NEITHER FEAR NOR FAVOUR, AFFECTION OR ILL WILL:

MODERNISATION OF CARE PROCEEDINGS AND THE USE AND VALUE OF INDEPENDENT SOCIAL WORK EXPERTISE TO SENIOR JUDGES

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CONTENTS

TABLES

APPENDICES

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EXECUTIVE SUMMARY

Introduction

This is part two of an evaluation of the work of independent social work experts (ISWs) in care proceedings (stage I was published in April 2012). It takes forward findings from stage I exploring further the evidential base for views put to the Family Justice Review about the practice of courts. It examines the views, experiences and practices of a sample of senior judges in commissioning ISW assessments, placing these in the context of the timing, format and value of local authority assessments. Finally, judges' views about the implications of the modernisation programme for use of ISWs are explored - in the light of a need for earlier completion of cases, without loss of quality in assessments, and with regard to issues of fairness, justice and transparency in judicial decision making. In the report each section is followed by a summary of findings reflecting the key issue for policy and practice.

The study is based on interviews with 23 senior judges (20 DFJs, 3 Circuit Judges) in 20/43 county courts in England and Wales. Interviews were held between February and April 2013. They include representation from all circuits, and courts with small and high volume case loads (less than 115, 251 - 900 applications in 12 months). They hear applications from just over half of authorities in England (59%) and just over one third (36%) in Wales.

KEY FINDINGS

USE OF INDEPENDENT SOCIAL WORK EXPERTISE – VIEWS OF SENIOR JUDGES

1 Judges' views about frequency of use

- In the light of views about high use of ISWs at 2010, we sought judges' views about their practice: most said they were not 'frequent users' - estimates of 22-25% of case load suggested very similar usage to that found in a national random survey in 1999.

- A small group thought their use was 'frequent' - two to three orders a month, with use linked to local authorities known to be struggling.

- While there were indications of pockets of high use in the history of proceedings, there was no single 'cause'. For example, in periods where a 'no stone left unturned' attitude was *said* to dominate discourse, judges also experienced resource problems in local authorities with gaps in skills and evidence. Lack of judicial continuity played a part, as did the *very* early days of the Human Rights Act 1998 - but judges reported those days were long gone; they did not represent practices leading up to the FJR.

2 Judges' reasons for use of ISWs

- The main reasons for current use of ISWs is lack of an assessment, a poor quality/out of date otherwise limited assessment and where a local authority is unable to provide the skills to undertake the work – or cannot do so in the court's timescale.

- Breakdown of relationships between parents and a social worker was not a reason judges would countenance for use of an ISW – it could be a contributory factor but was rarely a free-standing reason - save in exceptional circumstances.

- Less common were cases where a LA had 'closed its mind' to a carer, where several candidates required consistency in assessor, or where an existing assessment was compromised, or biased, or lacked transparency. These were *not* routine cases but circumstances, even for judges who rarely used ISWs, which would justify use.

- Just under a third of judges identified changes to the role of guardians as contributing to use of ISWs; guardians were also identified as a party to most instructions.

- When considering use, caveats usually applied, (i) the ISW must be able to dedicate time and report quicker than the LA could while maintaining quality and (ii) the ISW should be a 'tried and trusted' expert with the confidence of the court and the LA.

- Main reasons for use in kinship assessments were broadly the same: lack of resources within the LA and inability to complete work in the timescale. Breakdown of relationships could be a *contributory* factor; it was not a 'freestanding' reason.

3 Local authority involvement in joint instructions and judicial decision making

- Most judges said LA involvement in instructions was active, usually the outcome of collegiate endeavours. There was little evidence of 'shoehorning' of local authorities – who were not slow in opposing an application if they felt that was appropriate.

- There was however limited evidence of a pragmatic approach where the LA had concerns about whether existing evidence would withstand examination.

- A desire by local authorities to share assessment costs was not identified as a driving force in their involvement in joint instructions.

- Some judges had noticed a decline in LA involvement in instructions (post 2011) but most had not; judges said that was because issues have always been robustly debated and local authority involvement 'active and appropriate'.

4 Reasoned adjudication or rubber stamp?

- Almost all judges had refused applications for an ISW: they do not regard themselves as a 'rubber stamp' in the face of an agreed application: almost all reported 'need' had to be established regardless of party views or the status of an application.

- Pressure of work and substantial reading materials mean judges are dependent on experienced child care advocates but judges said advocates were usually well aware of their approach to experts *per se* - that meant need had to be established.

- Some judges raised concerns about the impact of the new regime and a 26 week deadline. It was argued changes should not result in a 'knee-jerk' or 'macho' reaction by courts without proper exploration of the needs of the case within a framework that considers fairness and justice for children and parents.

5 The impact of human rights issues

- Human rights are not a key driver in applications or decisions to order an ISW report. Almost all judges said such arguments are out-dated by some years. Such issues were rarely engaged in court and *always* as an 'add on' or 'make weight' argument.

6 'Borderline' cases and decisions to instruct an ISW

- Such cases were rare, judges had granted leave - but with caveats. First, in complex cases issues can be subtle but with substantial implications for children and where 'broad brush' assessments may be limited. Second, judges have usually only countenanced use where a balancing exercise indicated potential value, where questions were identified and where the report would not cause delay.

- While such cases are rare most judges would not rule out exercising discretion in such circumstances; scrutiny may be 'fierce' but the same issues are likely to apply.

- Several judges cautioned about the benefits of hindsight and some rhetoric in this area. There were concerns that certain arguments may result in a blanket refusal and some 'shooting from the hip' by courts where timetables rather than careful scrutiny of need and potential value, may determine approaches.

7 Judicial views about the quality of ISW reports

- Just over half of the judges said the quality of ISW reports was good or excellent - reports described as 'outstanding', 'excellent' and 'exceptional' and without exception. Other judges said reports were good but with instances of variability; three judges identified a report that had not met their expectations.

- Reports were said to be analytical, reasoned, independent and comprehensive, built on sufficient time with parents/others for a robust assessment.

8 The expertise of ISWs

- Judges reported most of the ISWs they commissioned were highly experienced practitioners with specialist skills, highly articulate, with effective and detailed knowledge of public law, child development and the needs of the court.

- They were described as practitioners at the 'top of their field', able to provide 'experience, expertise and wisdom'. As a 'tried and trusted' expert they were mostly seen as of substantial value to courts and other parties.

9 The value of ISW assessments for courts

- ISWs were seen as providing specialist skills and expertise which a local authority could not provide and for the most part producing reports which are comprehensive, meet the court's timescale and enable judges to move forward with confidence.

- In exceptional circumstances (where local authority evidence is compromised, biased or lacks transparency) ISWs can engage highly disaffected parents/potential carers.

10 Impact of an ISW report on cases: planning, placement and contact issues

- With one exception almost all judges reported cases where an ISW assessment had changed the 'direction of thinking' and the order or placement proposed for a child.

- Circumstances included parenting capacity for a child with a physical disability, sexual abuse and risks to siblings, parenting in diverse cultural/religious contexts, parenting with a learning disability, and intergenerational abuse in families.

- Changes in thinking and planning for children some of which were heading for adoption included placement with another parent and with extended family members, and plans for Special Guardianship Orders changed to placement for adoption.

- Judges also reported an ISW could shorten cases and reduce litigated issues. This was especially so when the ISW was 'tried and trusted' by the local authority.

11 Limitations and problems in using ISWs

- Most judges said delay was not a factor associated with ISWs. Most have usually only agreed a 'late' application if the report could meet an existing deadline. Few would countenance an adjournment – save in very exceptional circumstances.

- There was some concern about the impact of timescales on the quality and value of ISW reports; this requires monitoring. Judges said timing was important but it was not the sole factor, other factors were relevant in exercising judicial discretion in this field.

- Undermining of social workers per se was not seen by most judges as a limitation or result of using ISWs. This is a complex area but some judges indicated the source of public confidence in social workers, where this is an issue, is likely to lie elsewhere.

12 Barriers or problems to earlier instruction of ISWs

- Judges identified three concerns: (i) impact on the quality and comprehensiveness of reports where an ISW has not seen all the evidence (ii) difficulties in engagement of parents before threshold and care plans are clear and, (iii) difficulties for extended family members/potential carers where similar sequencing issues apply.

LOCAL AUTHORITY INSPECTIONS

13 Ofsted and CSSIW - completion rates for core assessment within 35 days

- Data for the 90 'feeder' LAs demonstrate that in 44%, 80% of assessments were completed in 35 days, in 56% it was between 70 - 79%, in 29% it was below 70%.

14 Ofsted and CSSIW Inspections - 'quality and timeliness' of core assessments

- In a random sub-sample of 60/90 LAs, 58% was judged to be 'variable'; 18% were 'improving'; 5% were 'good', 5% 'unacceptably poor':

15 Ofsted grading: 'quality of practice' or 'quality of provision'

- In a sub sample of 52 'feeder' authorities, 58% were graded 'adequate' (grade 3), 31% 'good' (2) and 8% 'inadequate' (4).

THE PUBLIC LAW OUTLINE (PLO)

16 Courts operating the PLO and applicants meeting filing requirements

- Most judges operate or try to operate the PLO but many pointed out that case management practices are one part of dealing with delay; effective work by courts depends on timely, high quality evidence: the two are inextricably linked.

- Few judges reported a local authority as consistently compliant with providing the checklist documents at PLO stage 1.

- Judges with a single/very small number of 'feeder' authorities tended to report better experiences but some with several authorities had 'better' and 'poor' performers.

LOCAL AUTHORITY ASSESSMENTS FOR COURTS

17 Format, quality and utility to the court

- With notable exceptions, judges indicate that so far as proceedings are concerned, the core assessment record generated by electronic ICSs is '*not fit for purpose'*.

- This raises several policy questions, not least of which is whether that record was ever intended to be filed in proceedings. That requires urgent attention.

- Relatively few judges said the core assessment was a key document at PLO stage I; even fewer routinely received it. Most judges had either 'given up' on this document some time ago – or did not think it was necessary at the start of proceedings.

- Some DFJs had taken steps (many pre-dating the reports of Munro and the FJR) to assist local authorities in improving the quality of assessments.

18 Changes over time in the timeliness and quality of core assessments

- A small number of judges felt there had been some improvement in assessments but overall most saw little improvement post the Munro Report and recommendations.

- There were also pockets of concern about some social workers' understanding of legal framework and thus the requirements of courts. This has implications for training including a *compulsory* component in training on child care law for those wishing to work in this field, recruitment and retention of senior level social workers, in-house support for newly qualified social workers, and increased use of dedicated pre-proceedings assessment teams.

- Given the immediate needs of the FJMP an expansion of mentoring systems utilising the skills of experienced, court literate senior social workers such as ISWs would also meet the needs of both courts and local authorities, supporting colleagues in children's services where knowledge, experience and thus confidence is lacking.

19 The Integrated Children's System

- Ofsted and CSSIW reports identified some problems with some systems: these are exacerbated for courts not least because of the variety of systems used and thus the range of electronically generated reports filed.

- Any restructuring and reshaping of social work practices with families (following recommendations of the Munro Report) and improvements in the timing of reports for courts (under the PLO 2013) are likely to be constrained by IT systems.

- There has been lack of policy attention to documents for work under Part III of the CA 1989 and those required of local authorities under Part IV of the Act. Attention to this interface was absent from the work of Munro (2011) and from the development of integrated children's systems; it is also absent from Working Together to Safeguard Children (2013).

THE FAMILY JUSTICE MODERNISATION PROGRAMME

20 A view from senior judges

- Most judges said the days are long gone – save in exceptional circumstances - when an ISW might be used as a 'double check' issues or 'add weight' to a social worker's conclusion. Some judges did not recognise the picture of their work put to the FJR.

- Several judges raised concerns about some decisions they are expected to make. Key concerns are keeping vulnerable parents on an equal footing with other parties and the position of extended family members as potential carers for children. Therefore practices require careful and independent monitoring.

- Some judges expressed concerns that LAs are subject to less scrutiny of their work by guardians than in previous times; that the latter have less time per case and some were reported as less experienced than previously. With notable exceptions, judges said many experienced guardians on which courts have relied are now ISWs.

- Some judges said changes would not impact on their use of ISWs as the latter were rarely used; several more reiterated they had always undertaken a robust assessment of 'need' practice was thus in line with changes and would not alter.

- Whether judges were more or less likely to use ISWs, or that practice would remain unchanged, the circumstances where they would use an ISW were the same:

    - where a local authority lacks the necessary skills or time
    - to undertake work faster than a local authority was able
    - in complex cases such as those with multigenerational abuse
    - where an assessment is compromised, biased, or lacks transparency
    - Where several potential carers require assessment.

- Judges recognised the problems facing the FJS and for careful use of *all* experts. Practices are likely to be tempered, in the interests of children and justice, by a need never to close all doors in seeking the best solution for a child. Where necessary ISWs work to tighter deadlines and judges adapt case management practices.

- Judges addressed tensions between completion rates and doing what was best for a child: obtaining permanence for a child quickly is important but so is also making the right decision for a child and thus obtaining timely, analytical, forensically driven reports on which the court can move forward with confidence and speed.

21 In summary: myths, practices and ways forward

- Findings demonstrate multiple reasons for use of ISWs. Evaluation of ISW reports indicate they fill in gaps in LA evidence, add substantial expertise and skills and do not cause routine delay. Overall, senior judges' views and experiences support those findings: they ordered ISW reports where the evidence was necessary and where a local authority could not provide the expertise and/or time; that practice predates the 26 week deadline for completion.

- To a lesser extent judges also use ISWs in cases of multigenerational abuse and risk, where several carers require assessment, and where existing evidence is compromised, or biased or lacks transparency.

- There is evidence of collegiate work among all professions: tensions between local authority social workers and ISWs were not inherent, a 'tried and trusted' ISW was reported as of value to courts and to local authorities and guardians trying to obtain robust assessments within deadlines but with resource limitations.

- The study also raises some questions about levels of training, expertise and support for some social workers. Where these are newly qualified/second year practitioners without training in the legal framework, they are highly vulnerable in the legal arena. Mentoring schemes utilising ISWs may assist LAs in the immediate/medium term.

- Foremost for courts is that children, and just and fair proceedings, cannot wait. Immediate availability of high quality and timely assessments is imperative if timescales are to take precedence. Avenues must remain open to courts, guardians and local authorities to obtain the best evidence; no option should be immune from question or bypassed in that exercise.

SECTION 1 – THE EVALUATION

A BACKGROUND, OVERALL AIMS AND OBJECTIVES

1 As set out in the report on stage one of this evaluation, several concerns surround the use of independent social work (ISW) assessments in care proceedings. Some result from the exclusion of this work from a review of legal aid for expert assessments in this field and a cap on fees and fears about a resulting reduction in the availability of ISWs. At the same time, submissions to the Family Justice Review (FJR) in 2011[1] claimed that ISW assessments:

- cause delay
- simply duplicate existing local authority assessments
- add nothing new to cases
- undermine confidence in social work assessments
- result from parents utilising human rights arguments to gain second opinion evidence – and to which it was said the courts too readily accede.

2 In the interim report, the FJR indicated it was persuaded by criticisms of ISWs and made a number of recommendations to restrict their use. The final report however acknowledged the concerns the interim review had generated in the family justice system and that it had singled out independent social workers unfairly[2]. The final report therefore broadened recommendations as to future use of ISWs stating the court should seek material from *any* expert only when the information was necessary and was not available from parties already involved the case. It accordingly recommended future use of ISWs should be exceptional.

3 The government subsequently accepted those recommendations and, by implication, claims about ISWs. In responding to the final report of the FJR, Government stated that it would legislate to make it clear that it would only be permissible to commission expert evidence where it was 'necessary' to resolve the case[3] and where information is not available through other sources[4]. These proposals are now encapsulated in the amended

[1] For example, see Gibb M (2010:2) Social Work Reform Board, Submission to the Family Justice Review); Mavis M (2010) 'ADCS chief says Independent social worker role should end', Community Care, July).
[2] Final Report - www.justice.gov.uk/publications/policy/moj/2011-family-justice-review-final
[3] The test replacing whether such evidence was 'reasonably required'.
[4] The test is addressed in Re TG (Care Proceedings: Case Management: Expert Evidence) EWCA Civ, [2013] 1 FLR 1250, para [30]) and in Re H-L (A Child) [2013] EWCA Civ 655 where it is made clear that the meaning of the word 'necessary' does raise the bar in any consideration of expert evidence.

Family Procedure Rules (2010) in amended Practice Directions regarding use of experts[5], the revised PLO (see Appendix AP2) updated under new Practice Directions for the management of cases under Part IV of the Children Act 1989[6], and the public law sections of proposed primary legislation under the Children and Families Bill 2013.[7]

4 While some strong views have been expressed about the use of independent social work assessments in proceedings, in 2011 there was little hard evidence about the use or the impact of such assessments.[8] This independent evaluation, commissioned following submissions to the FJR, aimed to address that gap. Stage one was based on an analysis of 82 reports for courts (concerning 65 cases and 121 children) in England and Wales. The sample was drawn from the records of three independent agencies providing ISWs. The report was published in April 2012;[9] key findings challenged views put to the FJR about the work and contribution of ISWs to care proceedings (see below, paragraph six).

[5] Amendments to Part 25 of the Family Procedure Rules (Experts and Assessors) and Practice Direction Part 25A concerning expert witnesses in the family courts were drafted by the Family Procedure Rule Committee and laid before Parliament in December 2012. The new rules (inserting a new Part 25 into the FPR 2010) is largely a consolidation of the existing Part 25 plus the new rules; these came into effect on the 31 January 2013 and were applicable to existing and new applications starting after that date (the rules and Practice Directions are on the Family Procedure Rules Section of the MoJ website (www.justice.gov.uk/courts/procedure-rules/family. A series of short Practice Directions (25A to F) replacing a single Practice Direction relating to the use of experts. Additionally controlling the use of expert evidence has been added to case management responsibilities for the purposes of rule 1.4 of the FPR, and the order of matters including in active case management has been altered - placing setting timetables and controlling the progress of the case first. Para 1.1(2) also being relevant – dealing with a case justly includes saving expense.

[6] Practice Direction 36C includes the updated PLO and the pilot scheme for a (staggered) introduction across courts: care and supervision proceedings and other proceedings under Part 4 of the Children Act 1989 supplements FPR Part 36, rule 36.2 (Transitional Arrangements and Pilot Schemes), 31 May 2013. Annexed to PD36C is the revised PLO - Pilot Practice Direction 12A – Care, Supervision and Other Part 4 proceedings: Guide to Case Management under Part 4.

[7] As introduced: The Children and Families Bill 2012, Part 2 – Family Justice (clause 13 – Control of the use of experts and of assessors; clause 14 - Care, supervision and other family proceedings – time limits ad timetables, and clause 15 - Care plans). http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0005/cbill_2013-20140005_en_1.htm

[8] But see Ofsted Report (2012) Right on time: Exploring delays in adoption (this inspection included a focus on eight cases in which ISW reports were commissioned and in which Ofsted argued the latter 'essentially duplicated the task of the allocated local authority social workers'. The report states the ISW reports 'resulted from a disagreement about the proposed plan between the guardian for the child and the local authority or as a result of effective advocacy on behalf of parents' (Para 33). The report is however rather 'thin' on detail – and the task of the child's guardian to appropriately scrutinise the work of the local authority, and if necessary, hold it to account – perhaps especially where a proposed care plan is permanent severance of a child's relationship with a birth parents.(http://www.ofsted.gov.uk/resources/right-time-exploring-delays-adoption). See also, evidence to the FRJ from St Michael's Fellowship regarding the use residential family assessments following negative views about such assessments in the interim report of the FJR (http://www.stmichaelsfellowship.org.uk/content/2134/Services).

[9] Brophy J, Owen C, Sidaway J and Jhutti-Johal, J (2012) The contribution of experts in care proceedings: An evaluation of independent social work reports in care proceedings. England; CISWA-UK. (http://www.ciswa-uk.org/news/ - Research).

B THE FRAMEWORK FOR STAGE TWO

5 This report is based on interviews with senior judges; it takes forward issues and findings from stage one (an evaluation of ISW expert reports for courts) placing these, so far as is possible, within a rapidly changing climate regarding use of experts per se, the new timescale for the completion of cases, and thus expectations about the tasks and role of judicial case management.

6 Key issues and findings from stage one (as below) informed the themes and questions addressed with judges:

The families subject to proceedings

- The profiles of children and parents in cases referred to ISW experts demonstrate multiple problems; as demonstrated by other data in this field, such families are usually the poorest in Britain - at the bottom of the socio-economic ladder. Moreover they demonstrate high levels of co-morbidity. For example, almost half the sample parents had mental health problems, over 40% had drug/alcohol problems, over 50% of mothers were subject to domestic abuse and over 40% of parents were ill-treated as children. Most children were young, suffered multiple forms of maltreatment in families and most were well known to children's social care.

Responsibility for instructing ISWs

- Findings did not support a view that parents are solely responsible for the use of ISW assessments – or that applications are based solely on human rights claims by parents. Parents were involved in most instructions to an ISW (79%) but most of those (64%) were joint instructions - almost half involved all three major parties. Data demonstrate that in practice the local authority was a party to most instructions (65%) as was the guardian (56%).

- All letters of instruction instruct ISWs as an expert witness for the court. Letters were drafted according to Guidance/Practice Direction on instructing experts; ISWs were referred to the principles, duties and responsibilities of an expert witness for the court - distinguishing these witnesses from professional witnesses.

The assessment context in which ISWs are instructed

- Most cases (93%) indicated the local authority had filed at least one assessment relating to the care of a child(ren) in the current application; 71% contained a core assessment. However the reasons why an ISW was instructed to assess a parent in such cases were because an earlier assessment had not included the parent now seeking an assessment, or a parent with a new partner; this was the reason in 43% of cases. In these circumstances the ISW does not 'duplicate' the local authority assessment, but adds information.

- In 35% of cases parents contested a local authority assessment but most (27%) contested that assessment on grounds of content - not on human rights grounds.

Just 4 cases (8%) of parents contested a local authority assessment on grounds of a lack of independence or human rights claims.

- In those (19) cases where an ISW was instructed within twelve months of a local authority core assessment, many cases involved a high level conflict between the local authority and a parent(s) - some cases had reached an impasse. In most cases changed circumstances (e.g. a new partner, a birth parent not previously assessed, improved circumstances), missing information, further questions/new information underscored instructions to an ISW.

- Findings to date therefore do not appear to support views that ISW assessments routinely duplicate local authority assessments, adding nothing new to proceedings and arise primarily from applications by parents citing human rights to a second opinion.

The education, training, skills and experience of the sample ISWs

- ISWs employed by the sample agencies in stage one had substantial experience in child protection work; the median was 24 years. Many held senior positions in local authorities prior to ISW work; two-thirds had a relevant higher degree.

- There remains a view that an ISW is simply a third social work professional involved with the case (additional to the local authority social worker and the child's guardian). In the light of stage one findings, it was suggested that that view required 'unpacking' in the light of what ISWs actually do compared with what might be achievable – in certain circumstances - from a LA social worker or a guardian.

- Stage one findings also indicated that in certain cases with a history of non-cooperation/engagement with local authorities, the independence of the ISW coupled with the skills and time to spend with and fully assess parents according to the Practice Guidance accompanying the Framework for the Assessment of Children in Need and their Families (2000) is of benefit to courts and arguably local authorities.[10]

ISW assessments of parents

- Stage one data demonstrated that the ISWs draw on a range of theoretical frameworks and tools in engaging and assessing parents: The assessment of parenting is a dynamic process, the approach is evidence-based and the method of enquiry and presentation is forensically driven.

[10] That is, according to the domains for assessment set out under the DoH (2000) Assessing Children in Need and their Families – Practice Guidance, page 2, which under 'parenting capacity' covers basic care, ensuring safety, emotional warmth, stimulation, guidance and boundaries, and stability) 'family and environmental factors', and under Family and environmental factors includes family history and functioning , wider family, housing, employment, income, family's social integration and community resources; these assessed against the 'child's developmental needs' (health, education, emotional and behavioural development, identity, family and social relationships, social presentation, and self-care skills). With regard to England, those domains remain but the Framework has subsequently been superseded by Working Together to Safeguard Children (WT) (2013). http://media.education.gov.uk/assets/files/pdf/w/working%20together.pdf - see Section 2 below.

- Where the ISW agreed with a local authority social worker regarding placement of a child outside of his/her birth family, they 'add value' because the assessment underscoring that recommendation was up to date, based on current circumstances, was evidence-based, transparent and independent with the focus on the forensic needs of courts.

- It was also suggested that ISW reports *may* reduce the likelihood of a contested hearing, assist courts to meet tight timetables and achieve early resolution of a case.

Reports prepared by ISWs

- Reports were mostly of high quality; they were evidence-based, transparent in analysis and forensic in method. At its best, this enables the reader to track key issues in the case and questions to be addressed through the narrative of the report, the analysis of each domain of the assessment, through to the answers to questions, the conclusions reached and the recommendations made.

- Reports reflect a dynamic approach to case work based on spending sufficient time with parents to enable practitioners to undertake a comprehensive assessment in the light of disclosed documents and questions posed. Reports reflected a robust approach with parents where discrepancies in evidence were addressed directly and where assessments were fair and transparent in terms of the work undertaken and the recommendations made.

- There were some quality assurance issues relating to the layout of about 25% of reports. Poor layout and lack of signposting made such reports hard reading and in places, process driven. Key information was usually included, but poor structure made these reports time consuming to analyse. Equally, the recording and relevance of cultural and religious diversity require attention, and the use of research evidence needs to be increased.

Timetabling, delay and duration

- Where there were no changes in the circumstances of a case most ISW reports were delivered on time. Where reports were delayed, in most cases this resulted from changed circumstances and was *purposeful*. Very few reports (7/63) were lodged with solicitors later than the due date without case driven factors.

- Indications to date are that ISW reports are delivered well in time for the next court hearing; there was no evidence that ISW reports routinely cause delay in proceedings.

- Key features contributing to increased duration of assessments were changes in the circumstances of a case during proceedings, and the number of children in cases: assessments exceeding eight weeks were significantly more likely to involve three or more children.

7 Conclusions so far

- Findings to date do not support the view that ISWs simply duplicate existing parenting assessments and cause delay - or result from parents seeking 'second opinion' evidence based solely on applications under Article 6 of the Human Rights Act 1998.

- At the end of stage one we suggested that in the context of the Family Justice Modernisation Programme (FJMP) and faster justice, findings on the quality and duration of ISW reports indicated they have a capacity to assist the new programme in meeting completion targets without sacrificing quality.

C STAGE II – FOCUS AND KEY QUESTIONS

8 As we identified in stage one, key questions and gaps in data remain. Foremost in these are the views, experiences and practices of judges regarding the use and impact of ISW experts and their responses to the above findings from part one of this evaluation.

