>22</sup> Source: FamilyMan and Family Case Tracker 2004

<sup>23</sup> Source: DfES looked after children statistics 2003/04





### Inter-agency working

4.21 Stakeholders across agencies and at all tiers of the child care proceedings system have suggested that stronger relationships between agencies are vital, a finding that echoes earlier work<sup>24</sup>. There are ongoing measures to address these issues, such as the establishment of Local Family Justice Councils. Stakeholders report that inter-agency working remains a key area for improvement.

<sup>24</sup> e.g. Dame Margaret Booth's 1996 report *Avoiding Delay in Children Act Cases* that highlights the need for "better partnership working". In 2002 the Lord Chancellor's Department consultation 'Promoting inter-agency working in the family justice system' led to the establishment of the Family Justice Council as a means of addressing family justice issues across agencies.

## Immediate Recommendations

- 5.1 All the recommendations are designed to meet the terms of reference of the Review in presenting a way forward that will ensure all resources (including children's services) are used in the most effective, efficient, proportionate and timely way to deliver the best outcomes for the children and families concerned.
- 5.2 The Review recognises the work that is already underway to improve the child care proceedings system and recognises the many examples of good practice across the system. Any process of improvement needs to be ongoing and build on such good practice: there is no 'quick fix'. The Review's immediate recommendations are capable of implementation within 12 months and within current legislation. The Review also makes strategic recommendations that propose a framework for beneficial change in the longer term. These are described in section 6.
- 5.3 Reflecting the areas for improvement described above (paragraph 4.1), the recommendations aim to:
- ensure that families and children understand proceedings and are, wherever possible, able to engage with them;
  - ensure that s31 applications are only made after all safe and appropriate alternatives to court proceedings have been explored;
  - improve the consistency and quality of s31 applications to court;
  - improve case management during proceedings; and
  - encourage closer professional relationships.

### Helping families: ensure families and children understand proceedings

- 5.4 Better information and communication is needed to help vulnerable families understand local authority concerns and to be encouraged to address these as early as possible and before proceedings are issued.
- 5.5 When the local authority has met to discuss issuing proceedings, **the Review recommends** that the outcomes of such discussions are systematically recorded in a short document in simple language. This document should outline the local authority's concerns, the aims of the case, including permanent care options, and the key issues that form the basis of the local authority's case. This document should form part of the potential application to court.

- 5.6 **The Review recommends** that this document is given and properly explained to parents along with a list of local Children Panel solicitors to give parents access to appropriate legal advice. The requirement to provide these should be included in the collation of pre-proceedings guidance and best practice recommended in paragraph 5.14 below.
- 5.7 **The Review recommends** that children subject to proceedings should, as a matter of routine, be given detailed information by their social worker in language they understand when proceedings are issued, in line with current good practice. This information should explain what to expect of the court. The majority of children subject to proceedings are aged under 5, so this does need to be subject to their age and level of understanding. The children's guardian should also ascertain the child's understanding and provide supplementary information as appropriate. This does not appear to happen consistently at present<sup>25</sup> (Desk Research chapter 3).
- 5.8 Most parents have considerable praise for their solicitors and most judges are described as good or excellent. Highest satisfaction is when the judiciary address parents directly, listen sympathetically and show an interest in the children, with humanity, respect and warmth, and explain what is happening in court and why (Brophy ALR).
- 5.9 **The Review recommends** that the judiciary be encouraged to address families directly (and children when they are present in court) avoiding legal jargon, through judicial training and best practice guidance.

**Better Informed Resolution: ensure s31 applications are only made after all safe and appropriate alternatives to court proceedings have been explored**

- 5.10 The Review recommends more consistent local use of early advice, advocacy and support initiatives such as Family Group Conferences (FGCs) to help vulnerable families to understand local authority concerns and to be encouraged to address these as early as possible and before proceedings are issued. FGCs should also help to identify potential kinship care opportunities, which can then be pursued where these are in the best interests of the child(ren).
- 5.11 The Review recommends an immediate pilot of the provision of pre-proceedings legal advice to parents or carers in families where the local authority is considering issuing proceedings in respect of their child(ren). If this short document were provided to parents this would signal the point at which early legal advice would be appropriate. That would help parents to understand the local authority's concerns and that they need to have professional advice on what their options are for addressing these, even prior to the point of proceedings being issued.