9 For example, looking at the role of local authority evidence and the context in which ISWs are instructed, is it the case that:

- The timing of local authority core assessments has improved since data identified a substantial number of applications started proceedings without this document?[11]

- Are judges satisfied with the quality of core assessments for the purposes of proceedings?

- How frequently do judges think ISWs are used, how do they respond to a view that they too readily accede to applications for use, and how has or will their own practice change in the new climate?

- Have ISWs been instructed where the need/requirement might be described as 'borderline'; have judges received reports which they consider add little/nothing to information they already have?

- How do judges explain the high level of involvement by local authorities and guardians in instructions to ISWs – how are these issues played out in court?

[11] For example, Brophy 1999; Brophy et al.1999; 2003; 2009. For an overview of research findings to 2005 see Brophy J (2006) Research Review: Child Care Proceedings under the Children Act 1989. London: DCA. As identified in stage one, studies put the figure at some 40% of cases. Later work (Masson et al. (2008) Care Profiling Study. London: MoJ) confirmed findings as did Jessiman et al. (2009) An Early Process Evaluation of the Public Law Outline in family courts. Research Series 10/09.

- Have judges noticed any changes over time in the quality and timing of local authority assessments, and if so, do they have views about the reasons for any change?

Turning to judges' views, experiences and practices regarding ISWs:

- What reasons or issues underscore judicial practices in ordering an ISW report?
- What do judges see as the limitations and benefits of ISW reports - what are their views about the impact of reports on duration and delay in cases?
- Do reports have a value/added value to the work of courts?
- Do ISW reports have any impact on cases in terms of order, planning and placement of children?
- Are there any barriers to earlier instruction of ISWs?
- How large a role has the issue of human rights played in the use of ISWs?
- Are there circumstances where ISWs save time and money in proceedings?

Turning to the new agenda for care proceedings:

- How do judges think the new legal landscape (criteria, Practice Directions for use of experts and case management practices) will impact on the use of ISWs?

10 Second and also important (and perhaps more so given findings in stage one) are the views of local authority *social workers* undertaking assessments and local authority lawyers: we identified these as an important omission in stage one and they remain so.

11 Third and linked to the views of social workers and local authority lawyers, key questions remain about the format, quality and timing of local authority core assessments filed in proceedings. This is perhaps especially pertinent for practices in England following changes for assessments introduced by Working Together to Safeguard Children (WT) (2013)[12].

12 This second part of the evaluation addresses the first and the third question: the views, experiences and practices of senior judges, and the timing, quality and value of local authority core assessments.

[12] See note 10 above and Section 2 below.

13 As indicated above, it has to be acknowledged that public law proceedings are changing fast - in large part as a result of the Judicial Response to the Family Justice Review (Ryder, 2012). All sectors associated with decisions regarding allegations of child maltreatment or risk of maltreatment address a rapidly shifting terrain. The 26 week target for completion of care applications is now a deadline, changes to the test for use of expert evidence[13] and to judicial case management practices continue to impact on judicial training and current case management practices.

14 It is however also important to note that following findings from stage one of this evaluation, the final report of Mr Justice Ryder (now Lord Justice Ryder) made it clear that in appropriate circumstances there remains a place for ISW experts in care proceedings:

> 'There is a place for independent social work and forensic witnesses to advise on discrete issues which are outside the skills and expertise of the court or to provide an overview of different professional element in the more complex cases, but regard must be had as to why those who are already witnesses before the court have not provided the evidence that is necessary and who should pay for it when it is missing'
>
> Ryder J (as was) (2012) Judicial proposals for the modernisation of family justice, a framework of good practice. Para 41

15 It thus remains important to explore judicial views both with regard to the past exercise of judicial discretion (in part to examine the evidential base for views about court practices in the period prior to the Family Justice Review) but also to place that exercise and findings within the 'new regime' as this is 'bites' across courts in England and Wales.

Structure of the report – some signposting

16 The report is presenting in six sections, each section is followed by a **two page summary of key findings** addressing the questions raised:

- **Section 1** below provides a description of the sample (the judges and courts) plus background information from Ofsted and CSSIW inspections of LA assessments
- **Section 2** examines judges' views and experiences about the timing, quality and value of LA assessments for care proceedings.
- **Section 3** explores judges' use, and reason for ordering ISW assessments
- **Section 4** presents their views about the quality, value and impact of ISW reports
- **Section 5** addresses the changing landscape of proceedings and judges' views about the impact of the new regime, and,
- **Section 6** explores the implications of findings for debates about social work expertise at the interface with courts, the exercise of judicial discretion in further use of ISWs and implications for the success of the modernisation programme.

[13] See above, notes 3 and 4.

D SAMPLE JUDGES AND COURTS

The Judges

17 The sample consists of 23 Circuit Judges – 20 of whom are the Designated Family Judge (the DFJ) for their respective family courts.

18 All judges had substantial experience in public law proceedings - as advocates (at the Bar or as solicitor advocates) and then judges hearing applications under the Children Act 1989 (some also had experience of public law under previous legislation):

- Most judges had at least 10 years' experience hearing public law applications - many had substantially more experience
- Many sit or have sat as deputy High Court Judges.

Regions/circuits and those hearing care applications

19 Historically there have been seven administrative regions (court circuits) in England and Wales - each with a presiding Family Division Liaison Judge (FDLJ). Some substantial changes are underway in the organisation and administration of family justice and thus a change in the naming of family courts is in the pipe line but at the start of the evaluation, the distribution of courts remained divided into seven circuits (see table 1.5 below).

20 In each region there are a number of county courts hearing family cases and historically those designated to hear public law proceedings have been called 'care centres'.

21 The names of some county courts have changed as courts became relocated to 'combined' centres (hearing private and public law applications, and with Family Proceedings Courts located to the same site). This process of change – and change of name - is extended under the 'Single Family Court Programme'.[14]

22 For the purposes of this study we will continue to refer to the specific court in which judges are ticketed to hear public law applications as the 'county court care centre' (this to include all relevant courts – whether the court building is called a county court, a combined court, a combined family hearing centre, combined court etc).

[14] Munby, Sir James (President of the Family Division) and Sadler K (Chair, Civil Family and Tribunals, HMCTS Family Business Authority) (2013) The Single Family Court: A Joint Statement. The term 'single family court' has been used as shorthand; the proposed title being 'the family court'. Following the Crime and Courts Act 2013 the new Family Court for England and Wales will deal with all family cases - bar two fields of work. The aim is to establish this court by the spring of 2014; it will include judges from every tier of the judiciary sitting under one roof: High Court Judges, Circuit Judges, District Judges and Magistrates and it will have a unified system of administration and listing. (See, http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/single-family-court-guide-final-08042013.pdf.)

23 Each County Court Care Centre has a Designated Family Judge (a DFJ) who is responsible for it and for other County Courts and Family Proceedings Courts (FPCs) designated to hear family cases. In addition to a case load (often the more serious cases) in public and private law, the DFJ has responsibility for policy leadership and business operations in their respective area and for the family courts under their jurisdiction. This includes responsibility for promulgating the efficient and effective operation of case hearing lists, case management and best practice and generally for developing the President's national strategy for family justice in conjunction with the presiding judges and the FDLJ across the Circuit. Thus, for example, the DFJ chaired (what was) the local family justice council (now the local Family Justice Boards) and local business committees. They are said to be the public face of the judiciary and centres are expected to build and maintain relationships with local authorities, CAFCASS and local practitioners.

24 At the start of the fieldwork there were 43 county courts hearing public law cases spread across the seven administrative regions/circuits in England and Wales. In sampling we aimed to capture views and experiences from a number of DFJs in each circuit, to ensure representation from urban and rural catchment areas but also courts with a sufficiently high volume of cases and range of local authority applicants to enable judges to reflect on practices, but also to include a number of courts with a relatively small volume of applications over a 12 month period.

25 The study captures the views and practices of 20 DFJs plus three Circuit Judges: coverage in each region ranged from just under a third to three quarters of all DFJs. The breakdown is as follows:

Table 1.1 – Judges interviewed by court circuits/regions

Regions	Sample DFJs	Total DFJs in region
1 - London	1	1
2 – Midlands	5	10
3 – North East	3	6
4 – North West	3	4
5 – South East	3	10
6 – South West	3	8
7 – Wales	2	4
Total	20	43

Potential number of different local authority applicants per court

26 As indicated above, the aim was to achieve a sample of DFJs from each region, with representation from courts with a high volume of applications over a 12 month period but also courts hearing a relatively small number of applications. Once piloting began we were also able to identify the number of local authority applicants per court.

27 For ease of presentation - and given the substantive issues explored - we refer to local authority applicants as the 'feeder' local authorities for the sample courts. Technically however it is the Magistrates' Family Proceedings Courts (FPC) which is the 'feeder'; it transfers applications to a county court where cases meet the grounds for transfer[15].

28 Most county court care centres in this study hear (transferred) public law applications emanating from several local authorities: the number of local authority applicants per court ranged from one to over twenty. It is well known in the family justice system that the current county court for London (the PRFD and satellite courts) deals with transferred public law applications emanating from 33 local authorities but some centres outside of London also hear applications from a large number of local authorities.

29 A majority of the 20 care centres hear applications emanating from more than one local authority:

- Three centres hear applications from just one local authority
- Six centres hear applications from two local authorities
- Two care centre hear applications from three local authorities
- Two centres hear applications from four local authorities
- Four centres hear applications from five local authorities
- Three centres hear applications from ten or more local authorities.

Volume of care applications

30 Overall the 20 care centres in the study hear public law applications from 90 local authority applicants in England and Wales[16]. For the year 2010-11 these local authorities made a total of some 5,431 applications under s.31 of the Children Act 1989[17].

[15] The substantive provision for transfer from the FPC to the County Court remains Article 15 - Allocation and Transfer of Proceedings Order 2008 (http://www.legislation.gov.uk/uksi/2008/2836/article/15/made).

[16] For ease of presentation all applicants for public law orders are referred to as 'local authorities'. In practice, below regions and excluding London, England has developed different patterns of local government – these Councils holding statutory responsible for local services which include the support of families and the protection of children. Thus applications (from 'children's social care' –

31 Three centres dealt with fewer than 115 applications in a 12 month period: these courts also dealt with a very small number of local authority applicants: two centres hear (transferred) applications from just one local authority. Table 1.2 below sets out the volume of work over a 12 month period alongside the number of local authority applicants:

Table 1.2 - Courts by volume of applications and number of local authority applicants

Number of courts in this category	Volume of applications over a 12 month period[18]	Max. number of LA applicants for courts hearing this volume of cases
4	<115	2
4	116-200	4
2	201-250	2
6	251-351	5
4	352-900	21

E LOCAL AUTHORITY APPLICANTS – BACKGROUND INFORMATION

Core assessments: sources of information

32 For the 90 'feeder' local authorities for the sample courts we explored three types of data. First, we explored completion rates for core assessments with the prescribed time frame (for England and Wales). Second, for a random sub-sample of 60 local authorities we explored two additional data sets: for local authorities in England (52/60) we explored Ofsted inspection grading[19] for overall 'quality of provision' (or 'quality of practice' - whichever applied) and third, for the entire sub-sample (England and Wales - 60) we explored (qualitative) inspection judgements as to the 'timeliness and quality' of core assessments.

formerly children's social services) emanate from (two tier) 'shire' counties, metropolitan boroughs and unitary authorities – herein all 'local authority applicants'.

[17] Figures for England (including those in Table 1.2) have been calculated from Cafcass data: www.cafcass.gov.uk/media/6455/Cafcass Care study2012 FINAL.pdf pp34-38. At the time of fieldwork and for consistency across the various data sets we have used, the most up to date sets were 2010-11.

[18] Source: Cafcass data – ibid.

[19] Care and Social Services Inspectorate Wales (CSSIW) does not apply a grading system to inspections.

Completion rates for core assessments within 'feeder' local authorities

33 Ofsted data[20] on completion rates for assessments within (what was) a 35 day timescale do not differentiate between assessments according to whether they resulted in or were filed for care proceedings. However, they do provide information about completion rates for all core assessments within the prescribed timescale as this applied in 2010-11[21] and thus for the 90 'feeder' local authorities in the study. The results for the 90 'feeder' authorities are set out in table 1.3 below:

Table 1.3 - Core assessments completed within 35 days – 'Feeder' local authorities for sample courts - England and Wales

Percent completed within 35 days 2010-11	Number of LAs in this category	Percentage of all feeder LAs
Less than 50	5	6
50-69	21	23
70-79	24	27
80-89	30	33
90+	10	11
Total	90	100

34 In summary:

- In 44% of local authorities (40/90), 80% or more of assessments were completed within the statutory 35 day timescale
- In just over half (56%, 50/90), fewer than 80% of assessments were completed within the timescale
- In 29% (26/90) fewer than 70% were completed within the timescale.

Ofsted Inspections of local authority children's social care - England

35 In May 2012 a new framework of unannounced inspections of the arrangements for the protection of children was introduced in England; these are called child protection inspections (CPIs).[22] Some 'feeder' authorities in England were inspected under the new

[20] Ofsted publishes reports on the outcomes of local authority children's services inspections under the Children Act 2004 (see, http://www.ofsted.gov.uk/inspection-reports/find-inspection-report).
[21] See note 10 above; following a revision of Safeguarding Statutory Guidance for Working Together and the Assessment of Children in Need and their Families (2013) [England], the timescale for completion of a *full* assessment is now 45 days from the initial referral; the distinct between an initial and a 'core' assessment has been removed (see Section 2 below).
[22] Ofsted Inspections under the new framework take place on a 12 month cycle, running from June 2012 to May 2013. The first inspections under this framework took place in June 2012; by 31

CPI inspections and completed after June 2012 but most were not. Information for the latter group thus comes from the Safeguarding and Looked after Children Inspections. It should be noted that inspections under the latter (undertaken between 2009 and 2012) are not in all respects directly comparable with outcomes of the newer CPIs (Ofsted state that the CPI framework has 'raised the bar'). That said both types of report shed light on assessment practices, and importantly, also on management, support and training needs for social workers in the 'hinterland' behind Part III of the Children Act (CA) 1989. Some children and families currently 'embedded' in those findings will have become subject to proceedings under Part IV of the Act.

36 Under unannounced inspections Ofsted apply a four point grading to local authority arrangements for the protection of children.[23]Under new CPIs, the 'header' fields graded are:

- Overall effectiveness
- Effectiveness of help and protection provided to children, young people and families and carers
- Quality of practice
- Leadership and governance.

37 Under the Safeguarding Inspections (i.e. pre June 2012) the 'header' fields were:

- Safeguarding services
- Outcomes for children and young people
- Quality of provision
- Leadership and management

Ofsted grading: 'quality of practice' or 'quality of provision'

38 For the sub sample of 52 'feeder' local authorities in England we explored the grading for 'Quality of Practice' (or 'Provision' - whichever format was the most recently published report for the authority was inspected:):

- None were graded '1' (outstanding)
- 31% (16/52) were graded '2' (good)

December 2012, 23 inspections had been completed. The report does not follow the usual quarterly periods because it introduces the new framework and includes all the inspections that have taken place up to the end of December 2012 and that had been published by 21 January 2013.

[23] Ofsted grade 1 = 'outstanding' (a service that significantly exceeds minimum requirements); 2 = 'good' (a service that exceeds minimum requirements); 3 = 'adequate' (a service that meets minimum requirements) and 4 ='inadequate' (a service that does not meet minimum requirements). Ofsted has indicated grade 3 'adequate' will be changed to '*requires improvement'* with effect from November 2013 (Inspection of services for children in need of help and protection, children looked after and care leavers - http://www.ofsted.gov.uk/consultations/consultations/closed).

- 58% (30/52) were graded '3' (adequate)[24]
- 8% (4/52) were graded '4' (inadequate)

Ofsted and CSSIW inspections: the timeliness and quality of core assessments

39 With regard to inspection judgements about the 'timeliness and quality' of core assessments we explored reports for the sub-sample (60/90, 52 in England, eight in Wales). The main finding from both Ofsted and CSSIW Inspections was that of 'variability':

- 58% (35/60) inspections reported assessments were 'variable'
- 7% (11/60) said assessments were 'improving'
- 5% (3/60) said assessments were 'good' - without qualification
- 5% (3/60) said assessments were 'unacceptably poor'

40 Where inspectors said core assessments were 'variable' this could cover a range of judgements such as 'variable to good', or 'variable, poor to good' or 'a minority of high standard but too many were variable', or 'a minority were to a high standard but too many were descriptive and lacked analysis', or 'some good, some poor', 'quality of assessments and consistency of practice is too variable overall', 'the quality of practice is just too variable' 'assessments are inconsistent and the local authority has QA problems', 'variable – not all cases inspected demonstrated robust analysis'. For example:

> 'Very variable, there is a need for improvement and consistency – tick boxes and no analysis' CISSW (ID1)

In some local authorities the degree of variability could be wide ranging:

> 'Assessments were at least adequate, most recent good, some outstanding'. Ofsted (ID14)

41 The main problems with assessments were identified as follows:

- poor/insufficient attention to and balancing of risk and protective factors
- too descriptive and lacking analysis
- lack of focus on what needs to change
- lack of integration of historical information
- delayed assessments leading to drift
- poor attention to risk[25]
- missing information
- chronologies which were out of date
- parenting assessments which were inconsistent

[24] See note 23 above – proposed change of definition for a grade '3' in November 2013.
[25] And on occasion, 'overly optimistic'.

- poor or little attention to issues of diversity

42 Where assessments were described as 'improving', some inspectors noted improvements since the last visit (e.g. 'analysis was improving', 'risk and supportive factors were improving', or 'some are now good, others remain variable': for example:

> 'Assessments are improving but further work needs to be done'
> CSSIW (IDX)

As completion rates for core assessments demonstrate (table 1.3 above) improvements could be from a low base line.

43 Where core assessments were reported as 'good' without qualification, this applied across all teams within the authority:

> 'The quality of core assessments was high and consistent across all teams in the county'.
> Ofsted (ID4)

> ''The quality of initial and core assessments are good with appropriate account taken of the children's differing needs and individual circumstances including [issues of diversity]'.
> Ofsted (ID34)

44 Where assessments were described as 'good' – or where some were identified as good in an otherwise very mixed/variable picture, strengths identified as:

- risks and protective factors identified
- effectively tells child's journey through the care system
- parenting assessment highly effective
- [this authority] has a community based parenting assessment service which is comprehensive and high quality
- risks identified and well informed, some use of theory and research
- [this authority] has developed tools and models for assessments – underpinned by research.

45 Other inspectors described assessments as of 'adequate' quality, for example:

> 'Most of the initial and core assessment seen are thorough, or at least of adequate quality and appropriately identify risk and protective factors. In some cases research is used well to inform assessments'. Ofsted (ID43)

> 'The majority of current assessments are of adequate quality, although they contain description rather than coherent analysis or evaluation. A small number of assessments seen are inadequate as they fail to address the key issues in the case or they insufficiently incorporate the views of the child or other family members'.
> Ofsted (ID45)

The Integrated Children's System (ICS)[26] *– Inspection reports*

46 Just over a third of inspections (37%, 22/60) raised concerns about the ICS and the problems it generates for recording information, social work confidence, auditing and generating management information. Inspectors said systems have caused delays and resulted in a fragmented approach; some authorities were using multiple systems for records (electronic and manual) - to the frustration of managers and social workers.

47 Some inspectors said that the ICS did not support effective recording and retrieval of information. For example, records could be stored in different places making it difficult to get a holistic view of the child; some assessments were recorded in different formats and not accessible out of hours. Such problems could present significant barriers to the production of accurate, detailed and high quality assessments. Some local authorities were aware of the problems and trying to address these – with a new system, or planning a replacement.

Ofsted and CISSW Inspection reports and documents for public law proceedings

48 A very small number of reports commented on assessments for courts: the source of information is not always clear and the focus tends to be 'broad brush' and largely anecdotal. There was some limited indication that where local authority lawyers had been involved early, this was appreciated by social workers and improved the quality of reports for courts; there was also anecdotal comments suggesting positive feedback from two courts such cases.

49 Overall however inspection reports rarely mentioned the Public Law Outline (PLO) or the degree to which local authorities were able to meet assessment filing requirements. There were a very small number of references to reported discussions between a local authority and the 'local family court' - with 'productive results'. However an inspection focus on assessments for courts was sparse and anecdotal: inspection reports lacked routine focus on assessments for proceedings - or the criteria that might be applied by inspectors for this area of local authority work.[27]

[26] We use this term but recognise that in practice not all local authorities utilise the same system for recording and generating information. Variety results from locally determined choice as to a 'systems provider' from several available in the field of social and health care, moreover, first choice systems may have been developed, enhanced or 'patched' by other providers. We cannot investigate this in detail save to highlight that the market is now fragmented and systems may vary regarding the degree of prescriptive practices and the balance between checklists, free text and length. Our focus here is on the outcomes of electronic records when used as evidential reports in proceedings.

[27] There is an indication that this may change in 2014 (personal exchange with Ofsted).

50 SECTION 1 - KEY ISSUES AND FINDINGS

The sample judges and county court care centres

- The sample consists of 20/43 DFJs plus three Circuit Judges in England and Wales with representation from each of the administrative regions.

- Most judges are highly experienced in child and family proceedings – many with experience sitting as deputy High Court Judges.

The 'feeder' local authority applicants for the sample care centres

- The centres hear applications from over half of local authorities in England (59% - 90/152) and just over one third of authorities in Wales (36% - 8/22).

- Most centres hear cases from several local authorities; 9/20 courts hear applications from five or more authorities; three are the centre for ten or more LA applicants.

Volume of cases over a 12 month period

- The sample contains 'small volume' courts – four heard less than 115 applications in a 12 month period, these emanating from two or less LA applicants.

- Most courts however heard considerably more applications in this period: five heard between 251 and 351, and a further four heard between 352 and 900 - these emanating from between 10 and 21 local authorities.

Local authority core assessments - completion rates within (what was) 35 days

- Ofsted data for England and CSSIW data for Wales demonstrate variation in local authority completion rates for core assessments: in 44% of the relevant (90) authorities, 80% of assessments were completed within the timescale; in 56% it was fewer than 80%, and in 29% it was fewer than 70%.

Ofsted grading: 'quality of practice' or 'quality of provision'

- In a sub sample of 52/90 'feeder' local authorities in England, most 58% were graded '3' (adequate); 31% were graded 2 (good), 8% were graded '4' (inadequate).

Ofsted and CSSIW Inspections of 'quality and timeliness' of assessments

- There is variation in reporting and judgement styles across Ofsted and CSSIW but the most common finding (58%) was that of 'variability' (18% said assessments were 'improving'; 5% were 'good' without qualification, 5% 'unacceptably poor'):

  - Where reports were judged to be good – often in an otherwise variable picture - recurrent themes were clear identification and balancing of risks and protective factors, good use of research and attention to issues of diversity.

  - By contrast, themes for poor assessments included insufficient attention to and balancing of risk and protective factors, reports that lacked analysis, reports lacking a clear focus on what needs to change in parenting, failure to integrate historical information, delayed assessments, missing and inconsistent information, and poor attention to issues of diversity.

The Integrated Children's System

- Where Ofsted and CSSIW reports identified problems generated by the ICS, these have been exacerbated by the variety of IT systems used across local authorities.

- This suggests that any restructuring and reshaping of social work practices with families (following the recommendations of the Munro Report) and perhaps any improvements in the timing and quality of assessments for courts - may be constrained by IT systems.

- Some authorities have multiple locations for information; this may have implications for the format and quality of social work assessments for courts (e.g. from a print-off of the ICS assessment record, to a reconstruction of the electronic version, to a Word document, to starting from scratch with the document to be filed).

- Ofsted and CSSIW inspections do not appear to routinely and systematically inspect assessment reports for proceedings thus as argued in previous work on care proceedings there appears to be something of a policy lacuna at the interface of documents for the purposes of Part III of the CA 1989 and internal work of local authorities, and those required under Part IV for care proceedings[28].

- Equally, attention to this interface appears to be absent from the review of social work practice (Munro Review of Child Protection, Final Report 2011) and to changes to Statutory Guidance (for England) under Working Together to Safeguard Children (WT) (2013).

[28] Albeit the DoH et al. (2000) Framework for the Assessment of Children in Need and their Families noted (in an Appendix) that the document submitted to court 'will usually be a summary of the key assessment issues rather than the full record concerning the assessment, as the latter will not usually be in a format or language suitable for court' (Appendix D, Para 3); in practice however it appears that is often precisely what has been filed – see below Section 2.

SECTION 2 – THE TIMING, QUALITY AND VALUE OF LOCAL AUTHORITY CORE ASSESSMENTS FOR THE PURPOSES OF PROCEEDINGS

A INTRODUCTION

1 An assessment is a key component in a local authority's evidence at the start of care proceedings; this was so in the early days of Children Act 1989 proceedings (prior to attention to judicial case management practices) although as identified above[29] it was not always filed for the first hearing. What subsequently became the 'core' assessment[30] was one of the key documents in the pre-proceedings checklist of documents to be filed on day one of proceedings (stage 1) under The Public Law Outline: Guide to Case Management in Public Law Proceedings (2008).[31]

2 Concerns have also been expressed over several years about the quality of some reports filed: historically a key criticism has been a lack of analysis in reports.

3 Over the years we have however been hampered by a lack of socio-legal research which specifically addressed the interface between assessment reports work under Part III of the Children Act 1989 and reports for courts under Part IV (see Brophy, forthcoming). While it was not the purpose of this study to examine the detail of that lacuna, findings from interviews with the judiciary demonstrate that it cannot be ignored. Like other areas of welfare policy, aspects of local authority work in the delivery of services to children and families in need or at risk are in a period of flux. Amongst the various issues impacting on the support and delivery of child and family services by local authorities, three developments are important in understanding the framework and responses of judges below regarding the timing and quality of local authority core assessments.

4 First, the introduction of the Integrated Children's System (ICS) provided an electronic recording system for 'children's social care' (i.e. children in need, at risk and in

[29] See note 11 above.
[30] That is, according to the domains of assessment as these are set out in Guidance (Department of Health et al. *(*2000) Framework for the Assessment of Children in Need and their Families and accompanying Guidance - DoH (2000) Assessing Children in Need and their Families, Practice Guidance. London TSO (often referred to as the 'lilac' book assessment or the DoH Framework).
[31] The PLO (2008) page 9 (http://www.judiciary.gov.uk; also Pressdee P, Vater J, Judd F and Baker J (2008) The Public Law Outline: The Court Companion. Fam Law. The PLO was updated in 2010 - Practice Direction: Public Law Proceedings Guide to Case Management (see, http://www.justice.gov.uk/downloads/protecting-the-vulnerable/care-proceeding-reform/public_law_outline.pdf) and further revised in July 2013. In line with changes to assessments following Working Together (2013), annexed documents at PLO stage I now include 'The current assessment relating to the child and/or the family and friends of the child'. (The 'core' assessment however remains the relevant document for local authorities in Wales – see below, Para 12.)

care etc.) to support social work practice with children - and thus a computerised system for recording children's care records in accordance with the assessment framework and other guidance and regulation.[32] Whilst local authorities were originally required to commission or develop a system in accordance with this framework, requirements were subsequently relaxed in 2009 and an 'expert panel' established to develop proposals for the improvement and simplification of existing systems.[33]

5 Second, in June 2010 the DfE launched a review of local authority child protection work (the Munro Report, 2011).[34] The review was highly critical of a range of developments in the delivery of child protection children's services. Amongst other things it recommended a reduction in the amount of centralised regulation and a slimmed down statutory guidance plus removal of the distinction between 'initial' and 'core' assessments and of the statutory timescale for completion of assessments.

6 For the purposes of this evaluation three recommendations of the Munro report are important:

- A return to front line social work practice which is *relationship based* (emphasis added) and prioritises time with children and families over time spent on administration (that split is currently said to be 20/80 respectively)[35]
- Improvements in the quality of assessments to inform the next steps to safeguarding and promoting children's welfare
- Removing the constraints to local innovation and professional judgment that are created by prescribed approaches, for example, nationally designed assessment forms, national performance indicators associated with assessments or nationally prescribed approaches to IT systems.

7 The Munro Report recommended that in designing or procuring new software, local authorities should have regard to the following three principles:

- recording systems for child and family social work should meet the critical need to maintain a systemic and family narrative, which describes all the events

[32] The system was developed under the Every Child Matters programme, following introduction of the Assessment Framework. It was intended to provide a framework for working with children in need and their families; practice and case record keeping is supported by information technology designed to handle a large amount of information on individual children.
[33] See DfE – Social Work Reform: ICS Improvements – see, http://www.education.gov.uk/childrenandyoungpeople/social/socialworkreform/b0071081/integrated-childrens-system-ics-improvement (accessed March 2013).
[34] Munro Report of Child Protection, Final Report – A Child-Centred System (May 2011). https://www.gov.uk/government/publications/munro-review-of-child-protection-final-report-a-child-centred-system - accessed March 2013.
[35] Trowler I (17 May 2013) BBC One - interview with Michael Buchanan on appointment as Chief Social Worker (a post created following the Munro Report 2011).

associated with the interaction between a social worker, other professionals and the child and their family
- ICT systems for child and family social work should be able to adapt with relative ease to changes in local child protection system needs, operational structures and performance data requirements
- the analysis of requirements for ICT-based systems for child and family social work should primarily be based on a human-centred analysis of what is required by frontline workers; any clashes between the functional requirements that have been identified by this process and those associated with management information reporting should normally be resolved in terms of the former.

8 The DfE stated that existing guidance to the ICS remains relevant to the modification of existing electronic recording systems in accordance with the principles set out in the Munro Report.[36] That is to say, despite concerns about an electronic format for recording core assessments, that format is likely to remain. As indicated above, it should be noted that systems across local authorities are not uniform[37]; however local IT choices remain subject to compliance with the domains and triangle of assessment of children and parents as set out in Practice Guidance to the Framework[38].

9 Third, following the Munro recommendations, in England the Government proposed (i) to remove the distinction between initial and core assessments and, (ii) to remove the national timescale for assessment (these to be determined locally and publicised on local safeguarding board websites)[39].

10 Following piloting of proposals[40] the distinction between an initial and a core assessment has been dropped (WT, 2013). However, a statutory timescale for completion of an assessment is retained; this being 45 days from referral[41].

[36] For example, Guidance from (what was) the DCFS (now DfE) and update on progress with ICS improvement and a package of guidance for local authorities on improving ICS was issued - all materials said to be developed to address the most important issues identified by users of ICS and the expert panel during 2009. It was said to be designed to support local authority Directors of Children's Services and senior management in making decisions about the future of their local systems and how they can be improved. Guidance includes ICS - Guidance Note 1 (Recording the Core Assessment) Note 2 (Improving Narratives around Children and Family) and Analysing and Recording Significant Harm. These documents (Mar 2009) predate the Munro report. (See http://media.education.gov.uk/assets/files/pdf/i/ics%20analysing%20and%20recording%20significant%20harm%20march%202010.pdf (accessed, Dec 2012; Mar 2013).
[37] See note 26 above.
[38] See note 10 above.
[39] DfE (2012) Consultation on Revised Safeguarding Statutory Guidance https://www.education.gov.uk/consultations/.../working%20together%20...
[40] These being piloted in eight local authorities, the aim being to test the proposal to 'reduce statutory guidance on safeguarding and promote local autonomy, increasing the scope for practitioners to exercise their professional judgement including removing the distinction between the initial and core assessment and associated statutory timescale for completion', see, Munro E and Lushley C (2012)

11 In summary, the policy landscape in children's services is changing. However experiences on the ground with regard to whether changes are impacting on social work practice and time spent with families - and whether changes are reflected in the timing and quality of assessments for all courts, remain key questions.

12 WT (2013) does not of course apply in Wales (safeguarding being a devolved function and thus the responsibility of the Welsh Government). However there are indications of change in the Social Services and Well-being (Wales) Bill, introduced to the National Assembly in January 2013 (Royal Assent anticipated in early 2014). A discrete section of the Bill deals with aspects of WT (safeguarding/protection issues, structures, leadership and multi-agency working, establishment of a National Independent Safeguarding Board, and the re-establishment of Safeguarding Children Boards). The Bill also enables new arrangements for assessing the needs of children. Detailed operational arrangements will follow the Bill (implementation anticipated from April 2016). Until supporting statutory guidance (or codes of practice) are in place however (replacing the Welsh version of Working Together 2006), the 2000 Framework and procedures set out in the All Wales Child Protection Procedures (2008) remain[42]. Thus for our purposes and the Welsh courts, the 'core' assessment remains a key document with a completion timescale of 35 days.

13 In the interviews reported below (undertaken in England and Wales between February – April 2013) we have attempted to set discussions about local authority assessments both prior to and following what is increasingly called the new regime (i.e. post the Munro Report 2011; the Family Justice Review 2011 and the Judicial Response - Family Justice Modernisation Programme (2012) and the amended Practice Directions on the Use of Experts (Jan 2013)). In view of some of our key findings in stage one, this was firstly to explore whether we have missed issues which would lend support to some views about the use of ISW assessments as these were put to the Family Justice Review, secondly to

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The Impact of more flexible assessment practices in response to the Munro Review of Child Protection: Emerging findings from the trials - www.cwrc.ac.uk/projects/1062.html.

[41] Para 57 states: 'The maximum timeframe for the assessment to conclude, such that it is possible to reach a decision on next steps, should be no longer than 45 working days from the point of referral. If, in discussion with a child and their family and other professionals, an assessment exceeds 45 working days the social worker should record the reasons for exceeding the time limit'. Local authorities can be flexible within locally agreed protocols to that maximum but a local timeframe should be published by the Local Safeguarding Board (LSCB) on their website. (HM Government (2013) The Government response to the consultation on statutory guidance to safeguarding children (March). https://www.education.gov.uk/consultations/downloadableDocs/Govt%20response%20to%20Working%20Together.pdf

[42] All Wales Child Protection Procedures produced on behalf of all Safeguarding Children's Boards in Wales (2008) http://www.awcpp.org.uk/areasofwork/safeguardingchildren/awcpprg/index.html)

examine the picture behind findings (e.g. regarding the status of local authority involvement in joint instructions to ISWs and whether courts have been 'rubber stamping' applications), but thirdly, to explore whether judicial views and practices have implications for the modernisation programme.

14 We begin below by looking at case management issues and the operation of the PLO in courts and whether local authority core assessments are filed for the first hearing in accordance with the PLO as this operated at the time. We then explore with judges the format and quality of core assessments and whether they have observing any changes over time in these issues.

15 Views and experiences of local authority practices and the response of courts provide the framework for exploring the approach of DFJs to the use of independent social work assessments of parents and wider family/other potential carers during proceedings.

B THE 'PLO' IN THE SAMPLE COURTS

16 The operation of the PLO was subject to an early evaluation[43] (and some later criticism)[44] and it remains a central mechanism in attempts to improve judicial case management, introducing some uniformity in managing the process of bringing cases to trial. It places demands on local authority applicants (and other parties) in terms of the documents to be filed at each of four stages in the management of cases. The first stage (PLO stage I) and the documents required for the first hearing are seen as crucial to the success of the process in determining what further evidence will be required and in timetabling evidence in preparation for a final hearing date.[45]

17 Since its inception in 2008, indications are that implementation of the PLO across courts in England and Wales has been variable. We began therefore by asking judges whether the PLO is operated in their court, whether 'feeder' local authority applicants are PLO compliant in filing (what was) a core assessment on day one of proceedings[46] – and other key documents required for a first hearing.

[43] Jessiman et al. (2009) An early process evaluation of the Public Law Outline in family courts. Research Series 10/09. London: MoJ; Brophy J (2008) Piloting the Public Law Outline: Case Management in two Initiative Areas. London Family Justice Council.
[44] Masson J (2012) A failed revolution: Judicial case management of care proceedings', in, Probert R and Barton C (eds) *Fifty years of Family Law: Essays for Stephen Cretney*. Insentia, pp. 275 – 287.
[45] See Appendix 1, PLO (2010) - checklist documents; Appendix 2 revised PLO (2013) to be piloted.
[46] Save in exceptional/emergency situations.

18 *Courts operating the PLO*

- Most judges reported their court operates or tries to operate the PLO although one judge said this had only recently been implemented. Most judges in this category had been operating the PLO for some time, some since 2008
- Three judges reported they operated the PLO 'in part'
- Two judges reported the court did not – but one was 'trying to improve'.

19 However as a measure of approaches to improving case management by courts, the DFJs demonstrate that the PLO is only part of the solution to delay and to issues of the timing and poor quality of some evidence – which impact on case duration. Many judges described a range of local initiatives (pilot projects, agreed 'expectations' documents, protocols for pre proceedings work and local interdisciplinary initiatives) aimed at improving the quality and timing of evidence and the role of the court in improving the allocation and management of cases.

20 For example, in order to address late or inappropriate transfers, poor judicial continuity or case allocation problems, some courts have instigated a form of gate keeping in the allocation of cases (some done by the DFJ, some by a DJ with a legal adviser in the case of combined centres) to ensure appropriate allocation of cases to the right tier of court and judge. While some initiatives have gained momentum following the FJR and Modernisation Programme (the 26 week deadline for case completion being the major spur) it would be a mistake to think the latter policy developments (to be included in legislation) [47]are the only impetus for change. Some judges have been grappling with issues of delay, poor case preparation, case management issues and concerns about the use of experts for some time (initiatives dating back well before the PLO and Modernisation Programme).

21 Some DFJs/county court led initiatives continued to run alongside the operation of the PLO – which (as demonstrated below) of itself has not been entirely successful in ensuring key documents are filed at the start of proceedings. In collaboration with local authority applicants before and following the FJR and the Modernisation Programme some courts are focusing – and refocusing - on pre proceedings failures/problems to try and ensure key documents are filed at the first hearing. Some DFJs are also taking further measures to try and improve the standard of some documents so that they meet the needs of the court, enabling it to move forward. Some of these initiatives have also revealed difficult and unpalatable problems.

[47] save in exceptional circumstances - Clause 14, Children and Families Bill 2013 as first published.

22 For example, one initiative common in several courts is an attempt to address poor quality social work assessments and issues of social work confidence. Thus, for example, one DFJ in collaboration with local authorities and other professionals (e.g. the local Bar) organised a session for social workers in court. The aim was to help social workers by increasing their confidence in the legal arena. By placing social workers in the position of the judge, the aim was to enable them to see cases from the court's perspective and the issues and tasks of the judge (and thus what the court required from social work evidence). In practice the exercise also revealed that some social workers have a very poor understanding about the legal framework for proceedings and thus, the implications for their materials as a professional witness for the applicant authority. In such circumstances it is perhaps not surprising that some social workers are 'terrified of courts'.

23 Some DFJs in collaboration with others have produced very detailed written materials about the substantive issues that should be addressed in social work materials (e.g. statements, assessments and chronologies) and this forms a local pre proceedings protocol or 'expectations' document. Part of the aim was to improve the quality of social work evidence and thus the confidence of social workers as a key witness for the applicant.

24 During these initiatives DFJs have also raised with 'Directors/Deputy Directors of Children Services' concerns about substantive issues. A recurrent theme was s.20 children. Judges continue to see a worrying number of care applications for such children that arrive at court without a parenting assessment. Judges reported some local authorities acknowledge this problem, highlighting that it results from a need to prioritise case needs against scarce resources. In some areas judges felt discussions have resulted in improvements in pre proceedings assessments for s.20 children.

25 Some courts which have been attempting to run the PLO since its inception in 2008 also have internal case management initiatives/protocols/expectations documents aiming to increase 'throughput' of cases. Some run a gate keeping protocol to ensure the appropriate allocation of cases to tier of court/judge and to try to achieve judicial continuity.

26 A small number of courts now receive applications from local authorities which are running pre proceedings projects[48]. These initiatives are in part a response to budgetary

[48] There are a number of pre proceedings pilots/initiatives (e.g. see Broadhurst et al. 2012; Broadhurst et al. 2013; Holt et al. 2013) but perhaps the Tri-borough Care Proceedings Project in London is the major initiative from local government. In October 2010, Westminster City Council, Hammersmith and Fulham Borough Council and Kensington and Chelsea set out plans combining specific areas of service delivery as a response to financial pressures facing local government in

constraints within local government, but they also address concerns about the timing and quality of local authority evidence. Courts are also adapting to the new climate with a 26 week deadline determining timescales in cases along with the 2012 introduction of a case monitoring system (CMS)[49] for collecting information to track case progress.

27 The CMS data (2012) will provide management information as to the impact of the new culture/regime on cases – although a feature raised by some judges is its capacity to also produce unhelpful/crude 'league tables' between courts.

28 With notable exceptions, some judges noted it was not possible to read the volume of materials - several lever arch files - for each case when they are listed for back-to-back hearings (and the President has acknowledged this problem)[50]. In such circumstance judges argued that experienced child care advocates are crucial in helping them to quickly identify key issues and documents, as are clear position statements from parties.

C CORE ASSESSMENTS AND COMPLIANCE WITH PLO STAGE 1

29 The picture regarding whether judges in the 20 county courts consider local authorities comply with the PLO filing requirements is complex. This is in part because many courts hear applications from several local authorities – and judicial experiences demonstrate variations between[51] (and sometimes within) local authorities.

30 Also, a small number of judges do not take first hearings or hear only the more serious/complex cases[52] (i.e. not neglect/emotional abuse cases – the 'slow burners') so

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England (see evidence to the Justice Committee – pre-legislative scrutiny of the Children and Families Bill). The project so far as children's social care is concerned has been subject to an external evaluation (due July 2013); roll out of this model aims to incorporate a further 19 London boroughs.

[49] The CMS is a computerised management information programme for courts; it aims to provide ongoing information about case volume, content, progression and allocation. The CMS applies to all new care and supervision cases issued after the 2 April 2012. It is linked to the CMS O (Case Management System Orders) which provides Standard Direction from the first hearing through to the IRH. Thus data entered on the Order is then entered on the system after every hearing. The objective is to get a clear picture of the child in the case (placement pre and during proceedings etc) the orders made in the case, the experts commissioned, any delays/adjournments – and the reasons.

[50] Sir James Munby, View from the President's Chambers (4): The process of reform: an update. (July, 2013) http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/view-from-presidents-chambers-july-2013.pdf

[51] The CMS data should be able to answer that question and over time as it is one of the data boxes to be entered on the system under the CMS Order - 'reasons for delay/adjournments'.

[52] Those containing allegations of serious physical abuse, head injuries, complex medial issues, sexual abuse, cases with immigration/asylum issues, those with concurrent criminal proceedings, cases where there has been a death of another child, parent of other relevant person, or a background of suspicious child death in a family, and those with significant contested issues regarding religious, cultural issues, and medical treatment issues.

were unable to reflect on whether in their experience assessments were routinely filed for a first hearing. However the dominant picture – with notable exceptions – is one of variability:

31 Courts hearing applications from several local authorities:

- five judges said they thought core assessments were filed for the first hearing
- two were clear that their feeder authorities could not comply
- most judges however reported that the picture was variable across local authorities, for example: 'my good authorities comply', 'some struggle, some are failing – on a number of levels'.[53] For example:

  ' they are not consistently and uniformly filed in accordance with the PLO…the reason for that in a significant number of cases is that's not possible. And the reason I say that is because ... of the way in which local authorities, because of constraints on spending, have been required to prioritise those cases which they bring – it's clearly the emergency and urgent cases which take precedence. And therefore the preparation of a core assessment ahead of proceedings wouldn't have been questioned… [but] that's only a partial excuse. In relation to those cases where there should be a core assessment, because of the pressures on social workers generally, adherence to the requirement is mixed – is a kind way of putting it.
  18, p3

  'Trying to separate them out is just a nightmare actually… [but] generally speaking [they are] not - in my experience, and in the experience of quite a number of the other judges here. The experience that you will usually have is that the core assessment is not usually available until the CMC stage …I don't think you could actually identify one [authority] where they are doing it better or doing it worse than others actually..'.
  21, p2

  '.. Well sometimes a core assessment is filed…. In neglect cases, which I don't do an awful lot of [here] ….my experience is that core assessments would probably be available for cases on issue in somewhere between 50 and 60% of cases. There is an issue about the quality when they are filed. I would guess that in cases that have been issued [over the last six months] probably around half of them have had a core assessment – or claiming the name to be a core assessment ... whether it actually is, is another matter…'.
  41, p2

32 Courts with a single authority applicant

- All courts hearing applications from a single local authority reported the feeder authority filed core assessments on day one of proceedings
- Not surprisingly these judges had detailed knowledge of the local authority so that, for example, the judge could differentiate quality issues in assessments according to the team within the authority.[54] One such judge said:

[53] As identified in Section 1, some 'feeder' authorities received an Ofsted inspection where overall 'Quality of Practice' was judged 'inadequate'/adequate and quality of assessments, poor to variable. However, care should be taken in making associations with core assessments for proceedings: as indicated above, work for proceedings can be mediated by a local authority legal team and/or by prioritising cases which are moved into a pre-proceedings timeline (i.e. subject to a legal planning meeting and a 'notice of intention to issue' letter) where an assessment forms part of that timeline.

> ‘Overall here, yes [the local authority] has been PLO compliant [and] I think that has remained fairly static. I think that was because when the PLO came in, we spent quite a lot of effort both as a court - and also the LA independently - on training up for the PLO’. 26, p2

33 These judges were clear that their experiences may be specific to their location and the circumstances it generates and that their views and experiences could not be generalised to other courts. And while the range of applicants and volume of cases may be thought to be central in the ability of DFJs to influence change - not least because of the ease with which a DFJ may liaise with an authority/Director/Deputy Director of Children Services - that is not necessarily the case. For example, some DFJs with several local authority applicants endeavoured to engage in discussions with applicants to improve quality and filing practices (see above).

34 It should also be noted however that some judges expressed concerns about the implications for public confidence in courts where judges engaged in one-to-one meetings with a local authority applicant. Concerns were expressed about the reputation of the court as an independent arbiter and thus the message such meetings may give to parents, young people and advocates. Thus some judges while engaging in wider meetings, would not meet with a local authority on a one-to-one basis, for example:

> ‘I mean we haven’t got to the stage of the Tri-borough project but we may get there … [following] our first Family Justice Board we had a meeting, and then we had a special meeting that was heavily laden with local authorities [because] we were talking about pre-proceedings work and how it could be improved. They’ve undertaken to go away and have joint meetings to see whether there can be a common approach to pre-proceedings work’.

This judge continued:

> ‘…it was certainly prompted by the Family Justice Board, but it hadn’t been something I would have said …was necessary, because they’ve each got a slightly different way of doing it. But there was nothing glaring in terms of [differences between authorities]. And, it’s not been my approach - which is different from others: I will not meet local authorities on a one to one basis – I think that gives the wrong impression to private practice solicitors looking after parents, even Cafcass guardians. Other DFJs I know do have regular meetings, some of them have Director of Social Services sitting on the bench with them … but um … it’s not been my practice…’
>
> ‘I think you’ve got to be careful to be seen to be utterly independent. I’m sure if you’ve got the confidence in the professionals, which one hopes one has, they would realise that perhaps in having these meetings that I wouldn’t allow myself to be over-influenced by what we said behind closed doors as it were. But I think one should probably be careful to guard against a perception of bias’.
> 33, p6

[54] There are features in this group of courts which would benefit from further research: some problems were described as easier to resolve, this related to several issues not least of which are a lower volume of cases and the ‘simplicity’ of the local situation (a single local authority applicant, known social workers and advocates, good relationships between relatively a small number of professionals).

Improvements in the timing of filing of core assessments

35 Most judges had not noted any changes over time in the capacity of local authorities to file core assessments at the start of proceedings. Most judges put this down to resources problems within local authorities.

36 Under one third of judges (7/23) had noted some improvements in the timing but in terms of 'drivers' for change, most said improvements had been the result of judge led initiatives with local authorities (see above) which predated the modernisation programme and the Munro report.

37 Two judges felt the 26 week deadline was beginning to bite in some local authorities – and that had led to an improvement in the timing of filing; in one local authority the judge felt that a negative Ofsted report coupled with the demands of the modernisation programme was impacting on practices with some improvement in the number of cases where a local authority core assessment was filed at PLO stage 1.

D THE FORMAT OF ASSESSMENTS AND JUDICIAL SATISFACTION

38 In line with findings from Ofsted inspections under Section 1 above, the format of core assessments for proceedings remains for the most part electronic – the document filed being that generated by the templates of (various) IC systems. This format accounted for the vast majority of the assessment filed in proceedings.

Views about the quality of local authority core assessments for the purposes of proceedings

39 Almost all judges raised concerns about the quality of local authority core assessments for the purposes of proceedings. Few judges said these reports were 'good':

> 'As to quality, over time this is getting very much better, very very much better ... particularly in what I call the multi issue cases, what I call the slow burn cases. And that's probably because of the training we've delivered. Every social worker in [two authorities] was offered training on core/parenting assessments, pursuant to our pre-proceedings protocol. And the effect of that has been an enormous increase - and Cafcass agree with this -… there's been a huge improvement in social work statements, core assessments, parenting assessments and the like.
> 20, p2

And some of those reported as good were qualified because of variation within one local authority. These latter judges heard applications from no more than two local authority applicants and in two instances improvements had followed a judge led initiative that predated the Munro Report and the Modernisation Programme:

> 'I think it's probably improved, but certainly now it's a matter of routine that I do get the core assessment. And what was also helpful was that [the local authority] were doing a draft, a

sort of template for the core assessment, and the local authority involved me in the discussions and so I was able to give my two penny worth to the framework. And I think a huge advantage that I have, as a small court centre with one local authority, is that we do have a very good dialogue. And so any issues – I tend to have a meeting … very good working relationship now with the assistant director … and a lot is dealt with through that dialogue... [the template] has probably been in place for about three and a half years'.

In discussing the background to that development this judge continued:

'In previous assessments, there had been a lot of repetition, and so they were trying to cut down the repetition…and have it much more focussed - as it should be - on the welfare issues…previously it had been less focussed, now it was much more structured and much more focussed on looking at the welfare issues that were ultimately going to be the issues that the court was going to be deciding in the care proceedings. …That was their initiative, they did that, they produced their template, we discussed it, I made one or two suggestions, and then that's been the core assessment that we've used since then.
6, p2-3

A further judge said:

'I think they're often too long, sometimes repetitive - like most of the documents in care proceedings - but I think the quality's good, they seem to cover every angle, you know. And I think on the whole pretty fair to all concerned. I think sometimes they're almost too fair'
8, p3

And another judge in this group said:

'Overall I would say [the quality of core assessments] is very good. There is one particular area which has had difficulties over a length of time in terms both of deprivation and social work input that can have less detail within the core assessment, and can on occasions be late … and on occasion too, the guardian will point out the obvious, that it's not enough, it's not good enough'.

In explaining what was meant by 'not good enough' this judge continued:

'Well they haven't covered for instance the historic frame of the concern, so often [neglect] cases – they'd be the obvious ones. ..it is not significant in [this area] as a whole, but it remains such that the local authority and I have spoken about it over a year ago and I know that they are addressing it. So they're working, or trying to work on that…'
26, p3

Another responded:

'On the whole when I've looked at core assessments I think that they're easy to understand'.

Addressing whether they contain sufficient analysis, this judge continued:

'Yes, on the whole I'd say yes, core assessments are pretty good.'
34, p3

And a final judge in this grouping said:

'Generally they do an [electronically generated format] – a traffic light assessment, core assessment ... it depends on who has penned it [but] generally they follow the same format with the boxes ... I think they could be more detailed. If they've got gaps it will lead to the other parties raising questions and wanting a reassessment. On the whole they cover the relevant areas – they do. They will not be as detailed as an independent social work assessment – you're not comparing like with like.'

As to what further detail was required, this judge continued:

> 'The analysis -and the clarity in this: the analysis is 'X 'because of these factors – boom, boom, boom ... not sort of wordy stuff. You need the key underlying matrix and then the analysis – an insightful analysis'. …very often when you've got the core assessment you have a lot of other material at that stage as well.

Like other judges, this respondent went back to the timing of filing of LA core assessments – and the practice of having to go to other documents to get further information:

> 'So where it's missing you're looking to other documents. If you had a case where you had the core assessment - which should be at the beginning - and you're relying just on that – we'd be struggling more often [so] we need the other stuff, or far more detailed analysis in the core assessment.
> 35, p4

40 For most judges however the quality of reports was considered so poor for the purposes of proceedings that many described them as 'not fit for purpose' [55]. This view is rooted in two problems raised by most judges: the national formulaic computer generated format of assessments filed, and a lack of analysis within documents which focused on the needs of the court in s.31 applications. For example:

> 'Very often where they have been done it's sort of depressingly kind of … it's a physically unappealing document which is often put at the beginning of the judge's papers and sometimes may, in a complicated case, run to 40 or 50 pages… electronically generated, where endless boxes are filled in, often in fairly small sometimes single spaced writing. So it's often quite difficult to absorb, and I find myself rushing on to perhaps a chronology or a concise document which is going to give me - in a more accessible form - some of the key information that I need'.