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<sup>25</sup> One survey (Brophy ALR) found that 34% of children said that more information would have made things easier for them during proceedings, 34% requested more support and 24% said they needed more practical help.

5.12 Subject to the outcome of Lord Carter's Review of Legal Aid Procurement and its proposals on family legal aid, there appears to be advantage in funding pre-proceedings legal advice by legal aid on a fixed fee basis. A pilot could evaluate the impact of early legal advice in three key areas:

- the impact of early legal advice on families' experience of and engagement with the system;
- the extent to which early legal advice can ensure that cases only reach the point of proceedings when all safe and appropriate alternatives have been explored; and
- the impact of early legal advice on the quality of applications in cases that do go to court.

5.13 In addition, it is recommended that there is a more stringent upholding of the principle that legal aid is not used to fund core assessments during proceedings, where these are properly the responsibility of the local authority (this is discussed further in paragraph 5.19).

#### **Preparation for proceedings: improve the consistency and quality of s31 applications to court**

5.14 **The Review recommends** gathering all existing pre-proceedings guidance and best practice on case preparation into one document (which could be used as a checklist) and issued to local authorities as statutory guidance.

5.15 This guidance will be designed to ensure that all proposed s31 applications are thoroughly prepared by local authorities. The guidance should cover the activities that the courts can reasonably expect a local authority to have completed before the decision is taken to apply to court (in all but emergency situations) including:

- the appropriate provision of support services to families prior to proceedings (such as the use of FGCs);
- the completion of core assessments (Brophy ALR highlights that about one third of s31 cases come to court without a core assessment and the variability in standards where assessments have been done);
- rigorous examination of kinship care opportunities to ascertain if these are in the best interests of the child;
- the preparation of an interim care plan; and
- the proper provision of information to parents and children, including that relating to the local authority's concerns and a list of local Children Panel solicitors and / or family law firms.

5.16 Local authorities would then be responsible for completing all elements listed in this statutory guidance prior to application to court. A 'gateway' meeting within the local authority prior to application of a case to court (with input from the local authority legal team) should be used to ensure that applications to court demonstrate adherence.

- 5.17 What is agreed at this meeting should be recorded in a short document, which sets out in simple language the aims of the case, including the permanent care options, and the key issues that form the basis of the local authority's case. This document should form part of the local authority's application to court (and be included in the pre-proceedings best practice / guidance described above) and should be used to communicate the issues to the family (including to older children) prior to court proceedings. This will enable the family to be fully aware of the local authority's concerns and of what the potential outcomes of the planned care proceedings might be. This information can then be used by the parents as the basis on which to seek early legal advice. This document should subsequently form part of the local authority application to court and should be revised and re-circulated in light of the key issues identified at the first court hearing.
- 5.18 The statutory guidance should dovetail with a Practice Direction from the President, covering the minimum the court expects of every s31 application. **The Review recommends** that courts scrutinise the fitness of every s31 application against the requirements of this Practice Direction with the aim of ensuring they are fit to proceed promptly. This would monitor the fitness of applications and promote improvements in the quality and consistency of s31 applications.
- 5.19 There are various means through which consistent application of the statutory guidance and Practice Direction could be promoted:
- **the Review recommends** further consideration of means to encourage or enforce preparation in accordance with the statutory guidance and Practice Direction. These could include encouragement of greater use of existing powers on cost orders, or through the fees structure so that it better reflects the true costs incurred by poorly prepared applications<sup>26</sup> (the fee paid by local authorities to the court for s31 applications is currently £150; in 2003/04 each s31 application actually cost HMCS £1,200)<sup>27</sup>; or the exercise by the court of existing powers to require explanations from senior local authority staff where applications have been inadequately prepared;
  - in addition, **the Review recommends** that courts uphold much more strictly the expectation that core assessments are the responsibility of the local authority and where they are not completed, or not completed to a high enough standard, legal aid should never be used to pay for the completion or reworking of inadequate core assessments;
  - **the Review recommends** that adherence to the pre-proceedings statutory guidance and minimum standards Practice Direction should be monitored as part of independent performance monitoring of local authorities; and

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<sup>26</sup> The DCA's Court Fees Programme will be undertaking a review of the underlying fee policy for child care proceedings during 2006

<sup>27</sup> DCA Economics & Statistics Division

- **the Review recommends** that the courts monitor compliance with the statutory guidance and Practice Direction (full / partial / not at all) in order to inform the above monitoring.