This judge made two further points about the timing and the audience for the assessment:

> '…I'm not sure that the core assessment is necessarily in judicial terms the document that we really want to get our hands on. I mean often there will be a wealth of good background material there, but it helps me if that has been [analysed] by the case social worker. I think a lot of historic material about the personal development of the parents and so on may all be useful at a later stage…as part of an appraisal about their long term suitability but it's often not the initial overview of the case that one really needs …it often feels so verbose and so wordy, and sometimes I regret to say, so jargon-ridden…So I find I'm searching for some of

[55] It was not the focus of this evaluation to address the policy background to the ICS (e.g. see Cleaver H, Walker S, Scott J, Cleaver D, Rose W, Ward H and Pithouse A (2008) The Integrated Children's System: Enhancing Social Work and Inter-Agency Practice. London Jessica Kingsley) and there is a growing literature on the ICS and problems this has generated, not least for social workers (e.g. White S, Wastell D, Broadhurst K and Hall. C (2010) When policy o'erleaps itself: The 'tragic tale' of the Integrated Children's System, in Critical Social Policy vol. 30 no. 3 pp405-429; Shaw I, Bell M, Sinclair I, Sloper P, Mitchell W, Dyson P, Clayden J, and Rafferty, J (2009). An exemplary scheme? An evaluation of the Integrated Children's System, in, *British Journal of Social Work* 39, 4, 613-626). While there are suggestions that problems are of a transitory nature, evaluations suggest that they are likely to be inherent in the system. Some commentators question whether it is 'fit for purposes' - within children's social care; there is a view from social work practitioners (predating findings of the Munro Report) that the system has stymied direct work and good social work practice. It does appear that in the development of the system little or no attention focused on the impact of electronic record keeping for assessments for proceedings. Further government investment in the system was announced in 2010 (Building a Safe and Confident Future: Implementing the recommendations of the Social Work Task Force (2010: 8, Para 21).

> the basic information …I'm hungry for some of the welfare checklist headings. And the physical presentation of the documents in some cases with lots of sort of micro single spaced boxes isn't very judicial friendly.
> 1.2, p2-3

This judge went on to describe the importance of being able to distil and present what may be months or even years of social work involvement with a family to a document focused on the specific forensic needs of the judge.

Another judge was trying to pursue her feeder local authorities to consider changes to the format of assessment reports in the hope that improvements in the quality would follow:

> 'Personally I don't like [the electronic format]. I think it reduces the quality of the analysis because the social worker tends to think that provided they've included information many times of the same sort in each relevant box, that that's actually an assessment. Whereas the key passage is that bit at the end, and I don't think it encourages really an analytical frame of mind.'

This judge continued:

> '…They lack analysis; they don't focus on the needs of the court – I'm trying to get [local authorities] to change but they are reluctant to give up the electronic format; most are not keen – only one local authority is keen to move its approach'.
> 41, p4

This judge had largely persuaded a local authority in a previous region that it was a more useful exercise for the social workers to do a narrative report (according to the domain headings) because they were covering a number of areas that were also parenting assessment areas, and therefore alerting both themselves and the court to more of the detail about parenting failures which could then inform how the court structured the proceedings. This judge also identified some of the key problems where reports were expected to serve more than one audience (court and internal local authority needs):

> '[Local authority] is reluctant to give up the formulaic document. And although one of the other authorities is keener to move to a more analytic approach ... because I think once we're in proceedings – or they are doing the core assessment with a view to proceedings being issued, or after proceedings have been issued, I think in discussions with their legal department, they're recognising that they're actually advancing the case at the same time as they're doing the core assessment. So it means that they're not duplicating work because they're looking at matters in a more analytical way. And that helps them to identity the issues that they want to investigate – also helps them to identify whether they're going to be asking for any outside expertise, or whether they can genuinely identify that the case is a parenting issue rather than any other type of application. Also helps of course with deciding whether you're going to have a split hearing.'
> 40, p4-5.

A further judge with several feeder local authorities and a mixture of assessment reports - some electronically generated records, some narrative - reported limitations of the former

type of report: 'I hate them'. As to practices between local authorities this judge felt narrative based reports came from large authorities:

> '..for small authorities there may be resource issues sometimes you get the electronic – I discourage that…it is a very difficult document from which to extract information…you miss things ... the flavour doesn't come out. It lacks risk analysis, it lacks definition of issues…and the analysis doesn't come out – it lacks analysis.'
> 20, p3

This judge however also reported some improvement in local authority core assessments; the vehicle for this had been training and a pre-proceedings protocol.

41 Criticisms were fairly uniform across a majority of judges: where electronic records generated by the ICS are filled these do not meet the needs of the court:

- Reports lack analysis
- They are repetitious – information repeated in different sections
- The fonts are too small; single line spacing is inappropriate, there are endless boxes, some not ticked and information is repeated
- It is difficult to get the 'story' and find the information the court requires
- Reports are not transparent – not for judges or parents
- They don't provide a critical view of the way forward
- Large care centres see several local authority applicants, each with a different IT system, each giving the court a different format
- They are formulaic, duplicate information, are fragmented, lack narrative, with no key messages
- They contain a large amount of largely irrelevant material
- Some judges simply do not read them; they are not seen as a key document at the start of proceedings
- Local authorities need a greater appreciation of what the court needs
- Poor quality also results from high turnover in social workers and lack of training
- The court requires a structured narrative

42 One judge in describing events in his region encapsulated key concerns outlined above but also attempts to address some of them. This judge described mounting concerns about core assessments and a duplication of information across documents such that it had become very evident that a social worker's first statement very often consisted of a regurgitation of a core or pre-birth assessment, simply copying from that document to a statement. This judge described how, under the FJC, they had aimed to tackle the problem:

> 'We set up a subcommittee involving the local authorities and the professions to concentrate on pre-proceedings procedure. And within that committee great emphasis was set on the requirement for a detailed core assessment as being the foundation stone on which all the bricks of the proceedings are laid …And that is very much a drum that I've been beating for the last 5, 6 years'.

This judge went on to discuss efforts to re-ignite that work:

> ‘I have to emphasise that in this part of the world we regard the core assessment as being absolutely fundamental…could I just note …our interpretation of what a ... this all sounds very arrogant, I’m sorry ... our interpretation of what a core assessment should be is different from the social worker’s pro forma, tick box format.

The aim was to avoid duplication, make the lives of social workers easier and at the same time ensure that the right information is before the court in a form which is accessible for the purposes of proceedings. That work stalled following loss of the local family justice council but is to be picked up by another committee:

> ‘There is a growing appreciation that the electronic tick box version is not acceptable to the judiciary, and that a narrative core assessment is required. And the reason for that is that its apples and pears – the social work core assessment, in other words what a social worker refers to as a core assessment, is a document which is prepared from the perspective of a social worker as it were setting about the task of formulating a strategy in a particular case. As to whether it’s a good document for that purpose is in my mind open to question but that’s not a matter for me. [However] a core assessment from the point of view of the judge and as a foundation stone for the whole of the proceedings is a very different document, analysing first of all the needs of the child, and then the capacity of those who were charged with the care of the child to care for the child’.

43 The judge reported that the approach was not immediately welcomed by local authorities; it was perceived as requiring considerable amounts of social work time to produce such a document, compared to generating an electronic copy of the record held on the ICS. That response was seen as a fair comment by the Judge, he continued:

> ‘But what we were able to demonstrate was that the core assessment is the document from which everything else flows, for example, expert evidence. If you are asked for expert evidence you look at the core assessment to see what issue is raised that can’t be dealt with by the social worker, or hasn’t been dealt with by the social worker, and has been identified by the social worker as being an issue with which the court is going to have to grapple. And if you don’t have that, to my mind you never get past the base on properly dealing with expert evidence. So ... and they accept that ... and that’s improved life immeasurably’
> 18, p5-7

44 In summary a key message, reiterated by many judges, is that the interface between the work of the local authority and the needs of the court with regard to the purpose and thus the format of assessments for proceedings, requires attention.

45 This is not a new message: lack of analysis in some assessment reports predates the ICS (when reports were in a ‘Word’ format and narrative form) but use of ICS assessment records for the purposes of proceedings has exacerbated problems for courts. And as Section 1 (Ofsted/CSSIW inspections) demonstrates there are also concerns about aspects of the system for some local authority purposes under Part III of the CA 1989.

Key documents for judges at PLO 1

46 In addition to the application form, key documents for judges (i.e. the documents they seek to read at the start of proceedings) are the initial social work statement, a chronology, the local authority position statement, a threshold statement or proposed schedule of findings:

- Most judges looked for the initial social work statement
- About half sought a chronology – although there were criticisms of this document
- Most wanted the local authority position statement and threshold/proposed schedule of findings
- Relatively few judges identified the core assessment as key at PLO stage.

47 With regard to whether judges usually get these documents at PLO stage 1, the picture is variable:

- about a third said they did – or mostly did
- two judges with several feeder local authorities said it was 'unlikely' or 'very rare'
- the remaining judges said the picture was variable - sometimes they did, sometimes they did not.

48 Some judges expressed concern about duplication of information between social work statements, assessments and chronologies. As indicated above, many judges felt lack of time and little thought had been given to the purposes of a chronology for proceedings; many were too long and too detailed[56]. Judges said chronologies required honing down to key dates, events and a brief paragraph on relevance - cross referenced to the social work statement and assessments, where the narrative and analysis should take place

49 With regard to the core assessment, under half of the judges cited this report as a key document at PLO stage 1; even less said they routinely received it. Some judges said they did not receive it until the CMC; one said it should be dropped from PLO stage 1. Only one judge talked at length about the wider function of this document (see above - paragraph 52). However, it is important not to conflate a number of issues here. First, as indicated in Section 1 (Para 40) there are serious problems with the format and quality of many core assessments; second (and related to those problems) many judges no longer read the report. Third, in the sequence of case management tasks as they have stood to date and where threshold is yet to be established, the welfare test as to parenting capacity has

[56] For example, two pages of dates and details of missed contact sessions or failed medical/professional appointments etc was unnecessary, what was needed was a short paragraph saying how many appointments were made, missed and the stated reasons.

seldom been a priority at PLO stage 1. This is not to say that the timetable to file this report has been 'wrong' per se, rather in addressing timing and utility, the current format and quality of reports will continue to present problems for courts – regardless of the stage at which the document is filed.

E CHANGES OVER TIME IN THE QUALITY OF CORE ASSESSMENT[57]?

50 Most judges had not noted any changes in the quality of core assessments:

- most (10) had not observed any changes over time
- One judge felt the quality of assessments from all his feeder authorities had deteriorated (and there were initiatives afoot to try to address the situation)
- Seven judges observed some improvements in some authorities; these tended to be a minority of their feeder applicants
- Two judges reported both improvement and deterioration in assessments.

51 Where judges identified drivers for improvement, these mostly predated the Munro report and the FJR report and resulted from judge-led initiatives. However, a small number were due to pre proceedings initiatives in a relatively small number of authorities.[58]

52 In addressing problems in those local authorities that struggled with assessments, judges referred to the difficulties of a high staff turnover and poor monitoring of work. While some judges clearly struggle with some assessments they continually acknowledged the difficulties under which social workers operate, and made efforts to try and assist applicants.

53 Where assessments were poor, judges were clear - they wanted to be supportive of good, competent social work expertise but support had to earned. Some judges had experienced poorly trained, inexperienced social workers with little understanding of the legal framework and requirements of courts, with poor writing/drafting skills, and 'thin' assessments. Some judges felt social workers also were disempowered through lack of support and training - hence judge led initiatives about 'what the court needs'. Having identified knowledge gaps however, it was for the local authority to take forward.

54 Experiences of social work competencies varied, for example:

> '…judges want a maturity of judgement and a soundness of professional evaluation. Now you know, if the local authority team is working well, we get that, and in many many cases we do get that, I don't want to be thought that I'm saying we never get that – of course we get that -

[57] That is, pre or following the Munro report and the FJR report (2011 respectively).
[58] See note 48 above.

> some terrific work done by field social workers in [some] authorities, there's no question ... but also some barely literate, very thin ... barely adequate material I'm afraid'.
> 1.2, p10

55 Some judges reported some social workers as overworked and underappreciated in departments that were understaffed. High staff turnover was one reason for delay. One judge with some struggling' authorities said problems could be mediated by a good legal team, and despite senior management problems, a stable assessment team, but may suffer further as social workers leave for better resourced areas. However this judge continued:

> '… social workers in my view must be treated as professionals. They all have degrees, they often have a second degree, and unless you empower them and let them give their opinions - it's this culture of using psychologists every other minute has grown up'.
> 15, p8

56 Most judges were consistent about the failures of ICS generated reports. They were also clear that the format of reports was one element; key also was the training and experience of practitioners to enable them to 'stand behind' the quality of an assessment and the analysis undertaken.

57 SECTION 2 - KEY FINDINGS

The PLO and LA compliance with PLO stage I - filing requirements

- Most care centres operate – or try to operate - the PLO. However many judges pointed out that case management practices are one part of the exercise in dealing with delay; effective work by courts depends on timely, high quality evidence: the two are inextricably linked.

- The picture to date regarding filing compliance at PLO stage 1 is not encouraging: few judges reported a local authority that is consistently compliant - without qualification (i.e. five judges over twenty courts dealing with some 90 feeder local authorities).

Case volumes and number of local authority applicants

- Courts with a single/small number of 'feeder' local authorities tended to report better results for PLO stage I filing compliance but this requires further investigation; some courts with several feeder authorities had both 'better' and poorer performers thus precipitating factors require more detailed investigation.

The format and quality of local authority core assessments

- With notable exceptions judges indicate that so far as proceedings are concerned, the core assessment record generated by the electronic ICS is 'not fit for purpose'.

- This raises several questions, not least is why the record generated by IT systems became the core assessment for the purposes of legal proceedings. That requires urgent work because one of the effects of WT (2013) in England is that LAs will have greater flexibility in assessments models; this may increase further the inconsistencies in presentation to courts with several feeder authorities.

Changes over time in the timeliness and quality of core assessments

- Judges from twenty care centres (of a possible 43) and dealing with 90 'feeder' applicants – and with notable exceptions – saw relatively little evidence of improvement in the quality and timing of core assessments.

- There are some concerns about some social work evidence and indications of pockets of poor understanding of child care law, the requirements of law and legal procedures - and thus the needs and duties of courts in care proceedings.

- This is a complex issue: in the context of the needs generated by the modernisation programme it has several implications, some immediate, some longer term:

  - In the longer term, implications for training of social workers and the degree to which child protection law and practice is a compulsory option for later entry into this field

  - It also has implications for the support and monitoring provided for newly qualified social workers/those new to assessment teams – and the stage at which they should undertake this complex work

- It also has implications for the degree to which local authorities can retain the most experienced and skilled social workers in 'front line' work

- It indicates a need for mentoring systems within some local authorities bringing in highly experienced, court skilled, senior social workers to support those lacking applied knowledge and experience in the legal arena

- In the current climate of scarce resources, it raises questions about expanding the use of dedicated pre-proceedings assessment teams in local authorities – and creative ways of using this model to ensure front line staff are not deskilled

- It may also indicate a need for better integration of social work training with child care lawyers within local authority legal services departments

- Where findings indicated a need for improved assessments, the needs of courts are unlikely to be met by more managers, skilled though some are. Rather, well trained experienced social workers with acceptable workloads and time to do the work. Managers, however good, cannot teach 'experience' or 'wisdom'; these are borne out of training, support and experience itself and thus the routine production of robust evidence-based materials.

- We cannot say from these data whether problems are limited to authorities with high workloads and staff turnover, use of agency/overseas staff, and/or with poor support for social workers. However, given locations where concerns arose this may also be an issue about internal resource allocation.

- Some judges indicated there are good arguments for multidisciplinary training initiatives so that social workers train alongside other professionals in the FJS, thus better equipped to address the demands of law and procedures.

Key documents at the first appointment: the local authority core assessment

- Relatively few judges (6) listed the local authority core assessment as one of the key document they required at PLO stage I; even fewer routinely received it.

- Most judges had either given up on this document some time ago – or did not think it was necessary at stage one of proceedings.

- One judge detailed why this assessment *should* be key - in determining further assessments likely to be necessary and any support services families may require.

Court led initiatives

- Some DFJs have taken steps to assist local authorities in improving the quality of assessments; many pre-date the Munro Inquiry and the FJR. However some care was said to be needed in one-to-one work with applicants. The court has to be, and be seen to be, independent of applicants: that was a key issue in retaining the confidence and compliance of families, and public confidence in judges with powers to permit the permanent removal of children from parents.

SECTION 3 – THE COURT'S USE OF INDEPENDENT SOCIAL WORK ASSESSMENTS (ISWs)

A INTRODUCTION

1 In the absence of detailed research on the use of independent social worker experts in proceedings we have been dependent on various studies to identify overall use of assessments commissioned *within* proceedings[59]. Early CA research suggested more detailed examination of this field was required. A national random survey of all cases involving any expert evidence in 1999 indicated such assessments were ordered in 25% of cases. Data indicates that use has not in fact changed much: in 2008 the figure was put at 23% of all cases[60].

2 We therefore explored the use of ISWs by courts by first asking judges about their own view as to frequency of use. For this exercise we explored two broad time frames: use of ISWs during the period prior to the FJR, the Munro Report and the Family Justice Modernisation programme – and practices post 2011 (i.e. pre and post the 'new culture').

3 We then explored reasons for the use of ISWs and practices at the hearing at which applications to instruct an ISW have been made. In view of the level of involvement of local authorities in joint instructions (65% of cases[61]) we sought to shed light on a view that in practice, such involvement may be more apparent than real – representing a position in which local authorities were 'shoehorned' into instructions that they did not actively support.

B VIEWS ABOUT FREQUENCY OF USE

4 With a notable exception, judges could not provide hard data for discussions about their use of ISWs in the years prior to the FJR (2011) and the Modernisation Programme (2011) however discussions about their practices suggested three broad groups.

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[59] Brophy J (2006) Research Review: Child Care Proceedings under the Children Act 1989. London: DCA; Brophy J, Jhutti-Johal J and Owen C (2003) Significant harm: Child Protection Litigation in a Multi Cultural Setting: London. MOJ; Brophy J (1999) Expert Evidence in Child Protection Litigation: Where do we go from here? London: TSO; Hunt J, Macleod A and Thomas C (1999) The Last Resort: Child Protection, the Courts and the 1989 Children Act. London TSO; Brophy J, Wale C J and Bates P (1999) Myths and Practices: A national survey of the use of experts in care proceedings. London: BAAF; Masson J, Pearce J & Bader K. (2008) Care Profiling Study. London: MOJ. Jessiman P, Keogh P & Brophy J (2009) An Early Process Evaluation of the Public Law Outline in Family Courts. Research Series 10/09. London: MOJ.

[60] Brophy et al. (1999) op cit. Table 4.9; Masson et al. (2008) op.cit. Table A2.31.

[61] Findings from Stage one of the evaluation: see page 5 in Brophy J, Owen C, Sidaway J and Jhutti-Johal, J (2012) The contribution of experts in care proceedings: An evaluation of independent social work reports in care proceedings. England; CISWA-UK. (http://www.ciswa-uk.org/news/ - Research).

5 One group of judges (5/23) felt that use had been 'frequent'; one judge with two feeder authorities and an annual case load of about 110 cases estimated an ISW was commissioned at the rate of two to three a month. Two further judges with several 'feeder' local authorities that were 'struggling' said use of ISWs was 'frequent'; concern had led both judges to explore practices – and in some FPCs. For example, one judge said:

> 'I would say… up to about a year ago ... prior to our pre proceedings protocol ... they were used very regularly…because of a lack of confidence in the quality of social work assessments…non compliance by local authority social workers and delays [incurred]…just simply not doing the assessment. So you'd find 'X' is off sick for three months and they've got to appoint a new social worker, so [without an assessment] …we were [regularly] appointing ISWs …
>
> '…and there was a quality factor ... ISWs are fabulous, good quality social workers; sometimes past guardians ... you couldn't wish for better. And the result ...cases were foreshortened, you know, this wonderful report came through with an analytical opinion, which everybody found terribly difficult to dispute, cases went from a three to a one day hearing, or to one hour or whatever, because they shortened cases – they decided the case more or less for everybody. So there was a huge confidence in ISWs'.

This judge went on to describe recent (2012) changes following a pre proceedings protocol:

> '... the quality of local authority social work has undoubtedly increased and [assessments] are more timely. Where they are poor what we tend to do [now] is order an addendum [but we] identify the gaps …we will say "This, this and this is not analysed within your assessment – analyse it. These are the issues".'

This change has impacted on the frequency and way in which ISWs are used:

> 'The ISWs are still very good here, we've got fabulous ISWs, but they're not used to the same extent ...save in two circumstances; one is where you need a PAMS or PAMS-like assessment for a parent who has learning difficulties - local authorities are not able to do these…and [using an ISW] can be attractive to a local authority. And we sometimes will use an ISW where there are multi party issues ... where mum and dad unfortunately don't show capacity to be able to parent but there's a grandparent or an aunt or an uncle…but where issues of domestic violence or other family dynamics may make it risky. So sometimes where there are multi party issues and dynamics and specific skill needs, that's when an ISW may be used…'
> 20, p10-11

A further judge felt there might be a small increase in use because ISWs are cheaper than other experts:

> 'I think we've been looking at them harder latterly without having to go to psychologists ... because they're cheaper and may well fill in gaps ... so I think they've become a bit more popular. [But] it's very difficult for me to say because we get about 300 cases a year and I personally am seeing a small proportion at the moment…but anecdotally, yes [and] it's wholly to do with legal services' ability to pay, or willingness to pay'.
> 2, p6

As to whether this judge's approach has changed over time:

> 'I mean if they say to me ... if I'm convinced that the local authority haven't done sufficient work and I don't think that I can rely on them to produce additional worthwhile assessments, and I know that it's being suggested I should have a report from one of the really good independent social workers, then I'm very often persuaded to go along that route'.

Like the previous judge, this judge went on to describe the need to fit case requirements to the specific skills of the proposed ISW:

> '.. it's not just any ISW… again, it's knowing who really can help in a particular case. I mean we have one very good independent social worker who's particularly good with teenagers, so I would always - if in a teenage case I needed independent work - I'd certainly go for her.

This judge looked to the parties to provide initial reasons but it was supplemented by the court's appraisal of what was required:

> 'Yes, I very often do that - although we've got quite good legal representation [here] very experienced child panel solicitors. And they tend to think quite laterally in what a case needs by and large. Whether they do it early enough is another issue, but certainly by and large they do. So very often I don't have to take the initiative, but I know that some of my district judge colleagues may well have done that earlier on…they're very good at nailing what the case needs quite early on.
> 2, p6-7

A further judge in this group reported that in the past the court had got to a stage where it was hearing an application for an ISW in 75% of cases. However the circumstances were not straightforward; the main area of applications appeared to follow a negative viability assessment of an alternative carer by a local authority. Here frequency was said to be high:

> 'Very high, yes. And particularly in relation to kinship assessments … so what I've seen a lot is the local authority would carry out a viability assessment in relation to say grandparents, come back with a fairly brief negative assessment and those representing the grandparents would then ask for an ISW assessment. And that happened … I would say for almost every negative assessment of a family member …'

With regard to the use of ISWs for parenting assessments, historically, the volume was said to be less but still quite high, with a negative local authority assessment almost inevitably followed by an application for an ISW assessment. With several local authority applicants it was difficult to untangle this issue (by local authority and court including FPCs). This judge set out the difficulties faced:

> '… it was very difficult to say this should not be happening at this level. And I did have a concern that the proper approach wasn't being taken to …I would go out fairly frequently and see the FPCs and also speak to district judges and say, you know, we have not got a default position whereby if the local authority come up with negative assessments the parents are entitled to have their own independent assessment….

She continued:

> … [However] one of the problems we faced was that some of the viability assessments of relatives by the local authorities …and some of the parenting assessments done – the quality was not, well, they weren't of such a standard that you felt that they would stand up to robust cross examination, analysis… And therefore quite often at an earlier stage ISW reports were ordered rather than waiting and losing time, [and]…
> …that's the other example when we've had independent social work assessments, it's when the local authority are saying … particularly with kinship assessments … coming in later and you say, 'right, I need an assessment and I need it done quickly' and the local authority say 'we just can't, we haven't got the resources'…'

And referring to current debates about expertise already in cases, this judge added:

> 'I think that I also ought to say that one of … in saying that it was felt that the assessments carried out by the local authority weren't robust enough or adequate enough, the usual argument of course would be, 'well there's a Cafcass officer, there's a guardian, and so it's not just the local authority, you've got the independent guardian, so why do you want an independent social worker? – the guardian can cover whatever an independent social worker can cover'. But in earlier days we had guardians who were very experienced, very confident, quite happy to put their views forward, to analyse and justify their views, and then I'm afraid that we had a huge increase in the number of Cafcass officers who were new as guardians, and just didn't have the confidence to put forward their own views and justify them. And therefore quite often it would be the guardians saying … or supporting … the independent social work report… and of course what we found is that a lot of independent social workers are ex guardians'.

In the context of an internal audit this judge had concluded there wasn't a careful enough scrutiny of when ISWs - and indeed experts per se - were needed:

> 'Well I think what has changed is that the view was taken that it was unnecessary to have so many cases with independent social workers in. And more recently the message that I've tried to get across, the message that the other circuit judges here have tried to get across is that there needs to be a very good reason to have an independent social work report, not just because there's a negative assessment.'
> 14, p7-9

6 A further group of judges (10/23) felt that in the period prior to 2011 they 'sometimes' commissioned ISWs - but not frequently: several estimated usage in the region of 22 – 25% of their cases. One DFJ lamented on the historic lack of management information for judges in CA cases; he routinely collected his own data producing figure for us from his decisions:

> 'I can tell you [from] my current cases … I'm carrying 29 at the moment … there are four ISWs that I've authorised, that's 14%. In 2012 I had eight in 42 cases I completed, which is 19%. In 2011 it was 18% - that was seven applications in 39 cases. In 2010 it was six in 26, which is 23%. And 2009 it was nine out of 32, which was 28%....'