5.20 Monitoring of and incentive arrangements in regard to s31 applications could provide a perverse incentive for local authorities to use Emergency Protection Orders more widely. This recommendation would therefore need to be implemented alongside more consistent use of cost orders against local authorities for improperly brought EPO cases. In (X) Council v B [2005] 1 FLR 341, guidance was given on EPOs in the light of the human rights of the children and parents. Mr Justice Munby stated that:

*“an EPO, summarily removing a child from his parents, is a draconian and extremely harsh measure requiring exceptional justification and extraordinarily compelling reasons”.*

5.21 Use of the statutory guidance and Practice Direction would be a way of achieving the improvements to procedures before proceedings identified by the Thematic Review (paragraph 46).

#### **During proceedings: improve case management during proceedings**

5.22 **The Review recommends** changing the scope and timing of the First Hearing in the FPC and the Allocation Hearing (rolling them into one meeting, potentially with the Case Management Conference as well). The aims of this meeting should be to identify key issues in the case as early as possible; to examine the interim care plan; to agree what expert evidence is required; and to agree the points that need to be included in a draft letter of instruction.

5.23 The short document in simple language prepared by the local authority and communicated to the family pre-proceedings (paragraph 5.5 above) should be revised in light of this First Hearing and re-circulated, if necessary, and again properly communicated to the parties (directly to older children), recording the key issues identified, the aims of the case and the potential care plan which the court might authorise if an Order were made.

5.24 This combined hearing should happen 3-4 weeks after issue (to allow the children’s guardian to be appointed and to review the local authority’s assessments, as well as to allow reading time for advocates). The timetable of the Protocol has the First Hearing within a week of issue and Case Management Conference 15-60 days after issue<sup>28</sup>.

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<sup>28</sup> See footnote 24

5.25 As well as ensuring that all the material for the case is in place, this altered first hearing could also ensure that the parents and other parties involved in the case are more fully aware of what the outcome might be were an order to be granted, and can accordingly determine and be advised on their response to the proceedings. Courts are already able to take account of the attitude taken by parents in determining aspects of the care plan, including contact. Better information here should therefore reduce issues arising from unfounded fears that parents may have about the permanent removal of the child(ren). However, in 70% of s31 cases children are permanently removed from their birth parents (Brophy ALR), albeit that only 6%<sup>29</sup> of looked after children are adopted each year. The implementation of this recommendation can be achieved through a second Practice Direction covering s31 proceedings.

5.26 The Review terms of reference included the question as to whether the two stages of a care case (determining whether the child is at risk of harm (the threshold) and deciding whether to make an order and approve the care plan) could be dealt with separately with different input from lawyers. The Review, having considered this question, has concluded that there is no case for changing the current practice whereby some cases proceed with a separate consideration of the threshold i.e. a split hearing and, in the remainder, the issue is rolled into the final hearing. Parents should, of course, continue to have an unfettered right to challenge the threshold at court before the case proceeds further.

#### **Inter-agency working: encourage closer professional relationships**

5.27 There is scope to improve the extent to which the many agencies working within the child care proceedings system interact in terms of process improvements, resource management and working culture. Where there is strong inter-agency working it can improve outcomes for children whilst ensuring effective use of shared resources.

5.28 There is usually a need for parties and their advocates to discuss the issues at court prior to the case going before the judge at the First Hearing. This will often be helpful in narrowing the issues but, due to constraints of time and availability, these meetings do not always take place. Where they do occur, they often start late and delay the start of hearings, leaving the judge / bench / legal adviser to wait. Sometimes parties and their lawyers will shuttle between the judge and corridor meetings as issues are refined and resolved. In some courts, listings systems have been changed to systematise this process of advocates' meetings. The process needs to be more formalised to maximise efficient communication taking advantage of the presence of all the parties together at court, while acknowledging that families should not be put under undue pressure in the stressful circumstances of the court setting.

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<sup>29</sup> Children looked after by Local Authorities Year Ending 31 March 2005 Volume 1: National Tables *March 2006*

- 5.29 **The Review recommends** new listings procedures to address these issues, in line with good practice described in 5.28. This recommendation builds on the thinking of the Thematic Review (paragraphs 47-48). The implementation of this recommendation can be achieved through a new Practice Direction covering s31 proceedings.
- 5.30 Local Family Justice Councils receive funding for annual inter-disciplinary conferences. In addition, many Circuits hold an annual conference. **The Review invites** the FJC and the President to consider whether and how these events might be used to bring together professionals from every part of the child care proceedings system with the aim of enhancing understanding of their different roles and responsibilities within the system and the different approaches and priorities that these can necessitate.
- 5.31 **The Review recommends** further work looking at how greater use of joint targets and funds across agencies might encourage joint planning and shared priorities (i.e. pooling budget resources rather than sharing a single budget). This will address the issue flagged above that any improvements to the system must be holistic to avoid merely shifting resource issues from one agency to another. Pooled budgets would have a long-term impact and are more likely to be used to enhance qualitative value while maintaining costs. Their impact is likely to be indirect, through the creation of attitudes where constructive cost reduction proposals are more likely to arise.
- 5.32 However the Review does not recommend making local authorities responsible for the whole costs of these cases (and transferring to their budgets an appropriate proportion of the current expenditure on legal aid). Although this would certainly ensure that decisions on initiating cases were taken in full understanding of the prospective costs, local authorities have a duty, not an option, to pursue cases where children appear at risk of harm. Furthermore, as applicants, they cannot be placed in a position to influence or determine the extent of representation of the other parties.
- 5.33 One model for joint working is through Local Area Agreements where local authorities accept stretch targets on the basis that they work with local partners to deliver higher than targeted performance in return for extra funding. This 'bonus' is then shared amongst local delivery partners. This model is already being used successfully by some local authorities. Achieving this recommendation will depend on local authorities including a target around improving child care proceedings, possibly at the expense of other activity. Agencies will also need to ensure that their independence is maintained appropriately.



- 5.34 The role of Independent Reviewing Officers (IROs) is to operate independently of the line of local authority management of the cases of looked after children, ensuring proper scrutiny of the development and delivery of care plans by the local authority. However Review stakeholders have highlighted their concern that IROs appear not systematically to receive the court's judgments, the court approved care plans or other related written directions of the court to inform their work.
- 5.35 **The Review recommends** that local authorities be required, through revised statutory guidance, to ensure the IRO is kept up to date with the care plan as presented in court. In future the Integrated Children's System (currently being developed by DfES and the Welsh Assembly to gather data and increase standardisation of care plans) will bring together the court care plan and the local authority care plan (which are currently separate with the IRO, on occasions, only seeing the latter).
- 5.36 **The Review recommends** that consideration be given to the costs and benefits of implementing face to face hand-overs between children's guardians and IROs to ensure that such key information is communicated properly. This meeting could include the older child or young person directly, wherever possible, to increase a sense of understanding and ownership of the plan.

## Strategic Framework

6.1 In addition to the immediate recommendations above, there is a clear need for a longer-term strategic framework to ensure sustained improvements to the child care proceedings system. This should include mechanisms to ensure that resources across all agencies are sustainable in light of the expected increases in the volume of s31 cases (see paragraph 3.5).

### Helping families: ensure families and children understand proceedings

6.2 In addition to the recommendations outlined above, in the longer term, more can be done to engage families in addressing local authority concerns earlier with three aims:

- to offer advice, support and advocacy for families to avoid the point of coming to proceedings where possible or desirable;
- to ensure that where proceedings are issued, families understand both the concerns of the local authority that have given rise to the court application and what to expect of the court process; and
- to make sure that alternative care options (such as potential kinship care placements) have already been considered, and where possible assessed, pre-proceedings.

6.3 **The Review recommends** further evaluation of the following options:

- the provision of access to independent support for parents as their social worker becomes engaged in s31 proceedings (this could be achieved in conjunction with the roll-out of the pre-proceedings legal advice pilot recommended above);
- the LSC to restrict funding of solicitors for children and families to those who are on the Children's Panel of solicitors. This is subject to the outcome of Lord Carter's Review of Legal Aid Procurement and its recommendations on family legal aid. The Law Society is also reviewing its Children Panel and this area should be considered in more detail once the Law Society work has progressed; and
- the potential of new, accessible, tools to encourage families to engage with child protection agencies and explaining the process and advice sources (in appropriate language(s)) such as making available an explanatory DVD. The DVD could include information on where to seek appropriate early advice and encourage families to engage with local authorities in addressing parenting concerns.