However this judge continued,

> 'Now I can tell you from our current [overall] CMS figures which only operate from April [2012] that we've only had ISWs approved in 5% of the county court cases…'

Reflecting on the implications of these figures this judge continued:

> 'Well I don't know whether it's just me, because I get a lot of the more complicated cases to deal with, some of which have come up at a late stage from the family proceedings court because they've run into problems or whatever [and so] in terms of the ISWs that I have actually got on board. But there's certainly a distance between the volume that I'm authorising and the volume that now seems to be being authorised in the cases that we're monitoring under CMS'.
> 21, p7-8

This judge's practice was first to examine whether the local authority had done the necessary work and if it was satisfactory. As to his approach where the work was not satisfactory or if there were gaps, or changed parental/other circumstances – and whether the judge would look to an ISW or return matters to the local authority, this judge responded:

> 'No I'd be going to an ISW, because all too often if you've got a problem with the local authority assessment, they're not going to be able to remedy it…'

And as to CMS figures above and the reasons, this judge continued:

> 'it's a change in the culture because of the pressures that practitioners know are there in terms of [the court] being able to authorise expert assessments. I think there has actually been an improvement in the local authority in a lot of what it actually does. I think one of the difficulties …is that for a number of our local authorities, they used to effectively outsource a lot of these assessments to associations and charities like [X] - who weren't actually very good at what they did…But budget cuts recently within local authorities meant that they've had to completely revisit what they're doing. I've been talking to all [my] authorities about actually trying to share assessment resources – it's not getting a very good reception at the moment.'
> 21, p10

7 A final group of judges (7/23) said ISWs were rarely or very rarely used in their court. One DFJ (with a total caseload in the region of 300 cases over a 12 month period) said over the last three years, a maximum of three ISWs had been commissioned. Another judge said

> **'**To be honest, I can only speak from personal experience, and I do have a large volume of cases - I try and avoid them...I think it should be done in-house. The only time I will normally sanction it is if the local authorities are being so phenomenally slow ... and then I make them probably pay for all of it to make them improve their own practice ... which normally works. Or, if I think there's been a lack of transparency for whatever reason and there's a real concern then that even if you sent it to a different area of a local authority that it wouldn't be transparent and fair. [But] I use [ISWs] very rarely,very very rarely'.
> 15, p8-9

A further judge said:

> '…if you used a scale of 1 to 5 – five being in every case, and one being in no cases at all – probably two - so very low incidence [in my court]
>
> .. And the sort of cases in which I countenance it are where for some reason there is an unusual or exceptional profile so far as the parents are concerned which means that you've got to have a specialist dealing with the parents in order to carry out an assessment…
>
> … or alternatively where the local authority's conducted a core assessment but it is deficient and the local authority is compromised insofar as completing the core assessment is concerned. That happens, for example, where they produce a deficient core assessment, and on the basis of that core assessment declare a conclusion that for example the parenting capacity of the parent or parents is flawed, so they've compromised their position.
>
> …or finally, where there's an urgency about the matter and the local authority for some reason or another ... and generally it's illness of social worker or something of that kind ... can't conclude the assessment within the regulatory period.
> 18, p7

8 Whether judges felt they were 'frequent', or 'some time' users – views generally were that usage is now reducing/likely to reduce but as alluded to above, there were certain caveats arising from the reasons for use (see below 'C').

9 While these are of course - with a notable exception – reflections on use: as one judge above lamented with some force, prior to the introduction of the CMS in April 2012, judges simply did not have access to even basic management information on court practices. However, while most views did not suggest high use of ISWs across all courts in the sample there were some pockets of high use. And as views about frequency of use indicate, frequency of use has to be understood in the context of the underscoring reasons. It will however be difficult to substantiate the impact of the new regime as the CMS in courts was introduced alongside the new 'culture' and approach regarding the use of all experts, thus data for 2012-13 will represent a base line already influenced by the latter approach.

C JUDGES' REASONS FOR USE OF ISWs

Parenting assessments

10 Judges' reasons for giving leave for ISW assessments fell into two main categories and one further subsidiary group. As indicated above, the first category focused on the availability and quality of existing assessments and available resource issues within local authorities, the second focused on the children's guardians and the third on 'other' issues.

The work and resources of local authorities

11 Most judges (17) said one of the main reasons why they gave leave for an ISW assessment of parenting was because cases lacked a relevant assessment (5) or because of poor quality/limitations of an existing assessment (12)

- However almost all judges (21/23) also identified that the key reason why they gave leave for the instruction of an ISW was because a local authority lacked the *skills* to undertake the specific work required and/or was unable to meet the timescale.
- A minority of judges (6) also said that on occasion a failure to engage or gain cooperation of a parent(s) could *contribute* to the reasons – but most judges emphasised that that of itself, would seldom be the only reason.

12 *The work of the children's guardians*

- Some eight judges said the children's guardian was not available or unable to fill gaps in local authority assessment evidence; six added that use of an ISW has also been underscored by a recommendation from the children's guardian.
- Some concerns were also raised regarding the reports of children's guardians: it was felt reports were less thorough than in previous times; it was also pointed out

that in a small number of cases where issues are subtle/finely balanced, a guardian can also be of the view that a second opinion can be valuable.

- Few if any judges appear to anticipate guardians are able to undertake hands on assessments to fill gaps or shortcomings in existing work. Rather the role is said to be that of identifying gaps and assisting the court in determining - in terms of skills and timetable - how these are best addressed by others[62] (this confirms stage one findings on the level involvement of guardians in joint instructions).

13 *Other reasons*

Five judges raised additional reasons:

- Cases where the court requires a degree of independence: this can result from a complex interplay of issues and where some issues are finely balanced (but the latter were very small in number)
- Cases where the issues are subtle and further clarity is required (in this context, judges said the local authority can be equally 'desperate to take the case forward')

14 More than one judge in this group reported that the judge has to be confident there are no significant gaps in the local authority's evidence. However one judge acknowledged that historically that has led to a 'no stone left unturned' approach; that concept had to be viewed in the context of a number of issues including the sheer pressure of time on judges:

> 'Well, it's no good being told just be a bold judge - because the Court of Appeal expects even the bold judge to give reasons. And the only sensible and honest reasons you can give means showing in your judgement that you are fully aware of all the important issues, as I've said, and you can explain why you think the evidence you've got is sufficient for you to come to a fair and fully informed decision on those issues..'

This judge continued:

> '…and we've got such high caseloads and so many cases in our list in the typical day ... particularly on a day when you're wanting to get on with a rolling 4, 5, 6 day contested care case – you just simply do not have the time to go back into your room and compose a well structured judgement explaining why in spite of every party in the case asking for the independent social worker, you the judge are saying no it's not required….
>
> …but I think the local authorities are tending to object much more often than they did…they've got much more confident in saying 'no we say it's not necessary' - and coming with skeleton

[62] And see subsequent Cafcass Revised PLO: Guidance, para 12 (Guardians as experts and the limits of knowledge expertise and use of other experts); para 13 (Threshold analysis – a view on parenting capacity gaps), para 17 (case management advice in the context of any gaps in evidence including where an additional or specialist assessment might be required working within the Practice Direction (FPR Part 25, 31 Jan 2013), and paragraphs 20 – 21 (analysis of parenting capacity) assumes there has been an up to date assessment of relevant parenting by the LA according to the Framework domains – from which the guardian will work, if not, the guardian will advise on the assessment needed (but will not actually do a Framework assessment her/himself) (13 June 2013). http://www.cafcass.gov.uk/media/164871/revisedplocafcassguidancev6.pdf

> arguments saying why it's not necessary but..you have to be able to say there are no significant gaps in the local authority assessment….'
> 13, p10

15 Two issues were discussed by two judges at this point. As indicated above, while a need for independence could be important, it was seldom the driving force for instructing an ISW (see below - reasons to refuse). Rather it was one issue in the context of other factors. However one judge said that where issues were finely balanced and where tensions might be high, an independent eye could be valuable to the judge and where the decision of the court was likely to be 'draconian' (i.e. permanent removal of a child from a parent); in such circumstances this could be supported and indeed welcomed by a local authority.

16 Notwithstanding the categories raised above regarding case related needs and expertise, in the context of other reasons three judges raised the following issues:

- An ISW would only be approved if the work could be completed quicker than was possible by the local authority
- The ISW must be a known ('tried and trusted')
- One judge (with several 'feeder' authorities) reported concerns that local authorities and guardians were less able or willing to 'nail their colours to the mast' than in previous times: practitioners were less experienced and that may play a part in some of the additional reasons for use of ISWs in some areas.

Kinship assessments

17 With regard to the use of ISWs for kinship/other assessments a major reason underscoring leave has been a lack of resources/skills within a local authority or an inability to complete the assessment within the timetable: 9/22 judges cited these circumstances.

18 The second most common reason was that the guardian was not available/unable to fill a gap in assessments and the guardian initiated or supported the decision to instruct an ISW to undertake the work: 7/22 judges cited these circumstances.

19 A third and less common set of issues were a poor quality viability assessment or kinship assessment from the local authority (i.e. superficial, inconclusive or with gaps) (4/22 respectively). Difficulties for a local authority in engaging extended family members could be a *contributory* factor but it was not a 'freestanding' or indeed a common reason underscoring leave permitting the instruction of an ISW.

20 Other issues identified by a small number of judges (4) – usually in addition to the resource/timing difficulties for local authorities and guardians – included cases:

- where a local authority had 'closed its mind' to a potential carer
- where there were multiple potential carers to be assessed
- where a local authority viability assessment lacked transparency and fairness
- where an ISW could provide the necessary time to spend with a relative.

These were not identified as routine occurrences but they were circumstances – even for judges who rarely or very rarely commissioned an ISW – which underscored leave for an ISW kinship assessment:

> 'Occasionally one senses a closed mind from a local authority but mainly it's because of lack of resources within the local authority to do the work.'
> 1.1

21 A further judge highlighted the benefits to both the court and the local authority of continuity of practitioner when more than one relative was to be assessed:

> '… We are encouraged are we not, to deal much more than we do currently with as many issues [as possible] upfront? And so I suppose if I was presented with the argument that the local authority may be struggling further down the line to do kinship assessments in a case ... let's say for example, the family said 'well we want two aunties, two grandmothers and even a great grandmother assessed here' ... you know it's not unusual for the local authority to say 'well with that number of assessments we're going to struggle to meet the deadline'. If you could confront that issue and see that to save time, an ISW could come in and assess everybody – why not?
>
> … [ISWs] would be more than willing to assess everybody and offer a view as to why they rejected A, B and C, but didn't reject D, E and F, and actually put D, E, and F in order of preference you know…'

This judge continued:

> …I've often said to local authorities aren't you somewhat disadvantaged or the court somewhat disadvantaged by having this kinship assessment done by this social worker, the next one done by a different social worker – surely any intelligent structure would be that the same person assesses everybody. And they are in a position not just to say whether they're viable or not but why A is to be preferred to B and B is to be preferred to C'
> 13 p14

22 A further judge highlighted issues of timing where the local authority was under pressure, along with issues of quality and the robustness of a report produced under those conditions:

> '... I think the decision is always based on time... well it's not always based on time, it's based on two things – it's based on time and fairness. So far as the kinship assessments are concerned, because sometimes the kinship assessments come quite late in the proceedings ... it's sometimes not until a nose is against the wall that somebody comes [forward] as a potential carer. The viability assessment is always done by an in-house social worker. When it comes to the kinship assessment, sometimes the local authority will come along and say 'we need three months to do a kinship assessment' – at which point I say, 'not on your Nelly',

> and I then say 'go out and find how long an independent social worker will take to do this kinship assessment…'

This judge continued,

> '…and if an independent social worker can do it faster than in-house ... or sometimes if the viability assessment is 'iffy' ...I think is the best way to describe it, and you can tell when they're 'iffy' ... and sometimes the guardian will come in on a [local authority] viability assessment and say 'Actually this doesn't accord with what I've discovered about X, Y and Z at all.. it's very biased, unfair ...' and sometimes viability assessments are done over the phone, so you can tell that…there hasn't been much input. And in those circumstances where there is a perception of unfairness or bias, then I will order an independent social work assessment…'
> 22, p10

With regard to the frequency with which this might happen, this judge responded:

> 'I think it's slightly more actually, um ... I think it's probably about 30%, 30 to 40% of the time I will use an independent social worker. And actually sometimes the local authorities recognise that they haven't got the resources to carry out a full kinship assessment in a reasonable period of time ... and they will say… the quickest we can do it is in three months, and you know, other parties are asking for an independent social worker and we can't oppose that.'
> 22, p10

23 A further judge who was not a 'frequent user' of ISWs and rarely used them for kinship assessments said:

> 'I don't use them…not very often. It does happen occasionally, usually … it is where it was felt that the local authority has already formed an early view of [a relative] and that was an unfavourable view, and therefore that they wouldn't have a fair crack
> 26, p16-17

24 And referring to the time required to do a proper assessment, a further judge said

> 'I think they're um ... my impression is that they're more used for kinship assessments than parenting assessments…. perhaps it's because they have more time to go and sit down with these people and just talk things through with them. I mean the examples I've got are ... yes certainly the first one was a kinship carer, the second … she assessed a great aunt who came from [another country] ... and there was ... a set of grandparents I think, applicants for special guardianship…
> 33, p17

25 Five judges who described themselves as rarely or very rarely using ISWs for kinship assessments said circumstances would have to demonstrate a specific (skill) requirement emanating from the profile of a parent or potential carer(s) which a local authority could not supply, or where the local authority was unable to undertake a viability assessment in the time frame - or where a local authority assessment was clearly deficient. One such judge with a single 'feeder' local authority said this authority was improving, another reiterated that, as with parenting assessments, kinship assessments by an ISW were not used often but there remained a role for them where issues of fairness, transparency and justice were compromised.

D DIRECTIONS HEARINGS: DECISIONS TO INSTRUCT AN ISW

26 We explored with judges the issues and practices that underscore local authority involvement in joint instructions to an ISW. In the light of findings regarding the high level of involvement by local authorities in instructions[63], we also asked judges to shed some light on a view that such involvement may be more apparent than real, representing circumstances in which they were 'shoehorned' into instructions.

Reasons for local authority involvement in instructions to ISWs

27 Most judges (15/23) said the major reason for local authority involvement in instructions to ISWs was because the local authority supported the application; support was largely seen as active, based on the substantive needs of the case, for example:

- changes in the circumstances of a case – and where local authorities recognise the help/contribution of the ISW; the approach here was usually said to be 'collegiate' (one judge added that if it was not, local authorities are not generally reticent in opposing an application (but see below, Para 29 for caveats)
- a need for specific skills that the local authority cannot supply and/or to help a local authority meet the timescale
- where a local authority has conducted a viability assessment which is positive, it then instructs or supports the instruction of an ISW for a full assessment
- where the child's guardian seeks or supports an application
- Where several assessments are required an ISW can undertake the whole task presenting the court and local authority with a reasoned recommendation.
- Where there are acknowledged concerns regarding local authority work and the local authority cannot update an assessment in the timescale.
- Where there are complex parental/relative profiles requiring an intergenerational assessment and for which the authority lacks the skills and/or the time.

28 There was not much evidence in this sample that judges feel local authorities are routinely 'shoehorned' into jointly instructing an ISW where they do not 'actively' support that move. However a small number of judges said other factors may be part of the picture:

- One judge acknowledged that on occasion local authorities can adopt a 'pragmatic' approach (weighing factors and deciding to support an application).
- Two further judges identified that ultimate support from a local authority can on occasion be driven by a concern that in the event of a contested hearing its

[63] Stage I demonstrated the local authority was party to instructions in 65% of cases; the guardian in 56% of cases – see, page 3 above: 'Responsibility for instructing ISWs'.

assessment may be insufficiently robust; joint instruction to an ISW would enable a case to move forward and costs would be shared between parties[64]

- Overall cost issues/advantages to jointly funded instructions featured in the responses of six judges but contrary to anecdotal evidence an opportunity to share costs was not seen as a key driver.

29 Moreover, when we asked a sub sample of judges[65] whether they had noticed any changes over time in the involvement of local authorities in instructions to ISWs, responses were, not surprisingly, rather mixed: three could not say, four felt there was some change (one felt applicants were increasing their use – following 'more joined up thinking'); three felt there had been a decline in local authority involvement most of it since the FJR/Modernisation Programme; four said there had been no change (reporting that where appropriate, objections to instructing an ISW have always been robust; one judge said he might be more sympathetic to objections than previously).

30 A further issue raised by some judges regarding the use of ISWs was the impact of what they experienced as a changed role and expectations of children's guardians. In discussing local authority involvement and that of the child's guardians (the latter usually the lead in instructions) some judges lamented the loss of experienced guardians with the time and expertise to do 'hands on' work with children and families where deemed necessary; some concerns were also expressed about the employment of newer less experienced guardians coupled with less time per case than in previous years.

Court hearings: contesting and refusing applications to instruct an ISW

31 In the light of some underlying concerns about local authority involvement in instructions, we asked whether local authorities contest applications to instruct an ISW – or whether a form of inertia operated. We also raised a view that courts too readily accede to applications for an ISW and might be perceived of as something of a 'rubber stamp'.

- Almost all judges said local authorities do contest applications: impressions of how often varied from 'often/frequently', to 'sometimes' and 'rarely'.
- Some said it was if or when they thought it 'appropriate' but there was a concern that objections could be on cost grounds rather than need/quality of existing work

[64] There is some indication that judicial responses to this situation vary and thus to the ordering of costs. One judge for example thought that 'an input from the local authority was required by the LSC' (sic) [now the Legal Aid Agency] for other parties to receive legal aid'.

[65] A sub sample - 11/23 judges; and for evidence of the strong mediation role undertaken by guardians during the 1990s see chapter 6, Brophy and Bates (1999) The Guardian ad Litem, Complex Cases and use of Experts. Research Series No 03/99. London: LCD. (Now the MoJ.)

- Most said objections would depend on whether the local authority was confident about the quality of any existing assessment
- Some said applicants were not in any sense 'shy' about contesting an application
- Some noticed an increase in objections -felt to be due to the new regime
- Just one judge said he wished local authorities would protest more often – in busy courts that would nevertheless ensure issues were fully debated in court.

32 With regard to the approach of the court and whether they refuse applications:

- Almost all judges said they have refused applications – some said they 'often/frequently' refused an application, others said they did this 'sometimes' (just one judge said he had not refused but was cautious about giving leave)
- Most said that where a local authority objected the court would decide on the basis of existing evidence – they do not regard themselves as a 'rubber stamp'[66]
- Several judges said they did not agree leave to instruct on the basis of parties' agreed application; a need for the work had to be established with the court and that approach was well known to local advocates.[67]

33 However three issues were raised as relevant here:

- Judicial continuity in the management of cases
- Pressures on judges and a large amount of reading material for hearings
- Experienced and skilled child care lawyers to assist the judge
- Practices in some Family Proceedings Courts where ISWs were instructed prior to transfer.[68]

34 As indicated above, judge talked about the large amount of reading materials that are involved before some hearings; that exercise was reported as easier where courts were able to maintain judicial continuity in cases. Judges also highlighted the importance of experienced child care advocates able to assist the court and where courts were able to ensure judicial continuity, judges said they usually came into court with a 'list/checklist' of issues to be addressed. These judges talked about establishing a 'handle' on cases and the

[66] Some had protocols for advocates wishing to instruct experts, some of which predated the modernisation programme.
[67] And some judges where use of ISWs has always been low/very rare said their approach may lead to some 'self limiting' in the part of advocates.
[68] As set out n Section 1 above, this evaluation is restricted to the practices of senior judges in the county court; further work in FPCs where magistrates must address human rights issues in their written reasons would be helpful – both with regard to practices prior to but also following changes in criteria for use of expert (as set out in Section 1), and with regard to case management procedures following the revised PLO (2013).

evidence and expertise likely to be necessary, the capacity of a local authority to do outstanding assessments in the time frame, and the likely quality of any subsequent report.

35 As demonstrated above where local authorities recognise gaps or limitations to evidence, the approach is said – by judges at least - to be collegiate, based on getting the necessary evidence in the timeframe and to a standard that enables the court to move forward quickly.

36 Notwithstanding one judge, most judges did not think that local authorities suffer a form of inertia/reticence in contesting an application for an ISW where they felt it was not necessary. Equally, judges did not consider themselves a 'rubber stamp. There was no indication that any had been appealed on the basis of a decision regarding leave to instruct an ISW. In discussing the suggestion of 'shoehorning' - and an apparent lack of appeals by local authorities in these circumstances – one judge said that was perhaps a result of resources: it was cheaper to go ahead with an instruction than to appeal the decision to permit it. A further judge pointed out that a decision not to appeal must also be seen in the context of counsel's opinion as to likely success.

37 A concern raised by some judges was that where the dominant discourse about ISWs has been about over-use or misuse – and where the subsequent deadline for case completion is now 26 weeks - some courts may react with a 'knee jerk' or 'macho' reaction to applications for an ISW assessment with a blanket refusal not grounded in the needs of a case and issues of fairness to children and parents. This was especially the case with regard to discussions of some of the more subtle issues that proceedings can uncover:

> '…if the choice is between a family placement and the placement order adoption direction for a young child – you are very anxious indeed about it, because it's a huge commitment for the family to make, it's a huge decision for the child. And if you're faced with sort of fresh start versus possibly a rather complex emotional in-family placement – that's a very tricky one. And you really want wisdom, and somebody who has met these family members and has got a bit of judgement about what makes them tick….

This judge continued:

> '..and whether they'll be able to manage the natural parents and all those sort of issues – those are very subtle and ... even in the forensic process where we like to think that ... we can spot some of these problems, it's not so easily done if people are presenting a united face and so on. [So it's the value of] time, judgement, wisdom…depth of understanding …these are precious qualities in a social worker as well as judges.'
> 1.2, p8

The court in which leave is granted to instruct an ISW

38 Stage one of this evaluation indicated that most instructions for ISWs were based on leave granted in a care centre. In exploring that situation with judges and asking about their experiences of the court in which ISWs were generally instructed, three themes arose.

39 First, a small number of judges picked up cases at the CMC; in these circumstances it was difficult for them to know what issues underscored patterns of instruction.

40 Second however, most judges agreed that most instructions are likely to be issued in the county court: they highlighted several reasons for this:

- in the FPC or later in the county court a case reaches crisis point where evidence is insufficient and the local authority acknowledges it is unable to do an assessment - or cannot do so in the timescale
- cases may be transferred at the first hearing in the FPC without any directions as to assessments; in the county court the sequence of some evidence may be important as is the timing of instructions to an ISW (see below)
- some cases may be retained by the FPC 'too long' until complexities indicate it should be transferred or until a contested application is made to instruct an ISW and at that point, it may be transferred for a decision
- cases may be transferred at the point at which a local authority acknowledges it cannot provide the resources, and because the indications are that the final hearing is likely to require more than three days.

41 Some DFJs reported they were dealing with concerns about case allocation through pilots/procedures instigating a single point of entry for all applications. These are then reviewed by a judge as 'gatekeeper' (see above) so that cases are allocated to the appropriate tier of court/judge at the very start, to avoid unnecessary delay, and in combined centres, later transfers, and to try and achieve judicial continuity.

42 SECTION 3 - KEY FINDINGS

Frequency of use of ISWs – parenting assessments

- Most judges (17/23) were not frequent users of ISWs; estimates were between 22 and 25% of their case load but some much less. (Estimated figures are close to quantitative research findings.)

- Five judges thought their use was 'frequent' – about 2-3 cases a month and linked with local authorities known to be struggling.

- While there were indications of pockets of high use at some points in the history of court practices the reasons were usually several; views do not indicate high use by these judges in the period leading up to the family justice review.

Reasons for and patterns of use of ISWs –parenting assessments

- The main reasons for use of ISWs by judges were the quality and value of any existing assessment and resources within local authorities: 17/23 judges said reasons for use were lack of an assessment or a poor quality/limited assessment.

- Almost all judges (21/23) said use was because a local authority lacked the skills to undertake the necessary work – or could not do so in the necessary timescale.

- Relatively few judges (6) identified the breakdown in relationships between parents and a social worker as a reason to instruct an ISW and while it might be a contributory factor it was very rarely a free-standing justification.

- Just under a third of judges (8/23) said the changes to the work and role of the guardian had contributed to the use of ISWs; some also identified circumstances where a guardian had required further evidence and supported use of an ISW.

- A very limited number of judges referred to the 'no stone left unturned' approach to the use of experts per se: one judge acknowledged there was a period in which that approach had applied; it was 'historical' and had not been practice for some time.

- Two *further* caveats were applied by some judges: (i) the ISW had to be able to dedicate sufficient time and complete work faster than the local authority while maintaining high quality and (ii) it has to be a 'tried and trusted' ISW able to hold the confidence of both the local authority and the court.

Reasons for and patterns of use of ISWs – kinship assessments

- The main reasons for use for a kinship assessment largely reflect those cited for use in parenting assessments: judges cited lack of resources within a local authority or an inability to complete the work in the timescale: 9/22 judges cited these reasons.

- The second most common reason was that the guardian was not available or unable to fill this gap in local authority assessments – and the guardian supported use of an ISW: 7/22 judges cited these circumstances.

- A third much less common reason was a poor quality viability assessment or kinship assessment (i.e. superficial, inconclusive, or with gaps).

- Difficulties for a local authority in engaging extended family members could be a *contributory* factor for a small number of judges but it was not a 'freestanding' reason.

- Other issues identified by a small number of judges - usually in addition to local authority resources/timing difficulties - include cases where a local authority has 'closed its mind' to a potential carer, where there are multiple carers to be assessed and value in one person doing the work, where an existing assessment lacks transparency and fairness, and where an ISW could devote the necessary time to the assessment. These were not routine occurrences but were circumstances – even for judges who very rarely used ISWs – which would underscore use of an ISW.

Seeking leave to appoint: practices at the coalface and local authority involvement

- Most judges said where they gave leave for an ISW, the local authority has been an active participant; involvement was collegiate based on the needs of the case.

- There was little evidence here of routine 'shoehorning' of authorities into joint instructions of ISWs; most judges said authorities were neither slow nor shy in contesting applications in appropriate circumstances. There was some experience of a 'pragmatic' approach by local authorities where the latter had concerns that existing evidence was poor and might not withstand scrutiny.

- A desire to share assessment costs was not identified by judges as a driving force in local authority involvement in joint instructions.

- Some judges had noticed a decline in local authority involvement in instructions, a small number could not say but most judges felt there had been no change in levels of involvement because issues have always been robustly and properly debated.

Reasoned adjudication or rubber stamp?

- Almost all judges have refused applications for an ISW: they do not regard themselves as a 'rubber stamp' in the face of an agreed application. One judge felt pressure of work may mean less scrutiny where there was cross party agreement but most reported 'need' had to be established regardless of the status of an application.

- Pressure of work and a large amount of reading materials – and the need for help from experienced child care advocates - were raised in the context of decision making but many judges said advocates were aware of their approach to the use of experts per se and that meant need had to be established.

- Some judges raised concerns about the impact of the current regime and the 26 week deadline on the exercise of judicial discretion. They were concerned that it should not result in a 'knee-jerk' or 'macho' reaction by courts without proper exploration of the real needs of the case and within a framework that considers fairness and justice for children and parents.

SECTION 4 – VIEWS ABOUT THE QUALITY AND VALUE OF ISW ASSESSMENTS WITHIN PROCEEDINGS

A INTRODUCTION

1 The Stage 1 evaluation of ISW reports was positive overall most reports in the sample were of high quality; they were evidence-based, transparent in analysis and forensic in method[69]. At its best, this enables a reader to track key issues in a case, through the narrative of the assessment, the analysis of each domain of the assessment, the answers to questions set, the conclusions reached, and thus the recommendations made.

2 The reports reflected a dynamic approach to case work based on spending sufficient time with parents to enable practitioners to undertake a comprehensive assessment under the domain headings under the Assessment Framework and in the light of disclosed documents and the questions set. Most reports were robust and focused; they demonstrated parents had been challenged where necessary or where discrepancies were apparent but reports were fair and transparent with regard to conclusions and recommendations.

3 We noted however that an evaluation of reports was one part of a matrix in understanding the use and value of ISWs: a key gap has been information on the judicial decision making in the use of ISW and views about the quality and value reports.

4 In this section therefore we explore judges' views about the quality of reports and the benefits and limitations of ISW assessments, and the impact of reports on thinking, planning and placement for children. We also explored views about use of ISWs where issues were borderline/finely balanced, and whether judges received reports that add little or nothing to proceedings.