### During proceedings: improve case management during proceedings

- 6.4 Discussions with practitioners have highlighted the potential to make better use of all the resources devoted to family justice. This includes optimising the use of judicial resources by matching cases with the most appropriate level / type of judge and ensuring the proportionate amount of representation and an appropriate time-frame for every case.
- 6.5 A series of initiatives is already being taken forward to streamline and improve the family justice system utilising its existing powers, including the Judicial Resources Review mentioned above (paragraph 4.20). The Government and the judiciary are also working on detailed proposals on more efficient and effective business allocation mechanisms. They are also considering how best to move towards the unification of the family courts to make the family justice system as seamless and user-friendly as possible. The long term aim of a single Family Court with unified jurisdictions will require primary legislation.
- 6.6 The content and commissioning of expert evidence have widely been flagged as issues that can lead to unnecessary delay and complexity in s31 cases. **The Review recommends** a revised system of expert assessments in s31 cases. The welfare assessments currently conducted by independent experts should in future consist of one multi-disciplinary assessment of the family by a team of professionals over a limited timeframe. This recommendation should be considered in light of the report of the Chief Medical Officer (CMO's Report) into the quality and supply of medical expert witnesses when it is published.
- 6.7 This recommendation should not be seen as replacing the responsibility of the local authority to provide full information to the court, as part of the s31 application. Based on the pre-proceedings statutory guidance and the minimum standards Practice Direction, it is expected that all local authorities will provide information from a core assessment as part of their information to support the application. This should be available in all the non-urgent applications before the court. These core assessments should comprise input from the range of professionals working with the child and family. In addition, where the core assessment has indicated the need for a further assessment in relation to a specific need, this information should also have been obtained by the local authority in advance of the application. The local authority's gateway meeting will be expected to ascertain that all such information, from a range of disciplines, is available for the court as part of the local authority's application.
- 6.8 Variants of a multi-disciplinary model are already being successfully used by some local authorities and allow for a holistic expert assessment that draws conclusions to inform the local authority and, if an application is then considered necessary, the court. A multi-disciplinary approach by the local service providers also allows for referrals on to appropriate services to be made where required.

- 6.9 The model of multi-disciplinary input to assessments should therefore be used both by local authorities prior to the initiation of proceedings and as a separate process to replace assessments by individual experts commissioned during proceedings.
- 6.10 The 'in-court' assessment, which mirrors the current model of individual assessments in that it takes place only when the court feels that this is needed, will have the benefit of all pre-court assessments already completed with the family, along with any updated information from the local authority within the proceedings. Its purpose is to inform the court how the parents have responded to the challenge of the court process and how able and willing they are to make the necessary changes in order to parent successfully in the light of the individual needs and characteristics of the child. Overall, the court needs to hear advice on what timescale may be needed to enable the parents to meet these changes and how realistically this balances with the timescale of the child's needs. The multi-disciplinary 'team' would be 'virtual' – i.e. a limited group of professionals pulled together from health and social care, to focus on the specific circumstances of this family, rather than the same set of people to work on every case. The team would need to be independent of any previous work with the family. The group of professionals working in this way would develop specific expertise around timescales for parents and children, and the most common recurring challenges of drug/alcohol abuse; parental mental illness and special educational needs of either the parent(s) or child.
- 6.11 The court faces a different challenge in respect of expert evidence, when the threshold criteria are contested on the grounds of disputed medical evidence. **The Review recommends** that medical experts are involved in cases as early as possible in order that the likely expert evidence requirements can be discussed at the first hearing. This builds on best practice in some areas where medical experts are asked to advise as to what kind of additional expert evidence is necessary, if any, in any particular case beyond the information already provided by the local authority as part of the s31 application.

#### **Inter-agency working: encourage closer professional relationships**

- 6.12. In addition to joint working at local level the Review recommends examining the potential for a joint national target for s31 proceedings. The DCA currently has a PSA target on reducing delay in the court process, however targets around improving experiences of proceedings and outcomes for children and families could be adopted jointly by DCA and DfES. This would enable joint outcomes measures to be agreed and monitored.