B JUDICIAL VIEWS ABOUT THE QUALITY AND LIMITATIONS OF ISW REPORTS

5 As indicated above while the use of ISW assessments varied across judges when they were used, ISW parenting assessments were described by just over half of judges as 'good' or 'excellent' but there were pockets of concern within mixed experiences.

6 The quality of reports was described as good or excellent without qualification by just over half of judges (13/22):

[69] There were some quality assurance issues regarding the layout of 25% of reports: poor layout and lack of signposting made such reports hard reading - but key information *was* usually included. Equally, we noted issues of cultural and religious diversity, and use of research required more attention.

- 5 judges described reports as outstanding/excellent/exceptional
- 3 judges said reports are 'good to excellent'
- 5 judges said reports were 'good' with no qualification/exceptions

For example:

> '... reports are excellent, they are fantastic, in the past these ISW were guardians – couldn't wish for better work, cases were foreshortened by wonderful reports…we are now trying to encourage the LA to do the work, we don't have fantastic reports any more…'
> 20, p10,
>
> 'They are vastly experienced practitioners; reports are analytical, reasoned, with the time input….'
> 22, p17
>
> '…universally good, years of experience and the ability to utilise it, they are articulate and effective…'
> 33, p15
>
> 'They are experienced, knowledgeable – reports are analytical, independent and comprehensive....'
> 35, pp11-12
>
> 'the reports are very good - in some cases fantastic; they have time and the specialist skills…parents and guardians are happy…'
> 1.3, p13
>
> 'Good – and more consistently good than in some other expert reports
> 5, p8
>
> 'Good - but you have to pick your team - we have a bunch of about [several] who are really good very competent people…'
> 15 p14
>
> 'Oh very good, very good, I mean most of the ones we use are extremely good…'
> 34, p9
>
> 'Reports are a huge value to the court'
> 1.4,

7 A further nine judges said reports were good but with instances of variability; a small number (three) identified assessments that had not met the needs/expectations of the court:

> 'They are generally good to be honest. Although can't say universally thrilling. I can think of one or two cases ... [one] where I was disappointed with the focus on [the relevance] of [cultural and religious diversity]…the scholarship behind the overview we were hoping for was a bit disappointing…again I think it was the person…we had not used [this ISW] before and we were a bit disappointed, but they are generally good'
> 1.2, p9
>
> 'If you have a very good independent social worker it can make a huge difference to the case. ..one who you know, brings objectivity to the case - and most of them do I think...because of their inside knowledge of the system they are able to evaluate social work decisions, I mean, they have a huge amount to contribute but it does very much depend on the individual …like any expertise…we happen to have three or four who are very very good….they bring

specialist knowledge…rather than a 'broad brush' assessment… a [detailed] ISW assessment really nailed it'
2, p16

'Some are very good and some are not so strong; there are some ISWs who just simply do very little more than repeat what the parents say, support parents come hell or high water. There are others who clearly challenge the parents, and their reports are much more valuable than the unquestioning ones.'
11, p18

One further judge was rather cynical about some but not all ISWs:

'…the calibre varies enormously…we have some recently retired Cafcass officers who are of very very high quality in their reports, and the temptation to have one of them in is enormous …I will speak up for those who develop a speciality which may be lacking in some social work teams and [in those cases] we've been assisted by independent social workers who specialise in [particular field]. And in those - very anxious cases - you'll find the local authorities saying, 'we would value the work [of an ISW]'
13, p18

'Some are extremely good – particularly where the referral has been because specialist skills are required. Some not so good…so far as failings are concerned, my concerns have been [in a recent case]…with regard to the assiduousness of the preparation, the length of time taken with the subject, and the extent to which there was a really clear understanding of the history….as to the qualities – beyond specialist skills I think there are certainly those cases where local authorities can back themselves into a corner….or the parents' position has become polarised from the local authority's …and here the ISW [can move things forward]
18, p13

'…there are probably four or five ISWs who do it on a regular basis who are very good and very reliable…the court gets to know them and know that you can attach a lot of weight to what they've said. Often they're former guardians who've now decided to [do this work] but they're quite experienced. The difficulty is that they can only take on so much work, and some of it now tends to go out to these umbrella agencies that have sprung up … and I think there is a concern about the quality of some of those ... [And] the other difficulty is sometimes [ISWs appointed from outside the area] haven't got the advantage of knowing what resources are available locally. So they might say well say …mum needs help with A, B and C, but not actually able to identify where that help can come from. … if further work needs to be done, we need to know who's going to provide that work and the timescale for that work. So there is a concern about that I think for some of these reports.[70]
23, p14

C THE VALUE OF ISW REPORTS TO PROCEEDINGS

Parenting assessment within proceedings

8 Judges reported that a key value of ISWs to the court is the provision of expertise which the local authority does not have; most judges (16/23) identified this as the starting point. For example one judge said 'independent social workers have enormous value where the local authority lacks expertise…' Moreover most judges reported ISWs are:

[70] This criticism has also been levelled at some clinical expert witnesses working on a national basis (see Brophy et al. 2001). For a period the practice of consultant child psychiatrists when making recommendations for treatment was to contact the local CAMHS to discuss the treatment recommendations proposed and to see if these were achievable locally. Indications are that resource difficulties within CAMHS have reduced if not stopped that dialogue. This requires research.

- able to address gaps in local authority evidence where the applicant lacks time and/or expertise
- able to report to the domain headings of the Framework Guidance
- are able to meet tight timescales
- additionally, they are able to engage parents and gain meaningful cooperation
- are able to provide the court with an independent eye based on a detailed evaluation
- able produce a readable, analytical, evidence based report for the court following a robust assessment.

A small number of judges said there was an additional value to the court because the ISW was an expert witness, working to instructions. However the driving force is first and foremost, skills and expertise and time and capacity to work to court timescales.

9 Skills which local authorities cannot provide varied but judges here discussed commissioning ISWs with expertise which included the following areas:

- serious mental health issues and parenting
- parenting children with physical and learning disabilities
- parents with a learning disability and expertise in a PAMS assessment[71]
- specialist knowledge and experience with minority ethnic communities (e.g. travellers, families with immigration/asylum problems and language needs)[72]
- an assessment of risk in cases of child sexual abuse
- complex intergenerational abuse
- assessing parents/potential carers where there is denial/partial denial and potential for rehabilitation of a child in physical injury cases

10 The capacity to produce reports that are robust, forensically driven and analytical was however coupled with a concern that the report should meet the needs of local authorities. For example:

[71] PAMS (Parent Assessment Manual Software) began in 1998 as the Parent Assessment Manual. This was a spiral bound paper based assessment tool developed by Dr Sue McGaw (NHS Specialist Parenting Service). Due to its significant value in providing an evidence base for assessing parents with a learning disability, a software version was developed in 2004; A second edition (PAMS 2.0) released in 2007 and third (PAMS 3.0) in 2010. An update (incorporating the latest government parenting advice) was made in 2012, - http://www.pillcreekpublishing.com/pams_more.html.

[72] And in some areas there is a concern about lack of knowledge and expertise within local authorities for working with Eastern European families.

> '…the local authority usually holds them in high regard, as indeed does the guardian…that is a key, because remember, one of the issues for a lot of the local authorities is that they've got to be able to take ownership of the assessment - and recommendations - if they're going to inform their placement decisions in relation to approval of a particular plan'.
> 21, p19

11 While an ability to also engage with and gain cooperation of parents/others could be an added value, this was not a 'free standing' issue when considering gaps in evidence and the use of an ISW. No judge highlighted better parental cooperation as a reason for an independent assessment – except where other factors were present. Foremost in these were cases in which existing local authority evidence was compromised in some way, or was biased or lacked transparency in coming to a view, or where a local authority had, in effect, 'backed itself into a corner'.

12 In such circumstances judges indicated an independent assessment could be of value to the court. In this context judges discussed the advantages of a 'fresh pair of eyes' with the right expertise, time to do the work – and to the court's timetable. In such cases issues of experience and wisdom were seen as key assets. One judge compared the skills, experience and the time available to an ISW - 'people who have been around the block', 'know the issues' 'are at the top of their field in skills and experience' – with what may be available in a local authority at that point. It was said that in such circumstances, an ISW who had the confidence of the local authority and the guardian is often able to work robustly but with empathy with parents who may be doubly incensed by aspects of local authority practice where – for whatever reason – things have gone badly wrong.

13 It was not that judges were unsupportive of local authority social workers and the difficulties of the task – on the contrary, but equally in describing situations where 'things had gone badly wrong' also described how an ISW can change the whole complexion of a case. More than one judge talked about some of the very subtle issues that may need addressing in complex cases; for that they may need the skills, wisdom and time that an ISW can offer to help both courts and local authorities to untangle things and cast light on the way forward.

14 It was reported that in some situations the local authority has been equally keen for an independent assessment and grateful for the help. Some judges said a substantial degree of collegiate action happens on their 'patch' with professionals working together to identify gaps in evidence and the assessment and skills necessary to move cases forward quickly: tensions are not inherent. Some judges - who were not 'frequent users' of ISWs - nevertheless saw a continued role for ISWs in certain situations and reported they did not recognise the view of ISW assessments or the relationship between ISWs and local

authorities as this was put to the Family Justice Review. This is not to say there were never tensions rather, the relationship was nuanced with evidence of collaborative work. Some judges also noted there are sometimes tensions between social workers and guardians.

D LIMITATIONS AND PROBLEMS IN ORDERING AN ISW REPORT

15 In discussion the limitations or problems that might be associated with instructing an ISW, while some judges (8) said delay may have been a factor, most judges (15) said delay was not in fact a problem or limitation. For example:

> 'I haven't found so actually. I've found that they do hit their targets; they are pretty good at hitting the targets … unlike some medical experts and … doctors are hopeless … [but] ISWs are very conscious that time's running against the child, so I think they really do pull the stops out, I haven't had any problems.
> 2, p23

16 The reasons for a limited identification of 'delay' at this point may be explained by (a) research on timescales for ISW reports demonstrate these are filed well in time for hearings[73] and (b) many judges in this sample have permitted 'later' applications for assessments only where these did not require an adjournment of a final hearing date. CMS data may shed further light on this issue - but in the context of current not previous practices.

17 Some judges added that in the new regime (post 2011) delay was not associated with commissioning an ISW assessment: ISWs are well aware of the pressures exerted by the 26 week deadline and where necessary are changing work patterns accordingly.

18 One judge expressed concern that while ISWs did not cause delay, reduced timescales for completion of cases and thus for the assessment may impact on the quality of the report and thus its value to the court.

19 While some judges recognised that there are issues regarding the confidence of some social workers, few however felt the use of an ISW automatically undermined confidence in social workers; one judge added that public confidence in social workers was not constructed on the basis of use of external experts in care cases.

20 One judge felt that perhaps in the very early days of the Human Rights Act 1998 – when there was freer use of attempts to argue Article 8 rights under the Act - that might have undermined the confidence of social workers. However this judge said that has not been the case for some time.

[73] See above, page 5: Summary of stage one findings: '*Timetabling, delay and duration'*.

21 Other limitations in the use of ISWs raised by four judges:

- One judge raised cost implications and a concern about quality assurance in one agency

- A further judge said that the key issue was improving local authority core assessments; he reiterated he was not 'against' the use of ISWs: 'they can be extraordinarily useful' but there is a real need to make authority core assessments fit for the purposes of proceedings

- Two judges raised concerns about inconsistencies in the structure of some reports – these can be laborious and repetitive on detail

- Two judges felt that an over reliance on ISW in proceedings means that the local authority never 'gets its act together'. One continued: 'local authorities have a responsibility - they have over relied on ISWs in proceedings'. This judge said 'responsibility lies across the board where 'no stone left unturned' practices were applied' but the judge also cautioned that this practice occurred in the face of a lack of local authority social workers trained in risk assessment.

D THE IMPACT OF ISW REPORTS: PLANNING AND PLACEMENT OF CHILDREN

22 In the light of a view that ISW assessments have no impact on cases, we asked judges if they had had any experience of an ISW report changing the direction of a case with regard to the order or placement plans for a child.

23 With one exception[74] all judges reported a case or cases in which an ISW assessment had changed the 'direction of thinking' and the order or placement proposed for a child. Examples of changed outcomes included cases in which an ISW had assessed parenting capacity for a child with a physical disability, cases involving sexual abuse and the risks posed to other children, several cases where the issues focused on the relevance and impact on parenting of cultural, religious and language differences, a case where a parent had a learning disability which required specialist assessment, cases where sibling contact

[74] This judge reported limited use of ISWs but recollected cases in which an ISW was commissioned where the local authority was 'desperate to take the case forward' and up against a timetable it could not meet. This judge could not recall the outcome of cases but thought an ISW assessment had 'afforded authoritative confirmation' to some of the concerns highlighted by the local authority.

was an issue, and where a parent's capacity to change had been insufficiently assessed in an earlier assessment.

24 Changes for children included:

- A move from an application for a care order to a residence order
- A change from placement for adoption, to placement with another parent
- Placement with an extended family member,
- From a care order and adoption, to a special guardianship order
- From placement for adoption in this country, to placement with an extended family member in a parent's country of origin
- From a plan for adoption to return of child to long term foster care placement
- From a plan for special guardianship order, to adoption.

25 Some judges added views about the impact on parents where, for example, an existing assessment had been flawed, biased or compromised in some way and thus where issues were heavily contested by parents. An assessment by an independent social worker could shorten such cases and reduce litigated issues. As indicated above this was especially so where the ISW is 'tried and trusted' by the local authority; one judge gave an example of where a case had collapsed.

E 'BORDERLINE' ISSUES AND REPORTS THAT ADD LITTLE TO PROCEEDINGS

26 There is a view that in addition to the use of ISWs by desperate parents and uncritical judges, ISWs are used in borderline cases, and add nothing to proceedings. We therefore sought judges' views regarding the existence of borderline decisions/cases where some issues are finely balanced, and experiences of reports that add little/nothing to cases.

'Borderline' cases and decisions to instruct an ISW

27 Some judges (9) said they have granted leave for an ISW assessment in circumstances where issues might be described as 'borderline'/finely balanced but there were caveats. Discussion focused on how some issues in the field of parenting and child maltreatment can be very subtle and where 'broad brush' approaches to an assessment of, for example, a failing parent with a learning disability, or the placement needs of a child with a physical/emotional disability may need further investigation.

28 However some judges said that decisions to permit an instruction where issues were 'border line' was a declining practice: they may have been more sympathetic to applications

in these circumstances in the past but that was 'some time ago'. Moreover, some judges said where they had been asked to exercise their discretion in this regard they would have done so only where the report would not delay a final hearing date.

29 Other judges however have developed a 'rule of thumb' which meant that they tended to refuse such applications if the scales are not tipped in favour, or a gap identified in available evidence. For example, one judge said that the balancing act 'has to demonstrate ... over the fifty percent mark in favour [of an assessment]'.

30 Several judges cautioned about the benefits of hindsight in this regard. They were concerned that some of the arguments that have arisen in policy debates may result in a blanket approach and some 'shooting from the hip' by courts where issues are subtle and where they are making key decisions about a child's life. For example, one judge said 'yes I have commissioned a report where issues were 'borderline – but it was not 'borderline' as to value on delivery!'. A further judge said borderline cases were not common and local advocates know her 'benchmark: 'they know what I will 'wear and tend to be self regulating'.

Reports that add little/nothing to proceedings

31 Some judges (7/23) had experience of an ISW report that added little/nothing to proceedings; in two cases reports were commissioned before transfer. One judge said:

> 'In 80-85% of cases in which I have used them, ISW reports are of good quality – I rarely think that it hadn't been worth the investment when the report comes in'
> 41, p18

32 One judge with a long standing robust approach to case management and use of ISWs nevertheless reflected on the value to the court of an ISW assessment in finely balanced situations. This judge reflected on the subtleties that can emerge in complex cases; she gave an example of where, after much thought, she had ordered an ISW assessment which added little to the case. The judge described the worry attached to the decision but concluded 'it might [also] have gone the other way'.

33 Most judges however had not commissioned ISW reports that added nothing to the case: some added such reports might have been a thing of the past: 'historically perhaps, but not now' – some said not for some time. Judges would not grant leave if the additional issues and potential value of an assessment were not clear; overall experiences were that ISW reports met instructions, answering the questions outstanding.

34 SECTION 4 - KEY FINDINGS

Judicial views about the quality of ISW reports

- Just over half of the judges (59%, 13/22) reported ISW reports as good or excellent without exception/variation: five said reports are outstanding, excellent/exceptional:

  - These judges described the ISWs they commissioned as vastly experienced with detailed knowledge, specialist skills; they were highly articulate and effective, the 'tried and trusted' expert of huge value to the court and other parties.

  - Reports were described as analytical, reasoned, independent and comprehensive and built on sufficient time with parents/others for assessments.

- A further nine judges said reports were good but with instances of variability; three judges identified an assessment that had not met the expectations of the court:

  - Variability included a report which lacked sufficient intellectual weight/analysis, insufficient challenging work with a parent, a concern about the assiduousness of preparation, time with a subject and understanding of a case history.

The value of ISW assessments for courts

- Provision of specialist skills and expertise which a local authority cannot provide

- Production of reports in the court's timescale

- Provision of reports which meet the needs of the court and which are robust, forensically driven and analytical

- Engagement with parents and others - but this is not a freestanding consideration except where issues demand the independence of an expert witness where existing evidence is compromised, biased or lacks transparency

- Provision of 'experience, expertise and wisdom': practitioners at the 'top of their field'

- Assistance to the local authority and the guardian in moving forward.

Limitations and problems in using ISWs

- Most judges (15/23) said delay was not a factor; they had usually only agreed a late application if a report could meet existing deadlines; few judges would countenance an adjournment – save in very exceptional circumstances.

- Eight judges said delay could have been a factor associated with instructing an ISW but post 2011 this was not the case: ISWs were well aware of the 26 week deadline and where necessary, were changing work patterns.

- Judges reported that timing was an important factor but it was not the sole factor to be considered, other factors were relevant in exercising judicial discretion in this field.

- There was some concern about impact of timescales on the quality and value of ISW reports for courts; this requires monitoring.

- Undermining of social workers per se was not seen by most judges as an automatic limitation to use of ISWs. This is complex area for courts but overall most judges indicated issues of confidence in local authority social workers – and where this is an issue – is likely to lie elsewhere.

Impact of an ISW report on planning, placement and contact issues for children

- With one exception all judges reported cases in which an ISW assessment had changed the 'direction of thinking' and the order or placement proposed for a child.

- Judicial examples of circumstances where change was achieved were wide ranging and included parenting for a child with a physical disability, sexual abuse and risks to siblings, parenting in diverse cultural/religious contexts and where there are learning concerns and intergenerational abuse.

- Changes in thinking and planning for children - some of whom were heading for adoption - included placements with another parent/extended family members, and plans for a Special Guardianship Order, to placement for adoption.

- Where an existing assessment was compromised in some way judges reported an ISW could shorten cases and reduce litigated issues. This was especially so where the ISW is 'tried and trusted' by the local authority.

Borderline' cases and decisions to instruct an ISW

- Some judges have granted leave for an ISW assessment where issues were 'borderline'/finely balanced - but with caveats. In complex cases issues can be very subtle but with substantial implications for children and where 'broad brush' assessments may be limited.

- Such cases were relatively rare; judges have usually only countenanced use where a balancing act indicated potential value, questions identified, and where the report would not cause delay.

- Although rare, most judges would not rule out continued exercise of judicial discretion in the use of ISWs in borderline cases where issues are complex or very subtle. Scrutiny in some instances may be fiercer but the same issues are likely to apply: identification of essential gaps, potential value to be gained and capacity of the ISW to report in the court's timescale – save in exceptional circumstances.

- Several judges cautioned about the benefits of hindsight and some rhetoric in this regard. There were concerns that certain arguments may result in a blanket refusal and some 'shooting from the hip' by some courts where timetables rather than careful scrutiny of need and potential value may determine approaches.

SECTION 5 – THE FAMILY JUSTICE MODERNISATION PROGRAMME

A INTRODUCTION – CHANGING LEGAL LANDSCAPES

1 Reforms to the family justice system aim to increase moves to a more inquisitorial approach by courts in the management of cases. This is said to demand a change of culture by all those involved in care proceedings.

2 As demonstrated in Section one above, changes are driven by the cumulative effects of the Family Justice Review, the judicial response to that review under the Family Justice Modernisation Programme and amendment to the Practice Direction on the use of experts coupled with the overriding objective and the court's general powers of management under the Family Procedures Rules 2010 and recent case law.

3 This occurs against a background in which courts have been criticised as hitherto being too willing to approve the commissioning of experts in general and ISWs in particular. Amongst other things it was argued ISW reports are commissioned late in proceedings, cause delay and increase costs - and result from applications by parents utilising human rights arguments for repeat assessments to which courts too readily acceded.

4 In this final section therefore we begin by exploring judges' views and experiences of the use of human rights arguments in applications to instruct an ISW and in their decisions to give leave. We then explore the timing of instructions to ISWs and whether judges perceive any problems or barriers to an earlier appointment. Finally we explore judges' views and experiences about the overall impact of the new regime on the use of ISW experts.

B HUMAN RIGHTS ISSUES IN DECISIONS TO ORDER AN ISW

5 Stage one findings did not support a view that ISWs were simply commissioned by parents utilising human rights (HRs) arguments. Indeed we found much evidence to the contrary. However we recognised that stage one data may represent one part of a more complex picture; we therefore pursued this issue further with judges.

6 Judges confirmed that human rights arguments are not a key driver in applications or court decisions to instruct ISWs. Almost all judges said where they had experienced an advocate utilising a human rights argument in court, it has *always* been as an 'add on' or a 'make weight' argument; most judges also said there were usually better and more persuasive arguments to be made. These arguments focused on specific gaps or problems with existing evidence, the skills needed to address outstanding issues - and the ability to complete assessments within the court's timetable.

7 Some judges were somewhat alarmed by the suggestion that they have too readily acceded to applications for an ISW assessment grounded in HR issues. More than one judge expressed concern that this issue was exaggerated in policy debates during the family justice review. Responses were uniform regarding whether they heard applications based on HR issues:

> 'No never - they wouldn't come into my court and argue that!'
> 21, p28

> 'No – it's a 'make weight' argument when they've tried everything else'
> 6, p29

> 'It might be thrown in as a 'make weight' – it's rarely the main argument'
> 5, p16

> 'No – and they would get pretty short shrift…!'
> 2, p17

8 Just one judge could recall an application where human rights were a 'stand-alone' argument:

> '…it was a long time ago, very early in the life of the Human Rights Act 1998 and by certain advocates; I have had no experience of it as a 'stand- alone' argument for a long time.'
> 41 p31

9 A number of judges said that of course they have to have an eye to fairness and human rights issues in managing cases but the idea that such rights were a driving force in decisions to instruct ISW experts did not hold weight – at least with these judges[75]:

> 'It simply wouldn't happen now – it wouldn't get off the ground…it's a pretty old fashioned view.'
> 43, p16-17

[75] Some unpacking of this issue and the background to the (then) President's Guidance Bulletin No 2 http://www.familylaw.co.uk/system/uploads/attachments/0001/4513/Case_management_decisions_and_appeals_therefrom.pdf - perhaps with District Judges and in FPCs may be useful in casting light on an apparent disparity of view and experiences between these judges, a view of court practices put to the FJR and this Guidance. Against GW & PW v Oldham Metropolitan Borough Council & KPW [2005] EWCA Civ 1277 - noted as 'wholly exception on its facts but an example of circumstances when it *is* necessary in the interests of fairness and justice to allow a parent a second opinion', Sir Nicholas Wall nevertheless noted concerns from '*a number of judges and magistrates …that they feel unsupported by appellate jurisdictions. They thus feel, for example, that they must order an expert's report or an additional assessment by an independent social worker for fear that of they do not they will be appealed and criticised on appeal for not having done so'*. Those concerns underscored Guidance which addressed the exercise to be undertaken in the exercise of judicial discretion (i.e. transparent in weighing and balancing relevant factors) to enable the court to decide whether to order an expert report or a further expert report. Guidance also covered the relevance of Articles 6 and 8 ECHR. Two points are relevant: earlier Guidance and Practice Direction [2009] 2 FLR 1383 covered much of the same ground regarding the court's use of experts. Second, for purposes of this evaluation it should be noted stage one findings indicated that, for example, in many cases in which ISWs were instructed (over 40% - see below Section 6) this was not to provide a 'second opinion': there was no comparable report. Moreover, there was little evidence that applications were driven by human rights as a stand-alone argument.

> 'One might find it – as an 'add on' in a skeleton argument' - but it's an outdated approach …I have not experienced in a number of years.'
> 14, p23

C BARRIERS OR PROBLEMS TO EARLIER INSTRUCTION OF ISWs

10 In the context of aims to reduce the use of all experts and instruct those that are necessary much earlier in cases, we asked judges whether they saw any problems or barriers to earlier instructions of ISWs.

11 Three concerns were discussed: first risks to the comprehensive nature of reports if they were commissioned too early in cases; second concerns arising from the profile of parents subject to proceedings and thus their capacity to engage with the new agenda[76], and third, the position of extended family members.

Earlier use of ISWs for parenting assessments

12 One of the major potential problems discussed by most judges (16/23) with regard to earlier instructions to an ISW for a parenting assessment was a loss/reduction in benefits to the court of the practitioner having had access to all the evidence including the outcome of any fact finding hearing/agreed threshold and to key clinical reports.

13 There is a value to the court in the ISW being able to address those materials and outcomes in an interview with a parent(s) and where there is some clarity as to the 'direction of travel'. There is a value in the ISW being able to explore parents' reactions, and real capacity/willingness for change in the light of these developments.

14 Assessing willingness and capacity for change with a parent in the absence of certain documents and with a parent who is not yet clear about certain issues, who is yet to take on board and 'process' issues of personal responsibility or culpability (and thus a need for change) may have implications for the utility of a report. For example:

> 'They do come later on, yes. Again you know it depends on the individual case. … I mean where you have to do a fact finding then I think it's impossible for them [ISWs] to do the work until, you know, they've got the basic factual matrix, so it's always going to postdate that. I mean what I'm always trying to do is to anticipate gaps in the final sort of hearing … so they do need to have everything. I don't know, I think that's a difficult one. Some of them are quite

[76] Findings from several studies highlight that parents in proceedings have multiple problems: 'co-morbidity' is a defining feature of profiles. Many (over 40%) have mental health problems, many have drug and alcohol problems, many mothers (over 50% in some studies) are subject to domestic abuse, many have housing problems and some have chaotic lifestyles, many parents were also ill-treated as children and most are dependent on income support (for an overview of profiles see Brophy J (2006) Research Review: Child Care Proceedings under the Children Act 1989. London: DCA).