## Data Gaps

- 7.1 A recurring issue in this Review (and previous work on the child care proceedings system) is the lack of joined up, reliable quantitative data. This stems from the fact that each agency involved in the system collects data differently. These differences relate to the geographical boundaries, and whether data is collected per child (LAs and FPCs), per application (CCs), per case (CAFCASS) or per legally aided party to a case (LSC).
- 7.2 **The Review recommends** taking forward a programme of work to standardise data collection across the agencies involved in child care proceedings in order to facilitate monitoring of potential improvements as well as outcomes for children and families.
- 7.3 Every effort should be made to ensure that solutions have the lowest impact on administrative time, as each of the agencies involved runs separate legacy systems which will need to be maintained.
- 7.4 Detailed recommendations on the changes in the way data is collected and what new management data each agency should collect are included in the Desk Research Report (chapter 14). These include a unique identifier for children in order to link data from all the agencies involved and modifying the way data is collected by all agencies to ensure it can be used collectively with similar units of measure.
- 7.5 **The Review recommends** examining the potential of using the new Integrated Children's System to monitor the number and impact of s31 applications that do not comply with the new pre-proceedings statutory guidance proposed above, as well as the impact of increased emphasis on ensuring that potentially suitable kinship placements are explored pre-application.

## Implementation

8.1 Many reports have been written on how to improve the child care proceedings system, but there is less evidence of sustained improvements. If this paper is to have a positive impact on the system it is imperative to determine who is accountable for implementing the recommendations that are agreed. A strong governance structure is vital to ensure delivery and to drive a process of ongoing improvements.

8.2 Successful implementation of recommendations will require:

- Communication of the Review's recommendations to delivery agencies;
- Promulgation of best practice ideas gathered in the course of the Review (Desk Research Annex E)
- Engagement of key stakeholders and local delivery agents;
- Management of the implementation of agreed recommendations and pilots;
- Development of evaluation mechanisms for these;
- Management of any consultation process on strategic recommendations;
- Collection of management data and performance evaluation against whole system outcome measures, looking at the system as it is now and using that to benchmark to measure the impact of new initiatives; and
- Where appropriate, accountability to ministers on progress.

## ANNEX 1

### Child care proceedings review terms of reference

(Published in 'a fairer deal for legal aid' at Annex B)

1. These are the terms of reference for the Review of the child care proceedings system in England and Wales.
2. *A Fairer Deal for Legal Aid* puts forward the case for a cross-Government, end-to-end review of the child care proceedings system. This Review will aim to ensure that the system is as effective as possible in delivering the Government's overarching vision for children, as set out in the Green Paper *Every Child Matters*. It states that every child should benefit from:
  - Being healthy
  - Staying safe
  - Enjoying and achieving
  - Making a positive contribution
  - Experiencing economic well being.
3. The Review will be taken forward to improve the cross-Government delivery of the core welfare, minimum intervention and minimum delay principles set out in the Children Act 1989. It will:
  - Examine the extent to which the current system for deciding care cases in the courts ensures all resources (including children's services) are used in the most effective, efficient, proportionate and timely way to deliver the best outcomes for the children and families concerned
  - Explore the variation in routes taken to bring children into care, both in terms of the rate at which this takes place, and the way in which children enter care through the court process or on a voluntary basis. Identify good/innovative practice which enables children to be diverted away from court proceedings and, instead, to be supported in their families where this is possible.
  - Examine the extent to which the core principles of the Children Act 1989 are best met by the current, over represented approach within the courts, and examine whether these principles could be better met by using a more inquisitorial system.

Options to consider include:

  - Investigating the possibility of early low-level judicial interventions to encourage parents to resolve problems themselves, thus avoiding the need for full court proceedings wherever possible and appropriate; and,

- Examining whether the two stages of the court process in child protection cases (establishing the facts and determining the care plan) could be more formally separated with different attendees, procedures and levels of legal representation, and precisely where, and in what way, lawyers should be involved.
  - Explore examples of best practice from other jurisdictions and assess the extent to which they may be applied in England and Wales.
4. The review will be led jointly by DCA and DfES and will take into account the programmes of work in this area already underway across Government. It will also involve ODPM, HMT, HO, DH, the Welsh Assembly Government, and a comprehensive set of external stakeholders including the judiciary. It will report to Ministers by 31 January 2006.