> good at gathering their own information and having what is available at any particular point in time, but I think it's very difficult to generalise actually.' 2, p15

> '…I suppose the way I look at it is that I wouldn't expect there to be an order or permission for an ISW until we got to the stage where the local authority had completed their assessment, basically were ready to put together their plan…Because if they are saying at first appointment … well you see it depends doesn't it when the local authority actually get their evidence together and their assessments completed.'
> 14, p16 -17

> '…sometimes there are barriers because sometimes you need to wait until you've got your psychiatric or psychological report in, because there's always a difficult question of identifying what work needs to be done with the parents ... often the psychologist will identify that they need a parenting assessment …but in conjunction with some counselling or therapy …so we can teach them to have greater insight into the problems prior to a parenting assessment. Because otherwise there's concern that they won't take on board what it is they're being asked to do. So, the other risk is that [ISWs] will be asked to do an assessment without that additional evidence, because it may be the case where the court is under pressure not to actually order a psychiatric or a psychological report….'
> 23, p14

15 Some judges however were unsure about whether there would be problems in earlier instructions, but said 'things are already changing'.

16 Other judges however said - given their existing approach to case management - not much would change. For example, several judges described how they have always taken control of (what is now called) the 'evidential pathway' right at the beginning of cases, leading, as one said, 'from the front'. These judges went into court with a checklist:

> '…because you know you do need to be on top of the case as you go into court, knowing … already having sketched out what you think are the issues and seeing if you're going to be given something from the parties which changes that … or whether somebody's going to come up with an additional idea because they've got information that you haven't got that you then need to factor in. So case management hearings, certainly in the way that I do them in is a very interactive process, and we work the order during the hearing. So there'll be a draft and we'll add to, take out, alter what the parties think might be the matters that need looking at….'

This judge continued,

> '…and if, for example, an ISW was needed to undertake a PAMS assessment, I would expect the guardian to identify that [need] in an early analysis'.
> 41p17

17 These judges felt their practice already reflected what the new regime anticipated from them. Some acknowledged the limitations to the court of having an ISW assessment before certain issues were clear or determined by the court but felt there was little choice in the face of a completion deadline of 26 weeks.

18 A small number of respondents felt the limitations/losses of earlier instruction of ISWs 'had to be lived with':

> ‘there could have been a point in time at which if ISWs were instructed, it was late in the day - because there was a point in time when experts generally might be instructed [later]…that time has gone, in (my court) it’s very rare for an expert of any persuasion to be instructed late in proceedings…. judges here are very conscious of the need to grapple with expert evidence issues at the CMC…’

This judge continued:

> ‘So if [late instruction] occurs at all, it’s in respect of the viability assessment issue…[followed by a request for an ISW assessment] Now that sometimes happens, but at that point the child’s timescales militate more and more against the instruction being given. You know you can take a view about that, you can be either happy or unhappy … but it is a balance which has got to be applied in my judgement irrespective of targets [in exercising discretion] you’ve got to apply the best interests of the child in terms of allowing an assessment to ahead, as opposed to extending the duration of proceedings and admitting the consequences of delay.’ 18, p10

Two judges felt that ISWs - as people at the top of their profession - could probably ‘cope’ with the problems associated with early instruction and assessments before all the evidence was in. Weighing the benefits and disadvantages, one judge said that ‘in some cases there will be losses, in others, potential gains in the endeavour to meet 26 weeks’.

19 Some judges said problems associated with early use of ISWs has either been addressed by existing protocols or could be overcome by hearing any further views orally - at the final hearing. For example:

> ‘ … we’ve worked out the timeline [local protocol] of when experts and assessments have to be put on the hoof … we’ve worked it out that it’s got to be at week 4 in order to be able to get in the 26 weeks. So everybody is now aware, or will be aware as from 15th April that they have … if they’re going to want these sorts of assessments, they are going to have to be asking for them at week 4, which will be the case management conference. …In the county court I should add - it’s only going to be in the county court.’

Moving to the timing of kinship assessments, this judge commented:

> ‘… we are actually going to be quite tough about that as well and try to make it clear. And it’s a terrible balance because you don’t know what the outcome is going to be, and you could actually waste people’s money and time because if the parents … are found to be able within a reasonable period of time to provide a safe home, then the child will go [home]. But if you’re saying as we are proposing to say you have to provide the name of any potential alternative carer by week 4, I mean it just doesn’t quite sit together, because we’re then going to have to have … kinship assessments … (if the viability assessment is positive)… of people who may not actually at the end of the day be in the frame. But we haven’t been able to see any way round that, that’s the only way we can do it.’
> 22 p14

But with regard to the pressures for potential kinship/other carers, this judge continued**:**

> ‘I don’t think it’s going to magically change at all actually to be perfectly frank. Because even if we get to week 18, and it’s at that point that granny comes forward or aunty comes forward, and aunty is a runner – no court is going to say you’ve come too late, no court is going to whisk a child out of its family.’
>
> ‘… or I’d be very surprised … and that case would become an exceptional case. You know there is a good chance that this child can remain in its family, therefore this is an exceptional

> case. You know … that's the way … I mean if you've got the welfare of the child as your paramount concern, it must be better for a child to be brought up by an adequate family member than be separated completely. So the reality is although we're going to emphasise the fact that this is what should be done - and we do at the moment … I don't think it will change practice actually - to be frank. I mean it might change it a bit, but it's not going to change it fundamentally'.

Two judges outlined methods of updating an assessment:

> 'Well the expert will have access to the documents that are available at the time the expert is instructed…I mean what happens now is that a lot of documents come in after the expert has reported, and then what happens is they're given all the up to date documents and when they go into the witness box they are asked whether or not they have changed their opinion. That's the way we deal with that.'

This judge continued:

> '…sometimes you have a situation where you have one expert dependent upon another expert. So you might find that you have a psychiatric report on a parent …and also a parenting assessment being undertaken by an ISW. And the independent social worker may well say 'I would like to see the psychiatric report before I complete my report'. That often doesn't cause a problem because psychiatrists tend to be able to report quite quickly… [so]… it's staggering rather than holding off on… work until a report has come in.'
> 22, p15

A further judge said that she accepted there may be implications for the comprehensiveness of an ISW report, additional materials could be dealt with orally, at a final hearing. Certainly she was doubtful addendum reports would follow – and that was not her current practice:

> 'I think … there may be… pressure on courts not to permit addenda reports. I think you'll probably still be allowed to put questions…but the addenda, unless you have an unusual case where … I mean, for instance, we've had a very young child who had [medical condition] and it wasn't discovered until they went for the placement medical; the doctor was very concerned and arranged for a separate consultant to see the child, the condition was confirmed. And then questions were put to an independent social work expert who'd been involved earlier…but there was no question of a further report.'
> 26 p10

20 The other problem raised by some judges in discussing earlier assessments by ISWs focused on the profile of most parents subject to proceedings. It was pointed out that parents are frequently drawn from the poorest sections of society – those on the bottom rung of the socio-economic ladder. Many have significant mental health problems, substance abuse issues and housing problems. A significant number of parents have been in care themselves; mothers are frequently subject to domestic abuse where decisions to leave a violent partner may take time and could depend on several issues including a finding of fact by the court.

21 One judge went on to compare the profile of parents in the 'real world' of care proceedings with the 'world of the FJR'. It was argued these parents need time to engage in proceedings. Judges pointed out that the profile of most parents meant that the exercise of assessing real capacity for change was frequently facilitated once parties were over the

threshold criteria: the latter being the 'gateway' to a meaningful consideration of the welfare test. Several judges referred to the 'human reaction' of parents – and relatives. For example:

> 'I'm all for the nominating of other possibilities, but the reality with family members nominating themselves as potential carers is that it's immediately seen and felt by the family as people not backing the birth parents, and that's seen as ... that's a very painful thing to do. It's fine for us as lawyers to say well 'Aunt and Uncle have got to say, we'll take on the children' – but that's a huge thing to say in a family. And I can see why, despite our best endeavours, some family members will sit on their hands until they really see the writing is on the wall ... and that'll not be them being difficult or hopeless, it's just a human reaction where the family is rallying around the birth parents and want to clear the decks to say we will support them up hill and down dale ... it's such a different thing to say 'We'll take on their children for the rest of their lives.'
> 1.2, p12

22 Of particular concern for several judges was the position regarding s.20 children and some so-called 'slow burner' cases[77]. Judges reiterated s.20 children can get to court without a core assessment of a parent. As indicated above, some judges have addressed this issue with local authorities. One judge expressed concerns about why this situation continued in the light of the duties of IROs suggesting early legal input might assist. This judge also discussed a new pre proceedings initiative (July 2012) which it was hoped would improve assessments and early planning for such children:

> 'Well the pre-proceedings protocol basically says in your multi issue ... we call these multi issue cases - slow burners ... social worker should go in, engage for a fixed time, limited period, up to 6 months. After 6 months: 'where are you going?' [stocktaking exercise] … during that 6 months [the social worker] should identify ... risk analysis …what are the issues, can [parent] properly safeguard these children; if yes, with what agencies, with what protection, is there a capacity to change, sustain change, or not, are you into proceedings, if into proceedings, why..'.
> 20, p7

It was early days for this protocol - in terms of cases coming to court having been through the procedure – and thus the ability of the judge to assess whether it had improved the assessment of parents of s.20 children but this judge said it should:

> 'they're supposed to do the parenting assessment during this period – all assessments, identify kinship carers, all assessment of kinship carers [and] they're supposed to do drink and drug testing outside of proceedings…. if there's issues of capacity, then it's to come into proceedings immediately.'
> 20, p7

This judge highlighted the 'cultural' shift envisaged for care proceedings:

> 'It's like civil proceedings – you come into court: what do you want? Not, you know, come to court, now we start [obtaining] the evidence. The evidence is [collected] outside of court, not in court.'
> 20, p6

23 Other judges – and some who rarely gave leave for an ISW assessment – either felt any earlier instruction of an ISW would 'depend on the circumstances' of a case, or did not

[77] These are cases of neglect and emotional abuse; they are a majority of cases in terms of categories of child maltreatment allegations (compared with physical injury and sexual abuse).

perceive difficulties so far as the *supply* of ISW was concerned: more ISWs were now said to be available and completing assessments quicker than previously.

Earlier use of ISWs for kinship assessments

24 As indicated above, some judges reiterated the point that earlier use of ISWs for kinship assessments may be difficult where parents remain unclear about outcomes and local authority placement plans. Equally parents were said to have difficulties revealing problems and the existence of care proceedings to extended family members – some substantial difficulties and issues of shame are involved for most and particularly for some parents in minority ethnic communities.

25 Until it is clear to parents that children are unlikely to be returned home they are unlikely to reveal the seriousness of the situation to family members. In this regard judges again referred to the psychological and emotional vulnerability of most parents and the human issues involved in identifying a potential alternative carer before their own assessments, statements and threshold issues have been determined:

> '… I mean if you've got the welfare of the child as your paramount concern, it must be better for a child to be brought up by an adequate family member than be separated completely. So the reality is although we're going to emphasise the fact that this is what should be done. .. and we do at the moment … I don't think it will change practice actually, to be frank. I mean it might change it a bit, but it's not going to change it fundamentally.'
> 22, pp14-15

> 'The timing is becoming crucial. But again, if the local authority did its work thoroughly pre-proceedings, the majority of cases do have a pre-proceedings stage ... then I think there is really no reason why they shouldn't have been able to identify who the kinship carers are at an early stage. And where they don't, where you start proceedings without knowing who they are, an early direction from the court saying that we won't assess anyone unless you identify them by a particular date ... some of the parents that you're dealing with, even that's going to cut no ice, it's still going to be a case of, only when they can see the end in sight and the end is not a pleasant one, that they suddenly start jumping around looking for alternatives. So there's no foolproof [approach]…'
> 5, p14

26 There was also recognition of the difficulties for social workers working with parents and concerns that attempts at early exploration of alterative carers could undermine work and relationships with parents. Judges have differing experiences of how much work local authorities put into identifying alternative carers or use family group conferences for this purpose.

> '…I think local authorities to a greater or lesser extent do try from an early stage in the process to identify or get the parents to identify people who might be assessed … though I can understand why they find that difficult with parents. I mean if the parents are being told on day 1 there's a chance you won't get your kids back, there's a chance they might even be adopted – that's not the kind of message that'd going to help to build a good relationship between the social worker and the parents. So I think you can understand why it comes late, but the court can only give permission for a viability assessment of a known kinship person. And so if no one's been identified, the court can't do anything about getting the assessment'.
> 5, p12

> ‘And also with kinship, you’re dependent upon names being put forward to you – the local authority doesn’t search for these people. In an emergency when a child’s been injured they might ask at the hospital: ‘where can little Johnny go?’ … and grandma’s there at the hospital anyway. But normally they’re names that are put forward by the parents, and so it’s impossible to have an ISW at that stage … then you do your viability assessment … because you wouldn’t order an ISW straight away without a viability assessment.’
> 8, p14

> ‘No they do happen, and again, they are on message that those have to happen early in the proceedings. And one of the difficulties that I think we all encountered were family members coming right at the eleventh hour and properly needing assessment. So a careful timetable being derailed. So there’s an emphasis in having an early family group conference, so that potential family members can be identified and viability assessments done at an early stage.’
> 6, p5

27 However few judges identified family group conference minutes as a key document at the start of proceedings. Whether this is because relatively few are filed, or few are undertaken or because the document – like the core assessment – has not been seen as key at that stage, remains unclear.

28 Some judges said that the sequence of certain types of expert evidence in proceedings served a purpose: it was not arbitrary. One judge argued that the real problem here is not the sequence of evidence: that often had a utility for courts and parties. Rather, it was the time assessments took to complete which is the major problem.

29 In the face of the 26 week deadline for cases, as indicated above several judges raise the question of identifying alternative carers at the first hearing – and directly with parents. As comments above also demonstrate there are varying degrees of discomfort about doing this – both with regard to the message it might give parents regarding an ‘early view’ taken by the court and before parents have had an opportunity to put their case, and the ‘brutality’ of this approach towards vulnerable parents at a first court hearing. However in the light of the deadline they felt it had to be done. Most judges reported they tried to emphasise to parents that it did not indicate the court had taken a view.

30 Some judges indicated they were taking a ‘hard line’ with parents on this issue but as indicated above many discussed the tensions saying the judge cannot be categorical about the court’s treatment of parents/potential alternative carers where an application arrives later in a case. For example:

> ‘I mean which judge conscientiously is going to say to the parents ... you’ll put it in the order ... if anybody wishes to nominate an alternative carer they must do so by Wednesday afternoon, 4 o’clock ... but which judge is going to turn round and say, when an excellent candidate is proposed on Friday morning ‘Sorry you’re too late by 48 hours’? I mean it’s unthinkable isn’t it? Unless things are so rigorously imposed upon us that people are going to be told ‘Sorry you’ve missed your chance’.
> 33 p18

> ‘But you know it’s the never say never situation, and sometimes some family members will appear and you know there will be good emotional, practical, job related financial reasons why they’ve not come forward earlier - and if you feel they have something to offer ...it’s actually very hard sometimes to stick with the ‘No’ when the alternative is adoptive placement or something.
> 1. 2 p16

31 There were concerns from some (but not all) judges about new timescales and implications for use of ISWs. Judges were sympathetic to a need for real attention to delay – albeit they did not identify ISWs as a cause. However in the absence of other measures some were at best ‘uncomfortable’ with what they were expected to do: more than one described the approach to ‘late’ applications as tough or brutal.

32 The work of local authorities was repeatedly identified as a key issue requiring substantial improvement; the timescale of some clinical experts – and the overuse by some local authorities of psychological reports - received critical comment.

33 The use of ISWs was singled out as not, for the most part, the cause of delay – unlike some clinical experts. And in looking at some of the drivers in using experts one judge said it had been driven by local authorities who in the absence of staff trained in risk assessment have instructed psychologists, this impacting on case duration and delay in proceedings. Thus judges suggested some time lines and a ‘deconstruction’ of some issues were also needed. While there was some recognition of a period in which ‘no stone left unturned’ drove some practices in the use of expert assessments; no judge said that was contemporary or recent practice – most said it was ‘historical’ and more than one judge was unhappy about the picture of court practices put to the FJR:

> ‘... historically there was a period where there was a more liberal attitude to the use of experts - but there are also courts that did not recognise the picture of [their work] put to the Family Justice Review.’

34 In certain respects the impact on use of ISWs for kinship assessments was seen as more vulnerable than their use for parenting assessments where they were undertaking work which a local authority could not do (through lack of skills or an inability to meet timescales).

D JUDGES’ VIEWS ABOUT THE IMPACT OF THE NEW REGIME

35 Many of the issues raised in relation to earlier instruction of ISW experts were reiterated in a more general discussion by judges about the impact of the overall regime on practices in commissioning ISWs in cases.

36 Several judges discussed concerns about some changes, for example one judge said:

> 'I am very concerned about this – it worries me greatly.'

Another said:

> 'I need to be able to sleep at night when I have made decisions.'

And a further judge said:

> 'I don't have one expert more than I need in a case.'

37 Several judges reiterated concerns about the service guardians were now able to provide. One judge went on to express concern that the testing of local authority evidence by the guardian has become simply supervision of local authority work. This judge said that guardians are also less experienced than was once the case and like other respondents was concerned about the limited time guardians now have on each case. This judge went on to say that they were no longer an active partner; the court is [therefore] left with the work of the local authority standing alone. This judge continued: 'guardians nowadays are not experienced – experienced guardians have left to become independent social workers'.

38 A further judge felt it was hard to know what the impact of the new regime would be:

> '…especially with regard to the 'slow burners', we don't always get what we need from local authority social workers, guardians do less now and this will impact on use of ISWs in proceedings.'
> 2 p15

39 Several judges again raised concerns about the position of parents given their profiles and especially those with drug and alcohol problems[78]. One judge asked 'how is a parent to remain on an equal footing in the current culture?'

40 Some judges said the new regime would impact on their use of ISWs and the 'direction of travel' was towards a reduction/or they felt it was already reducing use but most added caveats:

[78] There is an indication that cases in the Family Drug and Alcohol Court (FDAC) may be an exemption (comment: Sir James Munby, 'Open Meeting with the President of the Family Division', PRFD, 22 April 2013). Also, if parents are able to access a project, there are indications that it may fit with the 26 weeks. By about 20 weeks the court is said to have a pretty good idea of whether a parent is going to make it, and if at that point progress has been made and is deemed worth pursing, it may well be they will be an exception. (Evaluation of FDAC - see Harwin J, Ryan M and Tunnard J with Pokhrel S, Alrouh B, Matias C and Momenian-Scheider S (2011) The Family Drug and Alcohol Court Evaluation Project , Final Report (http://www.brunel.ac.uk/shssc/research/ccyr/research-projects/fda).

- If ‘front loading’ of cases [by local authorities] is to work that may increase the use in ISWs pre proceedings
- If local authorities lack resources (skills, expertise, time) they will continue to use ISWs
- They will continue to use ISWs where the court requires a safety net as a matter of justice
- They will continue to use ISW assessments if local authority work lacks transparency, is of poor quality or is compromised in some way.

41 Two judges also indicated they would spend more time deciding need, and in the new regime with a 26 week deadline: ‘we will need the “tried and trusted” ISW’. Two further judges reported that although cases where issues were ‘finely balanced’ were rare, they would scrutinise issues more heavily.

42 Several judges however felt that the new regime would not impact on their use of ISWs: they rarely used them anyway; several more said that as they had always taken a robust approach to commissioning ISWs, practices in their court would remain the same.

> ‘I don’t think it will make a scrap of difference, frankly. Either one is required or it’s not.’
> 8, p 21

> ‘We have always taken a robust approach here’
> 21, p13

> ‘No – we have always taken a robust approach here – if I move any further in that direction there will a strike amongst the advocates (laughs) but my own approach – over some time now – is consistent with the new documents’

This judge continued:

> ‘…. but if you are to instruct late, there really has to be added value – if there is, then [it has to be done]’
> 43, p22

> ‘No I don’t think [it will impact] because my own view is that the approach that I’ve developed over time is really consistent with where we are in terms of legislation. And since I tend to frontload proceedings, if there is a need for an ISW, we will be talking about it from very early in the life of the case, and I will be throwing it out as a suggestion for the parties to look at prior to case management conference. And if I think that there is a long piece of work that needs to be done, then I’ll shorten the period between first appointment and CMC … or in some cases make them the same appointment.’
> 41 p30

43 Overall judges said that in any case the days were long gone when an ISW might be used as a ‘double check’ for parents or to add weight to a social worker’s conclusion. But whether they were more or less likely to use currently - given local issues and resources -

the circumstances of use by these judges would remain broadly the same. They will seek assessments from independent social work experts:

- to fill gaps in evidence where the local authority cannot do so in the timescale
- to undertake assessments where a local authority lacks skills, expertise and/or time
- to carry out assessments where local authority assessments were biased or 'flawed by serious omission' or lacked transparency in coming to a decision
- to carry out work more quickly than a local authority could
- to undertake assessments in highly complex multigenerational families
- where assessments of several family members were required to be undertaken by one expert and the local authority could not do this/meet the timescale

44 While judges recognise the need for change, this intention could also be tempered - in the interests of children and of justice:

> '...if come the final hearing when all pieces of the jigsaw are laid out and the judge surveys everything, if the judge at that point comes to the conclusion that something new has cropped up ...if ...it becomes clear that earlier opinion was wrong ...then I would not shirk from saying this case is adjourned ...and we will reconvene when an independent social worker has assessed according to the gaps that this final hearing has exposed. That's the safety net. So justice will always be done ...'
> 13, p23

45 Like other expert reports, ISW assessments need to comply with a tight deadline and a suitable case management approach is adopted by judges, for example:

> '...since I tend to frontload proceedings, if there is a need for an ISW, we will be talking about it from very early in the life of the case and I will be throwing it out as a suggestion for the parties to look at. And if I think that there is a long piece of work that needs to be done, then I'll shorten the period between first appointment and CMC ... or in some cases make them the same appointment.'
> 41, p30

46 In addressing use in the context of timescales and concerns about costs, some judges addressed the concept of 'necessary' and the tighter test indicated, for example:

> 'I think you'd have to weigh it up ...well you have to apply the criteria in TG and Part 25 – is it necessary. Is it going to provide the information that the court can't make a decision without?'
> 35, p18

47 While supportive of change, judges also addressed tensions between implementing change *now* (for a faster process before they saw any benefits of 'front loading') and doing what was best for a particular child. Obtaining permanence for a child as quickly as possible was important but judges also described the importance of making the right decision:

> '... and of course we want to cut the waffle, we want to get on with things, we want to avoid duplication. I don't want any one witness more in a case than I need to – that's my starting point, that's non-negotiable. But equally I want to be able to sleep at night and I want to make decent decisions about the children I'm trying to deal with.'
> 2, p14

> '... obviously we're all within the Section 1 parameter – we've got to do what's in the best interests of the child. And I for my part, I'm not going to be hide-bound by any of these new rules and regulations. If I think that there's a child needs to have a particular piece of work carried out, in that child's best interests I will order it irrespective of whether it's going to be outside 26 weeks or not. But nevertheless I think we're going to try and get cases within this timescale if we possibly can ... because it obviously is in children's best interests to have their permanence debated quickly.'
> 34, p6

48 Judges reiterated that the success of the new regime depends on the extent to which local authorities are able to undertake timely, transparent and high quality assessments for proceedings; as one concluded, 'it is hard to know how much time, resources and money local authorities are going to be able to devote to this work'.

49 SECTION 5 - KEY FINDINGS

Human rights issues underscoring applications and court directions to instruct ISWs

- Judges reported that human rights arguments are not a key driver in applications for or court decisions to instruct ISWs. Almost all judges said such arguments are outdated; where they are engaged in contemporary practice it is *always* as an 'add on' or a 'make weight' argument.

Barriers or problems to earlier instruction of independent social work experts

- Judges identified three areas of concern in earlier use of ISW experts
  - Impact on the quality and comprehensiveness of reports where experts had not had sight of all the evidence and assessments in cases
  - implications for parents – given their profile - and their capacity to engage with the new agenda
  - the position of extended family members as potential carers

Impact of the new regime on the use of independent social work experts

- Overall, most judges said the days are long gone when an ISW might be used as a 'double check' for parents or to add weight to a social worker's conclusion.

- It was acknowledged by some judges that there was a period in which there was a more liberal approach to the use of all experts. That did not however represent recent practice – and for most, had not done so for a considerable time.

- Some judges did not recognise the picture of their work as this was put to the Family Justice Review.

- Several judges raised concerns about some of the changes and the case management decisions they are expected to make.

- Several judges raised concerns about parents and keeping them on an equal footing with other parties given vulnerable profiles.

- Some judges felt that some local authorities are subject to less scrutiny of their work than in previous times and by some guardians who have less time per case, are less experienced and doing a different job for courts than was previously the case. With notable exceptions judges said many experienced guardians on which courts relied are now ISWs.

- Some judges said the new regime was already reducing use of ISWs but most stated caveats would apply in the exercise of judicial discretion in this regard.

- Some judges felt that there would be no impact of their use of ISWs; they rarely used them anyway. Several more said since they had always taken a robust approach practices were already in line with new approaches and would remain unchanged.

- Whether judges thought they were more or less likely to use ISWs or that practice would remain unchanged, the circumstances in which they would use an ISW were the same:

    - to undertake assessments where a local authority lacks resources (skills, expertise and/or time)
    - to carry out assessments where a local authority assessment is compromised in some way, or biased or lacks transparency in coming to a view
    - to carry out work faster than a local authority could
    - to undertake assessments in complex multigenerational multi problem families
    - to undertake multiple assessments of extended family members where there is a value to the court in a one practitioner undertaking the assessments - and where a local authority cannot provide that resource.

- Judges recognise the problems facing the family justice system – and the need for careful and transparent decision making in the use of *all* experts. Practices are likely to be tempered - in the interests of children and of justice - by a need never to close all doors in seeking the best solution for a child.

- Like other expert reports, ISW assessments will have to fit in to tighter deadlines and where necessary, judges are adopting suitable case management approaches.

- Judges nevertheless addressed tensions between implementing change and doing what was best for a particular child; obtaining permanence for a child as quickly as possible was important but judges described the importance to them of making the right decision and thus a need for sufficiently robust, analytical, forensically driven assessments.

- Judges reiterated that the success of the new regime depends on the extent to which local authorities are able to undertake assessments that are timely, transparent, of high quality. Time, resources and funds to do this work are going to be the key.

- A small number have noted some improvements in some social work assessments. The overall picture however for many 'feeder' authorities in this sample is at best somewhat mixed. A limited number of judges received what they needed from local authorities in the way of assessments at PLO stage one and even less in a format that judges considered to be 'fit for the purposes of proceedings'.

SECTION 6 – CONCLUSIONS AND POLICY IMPLICATIONS

A LOCAL AUTHORITY CORE ASSESSMENTS

A report format fit for proceedings?

1 As key findings in section one demonstrate, this evaluation raises some difficult challenges for local authorities and government regarding use of electronically generated assessment records as evidence for courts. Such documents are not generally seen as a key document at the beginning of cases but more importantly, the record generated by the ICS is deemed 'not fit for purpose'; many judges have simply given up reading them. Moreover findings raise some key policy question regarding a focus on the needs of courts at the time the system was developed – and whether this format of reporting was intended for use in proceedings.

2 We raised concerns about core assessment reports generated by integrated children's systems with LA social workers and team managers during conferences following stage one of the evaluation - and whether the format may have disempowered social workers in their capacity to demonstrate analytical thinking and transparency in decision making[79]. Concerns about the electronic record were reiterated by judges and given some support by Ofsted and CSSIW inspections of core assessments. This requires immediate attention by the DfE – if the FJMP is to have real cross department impact.

Timeliness of LA assessment reports

3 In the context of the revised PLO (2013) the timing of filing of assessments will remain a concern. Assessments remain one of the checklist documents to be filed at issue.[80] Few judges routinely received the documents they required at PLO stage 1 – very few reported needing all the documents listed at PLO stage 1 (2010).[81] In the context of other issues and demands on local authorities it is difficult to see how that will change immediately. Leaving aside the format of assessments filed, further reductions in the quality and comprehensive nature of assessments are likely to be counter-productive (e.g. the 'thinness' of some reports – especially some kinship viability assessments – is already matter of concern for some judges). It will also do a further disservice to the reputation of some hard pressed social workers – already struggling with issues of analysis in reports - and may be problematic for guardians and advocates representing children and parents.

[79] For example, Community Care Conference: Family Justice Review - Be Better Prepared for Court Appearances: London: 5 Dec 2012; British Association of Social Workers - Conference. Paper: Bridging the gap: independent social work reports for courts. Birmingham: 5 - 6 October 2012.
[80] See Appendix 2.
[81] And some of this has now been dealt with by reducing the documents to be served and filed under the revised PLO (2013) – see Appendix 2.

Localised assessment models in England – implications for courts

4 There may be further risks for courts in a move to localised assessment models in England. Although the Framework for the Assessment for Children in Need and their Families (2000) has now been superseded by Working Together to Safeguard Children (2013), the domains for assessment and the 'triangle' remain[82]. However attention to the implications of localised models or a duty for such models to consider, in their development, the assessment report needs of courts, appears absent. This may further undermine consistency of presentation for those courts with several feeder authorities. Moreover, localised models suggest that it is likely to be yet harder – if not impossible - for the DfE to drive quality and improve format. Thus, lack of attention to the interface between the work of local authorities and courts (missing from the Munro Report (2011), apparently absent /lost from the policy framework which gave rise to the ICS[83]) is also absent from Working Together (2013). This may make some social workers more vulnerable in the legal arena and among other things potentially increase the need for the skills and expertise of ISWs who are experienced in negotiating that interface, producing reports that are of benefit to courts but also other parties including local authorities and guardians.

Improving social work court skills and confidence: mentoring

5 As indicated above, there are some pre proceedings and inter-borough projects (e.g. Tri- and Bi- borough projects in London)[84] and for the latter at least, where the 'direction of travel' (pre evaluation) is reported to be encouraging. However caution is necessary. There are some 174 local authorities in England and Wales and nationally such coalition of funds and resources between authorities may prove problematic. For example, some judges outside of London have raised the Tri-Borough model with 'feeder' authorities as a method of improving case preparation and assessments in tighter budgets. Responses from some authorities indicate there are concerns that the model may further deskill local social workers and is thus viewed as problematic. Whether deskilling - or indeed improved skills - result from the model may be resolved following publication of the evaluation.

6 Given concerns about some skill levels in some local authorities - but immediate demands for improvements in the quality of assessment reports, some judges suggested there is a strong argument for utilising ISWs in pre proceedings work. There is evidence that some local authorities are already piloting that approach using ISW agencies in mentoring

[82] See note 10 above.
[83] Anecdotally, there is some indication that there was some discussion of reports for courts when the ICS was being developed however the policy focus appears to have been lost and not revisited by subsequent governments.
[84] See Section 2 above and note 48.

schemes such that local authorities obtain highly skilled senior social workers with substantial experience of the legal arena and the requirements of courts who not only assist with cases preparing for proceedings but work at the coal face alongside front line social workers and senior managers. That model may also meet the long term needs of local authorities in terms of improving, and where necessary, generating a more analytical, legally literate skills base within teams – some of which may only have know practice under the ICS system. In principle, this may offer a method for local authorities to benefit from the skills and experience of ISWs – once employees of children's services and Cafcass – by re-introduced into general social work practice those skills it now clearly needs. Authors of the reports evaluated in stage I had substantial experience in child protection work – many at a senior level; the median was 24 years. Evaluation of both approaches however – in terms of immediate and longer term impact - is going to be crucial.

B JUDGES' VIEWS ABOUT REASONS FOR USE AND FREQUENCY OF USE

Reasons for instructing an ISW

7 Stage one identified that whilst in most cases the local authority had filed at least one core assessment undertaken at some point, lack of relevant assessment for a parent(s), out of date assessments, gaps in assessments and limitations in assessments underscored instruction to an ISWs:

- The major reason why an ISW was instructed to assess a parent was because any previous assessment *had not included* 'this parent, or this parent and a new partner'. This was the reason in 43% (21/49) of cases where an ISW was instructed[85].

- In 18% of cases (9/49) an existing assessment was out of date.

- In16% of cases (8/49), the previous report was not accepted by the court and/or the guardian or did not meet the court's needs.

- In 35% of cases (17/49) a previous report was contested by parents; as indicated above, most of these cases (27%, 13/17) were contested on grounds of content - not HR issues.

- In 39% (18/49) of cases, a previous report was seen as limited in other ways.

- There were 19 cases indicating that LA core assessment had been completed *in the twelve months preceding* instruction of an ISW. In these cases
  - A majority (68%) indicated high levels of conflict between the local authority social worker and the parent(s); in an impasse had been reached.

[85] Note multiple reasons were possible.

- In 13/19 cases the date of a local authority core assessment was *within six months* of the instruction to the ISW; in just over half (6/13), the main reason for the ISW instruction appeared to be 'changed circumstances' - usually a new partner/parent proposed as a carer for children.

- In 2/13 cases, key information was missing from the local authority assessment (in one case information on one child was missing, and the other the assessment had not addressed a parent's learning disability).

- Some 6/19 cases contained evidence of a core assessment dated *between 6 and 12 months* of the instruction for an ISW parenting assessment. In each case, the LOI contained questions suggesting outstanding/new information was required:

- Overall, in 23% (15/65 cases), documentation indicated a parent(s) had been involved in previous care proceedings regarding another child. Information for this group was limited:
  - Information (in the index for the bundle) as to earlier assessments filed in current proceedings was limited to 8/15 cases.

  - With one exception, all local authority reports from previous proceedings regarding another child were completed well over 12 months prior to current application concerning a different child (the minimum was 66 weeks, the maximum was 366 weeks, the mean,166 weeks).

8 Thus the ISW assessment was not a duplication of an existing assessment. Overall, changed circumstances (e.g. a new partner, a parent not previously assessed, changed parental circumstances) missing information or a poor quality assessment, further questions and new information underscored instructions to an ISW expert.

9 As stage two above (Sections 2 and 3) indicates, findings are supported by the practices described by most judges in this sample: they utilise ISWs to fill gaps in evidence which – for whatever reason – the local authority cannot provide the necessary skills/expertise or time, or cannot complete the work in the court's timescale.

8 Breakdown of relationships between parents and social workers per se - save in exceptional circumstances (where LA evidence is compromised or biased or lacks transparency) - did not contribute to judges' use of ISWs.

Frequency of use

9 Estimates of use varied from 'frequent' (a small group) to 'sometimes' (just under half the sample) to those who said they rarely or very rarely used ISWs. Contrary to some

received wisdom – and with notable exceptions - views did not indicate ISWs were used in most or every case. Indeed estimates from the 'sometime' users' were in the region of 22 – 25% of cases. This estimate replicates quantitative findings from a national random survey of use of experts in cases in 1999s.[86]

10 However, views about frequency of use cannot be examined in the absence of the reason for use; whether judges described themselves as frequent, sometime, or rare users of ISW assessments, the reasons they order ISW reports were similar. As indicated above ISWs were and are used to provide assessments where the local authority cannot provide the resources and/or time to do the work. With notable exceptions, the practices and experiences of these judges at least do not lend support to high use of ISWs or use simply to obtain 'second opinion' evidence in complex/serious cases.

11 Some judges said there had been pockets of high use in some courts at some points in the history of proceedings; there was no single cause for this. Periods in which some local authorities complained that court practices were dominated by a 'no stone left unturned' attitude in the use of *all* experts, were also periods in which judges saw poor quality local authority assessments and social workers untrained in the assessment and analysis of risk.

12 Reasons for use – and for continued use - focus on the court's need for evidenced based reports and opinion; in the absence of an assessment and with an applicant who, for whatever reason, is unable to provide one of sufficient quality and/ in the timescale required - would arguably withstand an appeal.

Joint instructions as an indication of need

13 Stage one identified that most ISWs are jointly instructed with high levels of involvement by the local authority and guardian (65% and 56% respectively); judges confirmed that finding. While that initial finding put paid to a view that use of ISWs was largely the result of disaffected parents seeking second opinion evidence, a question remained regarding the status of local authority (and guardian) involvement – and whether the former 's involvement at least was more 'apparent than real'. Judges however reported (i) instructions were usually the outcome of collegiate thinking and (b) where a local authority did not think an assessment was necessary, it was not usually slow in saying so in court.

[86] Table 4.9 - Brophy J, Wale C J and Bates P (1999) Myths and Practices: A national survey of the use of experts in child care proceedings. London: BAAF.

14 However, caveats applied: local authorities were reported as less robust in objecting where they were not confident about the quality or timeliness of an existing assessment. In rare cases where some issues might be 'borderline' there were circumstances where a local authority and the guardian have welcomed the time and skills an ISW can usually offer.

Senior judges: reasoned adjudication or rubber stamp?

15 As to whether courts were simply a 'rubber stamp' in the face of an agreed application for an ISW assessment, most of these senior judges at least said that regardless of the status of an application (agreed or contested) they would scrutinise it on the basis of 'need'. That was their approach – and had been so for some considerable time.

16 It might be suggested that '*well, they would say that wouldn't they'* - and other research argued that judges are too ready to let advocates 'run the case'[87] and that courts are too willing to agree further assessments[88]. Several issues are relevant in comparing findings (and the type of data being compared):

- First, these judges gave leave for an ISW assessment where the local authority was unable to provide the necessary resources (skills and/or time) to undertake the work.

- Second, findings from stage one regarding the *circumstances* in which ISW experts were appointed, lends support to the views of most judges in this sample – ISWs were mostly jointly instructed with guardians and local authorities the latter agreeing need.

- Third, ISWs addressed gaps in local authority evidence (that finding based not simply on reported use or what a professional said, but on a review of the court index setting out the assessments already filed in cases). ISWs did not for the most part duplicate an existing comparable assessment, judges did not countenance second opinion evidence save in exceptional circumstance where, for example, existing evidence was compromised in some way.

17 Changed or new parental circumstances and potential kinship/other carers are important issues. We could not determine from previous data the reasons why local authorities had not filed updated information or a new assessment. Judges provided a

[87] Pearce J, Masson J and Bader K (2011) Just Following Instructions: The Representation of Parents in Care Proceedings, Research Report, University of Bristol.
[88] Masson J and Dickson J with Bader K and Young J (2013) Partnership by Law: The Pre Proceedings Process for Families on the Edge of Care. Research Report. University of Bristol and University of East Anglia. And see the President's Bulletin No 2 – note 75 above.

further part of that puzzle: the key reason for granting leave to instruct an ISW in complex cases the county court was largely because of lack of resources – skills, expertise and time - within local authorities to undertake the necessary work.

18 Overall these judges have routinely refused applications for instruction of an ISW if a gap has not been identified and a potential value highlighted and questions clear - or if it would delay a hearing – these examples predate the FJR.

19 It should be noted however that respondents are senior judges; 21/23 are DFJs with responsibility for policy implementation in their respective regions and with a caseload of the more serious cases. That is not to argue that other judges and magistrates have exercised judicial discretion or undertaken the necessary balancing act (Wall, 2010) in the same way. However data on the circumstances in which leave has been given (e.g. an absence of an up to date relevant assessment of a parent/potential carer, a potential alternative carer with a positive viability assessment and a local authority with resource problems) that might be more rather than less likely. The criteria for determining need – now 'necessary' rather than 'reasonably required' – sets the bar higher and aims to narrow down some differences of approach. These data suggest for this sample of judges at least, differences of practice – with notable exceptions – are not great.

C JUDGES' VIEWS ABOUT VALUE AND IMPACT

Views about the quality of ISW reports

20 The ISW reports evaluated in stage I were mostly of high quality; they were evidence-based, transparent in analysis and forensic in method.[89] They set a standard in terms of the quality and format of reports that meet the needs of courts. Judges views and experience support those findings: they said ISW assessments are mostly of a very high standard and of substantial value to the court. This finding applied regardless of the level of use of ISW by judges.

Impact of ISW assessments on the work of courts

21 While one commentator to the FJR said ISW reports had no impact on cases, judges however reported ISW assessments impact on decision making and on plans and outcomes for children in terms of orders and placement. Almost all judges reported cases where the

[89] By 'forensic' we mean the application of rigorous discipline and method in identifying and referencing key issues from the assessment and disclosed papers as these relate to questions to be addressed. At its best, this enables the reader to track these from the background to the case, through the narrative of the assessment, the analysis of each domain of the assessment, through to the answers to questions and the conclusions reached.

work of an ISW had changed the direction of a case, where it had influenced the thinking and planning of both a local authority and guardian, changed the order of the court and the placement of children, and where it had had shortened cases and reduced the number of litigated issues and where and it had turned cases around.

22 Judges also said ISWs can have an 'added value' to the court in cases where an existing assessment is compromised in some way, or biased, or lacks transparency.

D FURTHER VIEWS IN THE DOMINANT DISCOURSE ON THE USE OF ISWS

Achieving parental cooperation – a reason to use?

23 While stage I data found high levels of parental cooperation with ISWs – the independent status of ISW experts and the likelihood of better parental engagement are not key drivers in their use by these judges - save in exceptional circumstances (where local authority evidence is seriously compromised, or biased or lacks transparency).

24 A likelihood of better parental cooperation with an ISW may be of *additional* value to that of obtaining the necessary skills and expertise but it was not a 'freestanding' reason in decision making. Judges were of the view that in general an ability to work with social work professionals was an important part of parenting.

Human rights issues – a key driver?

25 Stage one findings demonstrated human rights arguments on behalf of parents were not key drivers in applications to instruct an ISW. Judges confirmed that finding. Despite perceptions that courts are over anxious to uphold the HR Act, human rights issues were not a driving force in discussions in court or in judicial decision making as to need for an ISW. As indicated above, some judges said while there was a period where such issues were argued – it was very early in the HR Act 1998 not seen for some considerable time. It might appear as a last ditch 'make weight' argument but many said it simply would not be voiced in their court.

26 There is however some anecdotal concern about some practices in the Family Proceedings Courts; that of course requires further investigation in the context of the reasons underscoring the President's Guidance in 2010[90] but also with regard to the new criteria. This is because of concerns about simplistic, process driven decisions (what some judges referred to as the dangers of a 'knee-jerk' responses) from judges and magistrates

[90] See note 75 above.

such that an investigation of need and potential value of an ISW assessment is replaced with a blanket refusal of leave – and in the face of a local authority that is known to be struggling to supply the necessary skills and/or complete within the timescale.

Opportunities for cost sharing – a key driver?

27 Opportunities to share the cost of an assessment were not seen by judges as a key reason for local authority involvement in joint instructions to ISWs. However, where a local authority contests an application to instruct an ISW and is not successful, anecdotally, it has also been suggested that cost issues explain a lack of appeal of the court's decision. This view would benefit from detailed work with local authority lawyers and as to advice from Counsel – and now, in the light of the likely approach of the Court of Appeal to robust case management by judges following *Re TG (A Child) [2013] EWCA Civ 5 and Re H-L (A child) [2013] EWCA Civ 655.*

'Borderline' issues

28 Borderline cases where an ISW might be used were rare in this sample, the test applied by these judges at least in balancing need and potential value has mostly been rigorous. However, judges also cautioned about the benefits of hindsight – and a need to be able to conduct the balancing exercise according to the best interests and welfare of children. In certain albeit rare circumstances, instructing an ISW was said to serve an important purpose – for courts and local authorities.

ISWs that add little/nothing to proceedings

29 Judges had little experience of where an ISW assessment had added little or nothing to proceedings. For this sample at least, such cases were rare - in a large part because of their approaches to determining 'need', potential value and questions to be addressed - prior to giving leave for instructions. That approach predated the FJR.

Delay as a key limitation

30 Stage I findings demonstrated that ISW assessments did not routinely cause delay in cases; where no change occurred within proceedings, reports were filed well in time for the next hearing date. Judges reinforced that finding: they said delay was not generally a feature associated with use of ISWs. That is not to say that judges have not experienced applications later in proceedings – and perhaps more so for kinship assessments – but *on the whole* judges would not usually agree leave unless the work could be completed within the prescribed timescale. However, there were exceptions where judges were convinced of a good and appropriate reason for delay in an application for an assessment.

Rights of children and parents to have potential for rehabilitation assessed

31 Judges repeated that parents and children have a right to an assessment of parenting, future parenting capacity and where necessary, capacity to change; notwithstanding a finding or agreement as to threshold.

A value in the sequence of some assessments

32 Judges said that the timing of instructions to ISWs should not be seen simply as a 'last ditch' attempt by parents to have children returned; courts, local authorities and the guardian can require the assessment. Moreover, the sequence of instructions and thus the timing of assessments by ISWs can have value to the court. That value may be lost or reduced if instructions occur too early in a case. Thus, the impact of earlier instruction – on the quality of reports and their utility to courts requires monitoring.

E CARE PROCEEDINGS UNDER THE MODERNISATION PROGRAMME

Foundations for change

33 In the context of the new agenda for proceedings some caution is necessary where the building blocks for change are not robust and evidence-based – not least because it puts objectives at risk but it also increases the risk of unintended consequences.

34 Findings from an evaluation of reports and evidence in cases in stage one coupled with the views, experiences and practice of judges in county courts in this second stage do not support many negative views about the use and value of ISWs in proceedings. They indicate a rather different picture both in relation to their utility to courts, and their value to and relationship with some local authorities.

'Myths' and practices

35 Some judges acknowledged that there was a period, early in the life of the Human Rights Act 1998, where human rights issues played a more prominent role in applications for the use of *all* experts. Such practices were, according to these judges at least, a considerable time ago - predating the Family Justice Review by some time. No judge said that HR issues were rehearsed in their courts in the period leading up to the FJR. When it is has been used, judges concurred with earlier views and data to date: it is not a 'stand alone' rather a 'make weight' argument. But some judges have not encountered it for some years. Perhaps it is one issue least understood, most likely to be remembered, and one causing most anxiety/frustration to social workers.

36 This is not to say that some judges did not recognise the concerns generated by the phrase *'no stone left unturned'* as an attitude to decision making in the use of all experts.

Whatever the validity of that concern[91], most judges reiterated, those days were long gone. Inquiries into delay, attempts at tighter timescales (e.g. the Judicial Guide to Case Management) (2003) increased focus on judicial continuity, followed by the PLO (2008, 2010) - have all focused on the need for tighter control of expert evidence. However concerns continued - hence the President's 2010 Practice Guidance[92]. However, stage one data[93] does not lend support to the view that in county courts at least, ISWs were simply commissioned by judges under pressure from parents to obtain second opinion evidence and running human rights arguments: not in the period (2009-2010)[94] leading up to the Family Justice Review (2011) or indeed it seems in the period to April 2013. It may of course be the case – as is demonstrated here – that such assessments were commissioned for other evidential needs and reasons. Those were not however available to the FJR.

Evidence-based policy at the interface with courts

37 Detailed evaluation of local authority assessments for proceedings – and from the court's perspective - has been lacking. If such reports were evaluated in the terms that we evaluated ISW reports in stage one of this study, it is likely most would be found wanting. As indicated above, there has been a failure by successive governments to commission sufficiently detailed research on assessments and reports at the interface of Part III and IV of the Children Act 1989. Hence the debate about use of experts and what constitutes an 'expert' – and whether or in what circumstances social workers can be considered experts continues. These debates were part of the discourse surround early Children Act proceedings in the 1990s and they continue unencumbered by hard data.

38 As indicated above, various reports over several years have highlighted a lack of analysis in some social work assessments for courts, along with poor and lengthy chronologies (at least for court purposes), while the volume of documents continued to rise. Many of these documents it seems the courts may not need and – given the volume of cases - often simply do not have the time to read[95].

[91] Few research projects have examined this field in detail (i.e. going beyond a 'head count' of the disciplines of experts commissioned) exploring multiple assessments of the same issues/concerns (but see for an example, pp 37 – 43, Brophy J, Wale C J and Bates P (1999) Myths and Practices: A national survey of the use of experts in child care proceedings. London: BAAF.)
[92] See note 75 above.
[93] Based on a sample of 65 cases completed at March 2011.
[94] The sampling period for cases examined in stage I of the evaluation.
[95] This issue is now addressed by the revised PLO (2013) which distinguishes between documents according to whether they should be filed with the court and served on other parties, served on the parties but not filed with the court unless directed, and those which are listed for the parties but not served unless requested (View from the President's Chambers (No 2) The process of reform: the revised PLO and the local authority. Sir James Munby, President of the Family Division.

Social workers and courts – a fractured relationship?

39 Lack of work on social work documents for courts – and lack of robust training and support of some social workers in the legal framework for key aspects of their work - has contributed to confusion and at times an inaccurate presentation of the way in which social workers are viewed by courts. Evidence herein demonstrates how much courts value social work assessments which are robust, evidence-based, forensically driven and transparent in analysis – and according to the domains of assessment as these are set out in Framework Guidance. Where this work is undertaken by people with knowledge, skills and expertise and a 'wisdom' generated by experience, along with a clear understanding of the needs and demands of courts, such assessments are highly valued, not least because they allow the court to move forward with speed and confidence.

40 The experience of local authority social workers is not uniform but feelings of being undervalued and devalued by courts require some 'unpacking'. First, perhaps some disentanglement is required from wider issues which have led to a demoralised workforce, for example, those following child death enquiries and the treatment of social workers by parts of the media, and that resulting from poor Ofsted reports or working for a local authority subject to 'special measures'. Second, it might be helpful to address and clarify – not least for courts - the length of experience required as a *prerequisite* for this complex area of social work practice[96]. If LAs have to utilise newly qualified/second year social workers, they are arguably highly vulnerable in the legal arena (where the expectation has been that court

[96] The College of Social Work (TCSW) has now produced materials on a curriculum guide for *providers of training* of CPD on pre-proceedings and court-related skills (Brammer A, Boylan J with Dowding S (July, 2013) (http://www.tcsw.org.uk/professional-development/educators) and also (autumn, 2012) materials indicating that the expectation is that this work will be undertaken by 'experienced' or 'advanced' social work practitioners (http://www.tcsw.org.uk/professional-capabilities-framework). Definitions do not state the length of experience that would be expected before this status is reached or how it compares with that expected of others considered as experts in their field. For example, data on the experience and expertise of 17 child and adolescent psychiatrists undertaking expert witness work in 2001 indicated an average of 16 years at consultant level. At the time of that work doctors were not regarded as trained until they reached consultant level; for child psychiatrists this was a *minimum of seven years after qualification* (almost all did not start expert witness work until they were consultants, a small number worked under the supervision of a consultant during senior registrar training - see Brophy et al 1999:30-31, tables 4 and 5). Changes have taken place in medical training, so that following graduation, doctors follow set training programmes to become fully qualified as *independent practitioners* in their specialty: GPs requiring five further years of training, and consultants, seven to ten years. Revalidation to maintain a licence to practice is required at 5 yearly intervals thereafter. A key to being considered 'qualified' is the capacity to be an independent practitioner and while the move has been away from 'years served' to 'competency', the two are related. Moreover, while the TCSW can make recommendations, local authorities are not under any duty to comply; it is thus arguably for the court to continue to consider when 'experience and training' is sufficient for the author of a report to be considered an 'expert' in their field and according to the information set out in their C.V.

reports would be undertaken by level 3 practitioners). By simply asserting social workers are experts or that they must be treated as experts rather sidesteps a key issue for courts as to whether the particular practitioner can establish - by a CV - that he/she meets the 'training and experience' requirements in which he/she can be regarded as an 'expert' in their particular field (and that is not

of course the same as an 'expert witness' for the purposes of proceedings). Third, internal support and further training provided by local authorities may require attention, not least so that inexperienced social workers are not further trapped between the demands and limitations of local authority resources and those of the new agenda and expectations of courts.

41 There is a forth and linked issue: anecdotally it is said to be proving very difficult to get local authority social workers to undertake the kind of analysis in assessments that the President now expects from social workers[97]. As indicated above the ICS holds some responsible for this – but on two levels. The presentation of the reports generated by systems is the obvious one - as highlighted by judges. However, there is a further and arguably more insidious consequence of the ICS, and one which may further undermine the foundations on which the new regime and PLO is based. It may be the case that we have reached a point where many social workers in assessment teams have only known the ICS-based model of practice. While the ICS may be good at capturing a lot of information on children, it is clear from the experiences of judges (and from some Ofsted and CSSIW inspections) that it does not compel people to *analyse* information or to be transparent in that exercise.

42 A key issue therefore, and one which the current agenda does not appear to have addressed, is that we may now have a significant cadre of social workers who have never developed the ability to carry out the required analysis. The new agenda assumes that social workers have these skills but have been prevented from using them. Whether they have them – and in sufficient numbers – remains a question; where Assessment and Intervention social workers are in their first and second year of practice, it would seem at best, questionable. Recognition of that skills gap – and ways to address it – is crucial if social workers and thereby courts are not to be yet further 'vulnerable' in the current climate. ISW reports for courts provide a model already demonstrated to be what courts need and value, and as indicated here, the practitioners are highly valued.

[97] Sir James Munby, ibid. note 95 above.

Due process

43 A further issue not always transparent as a first principle in contemporary debate, is the fact that while the state empowers the removal of children from their birth families into care and adoption, the decision to effect removal and to make an objective examination of the evidence on which such an application is made – and according to the law – has to be taken by a third party. To reiterate the words of Sir Nicholas Wall (2011) then President of the Family Division, '*it cannot be taken by someone with an interest in the result – for example, by a local authority. Such a decision has to be taken by a judge or magistrate'.*[98] That is a safeguard on several levels – not least for the work, confidence and reputation of social workers who are acknowledged by judges to be undertaking a very difficult job. But the difficulties of the task do not dilute the duty of the court to test the evidence – and obtain further evidence where that is deemed necessary, and ensure procedural fairness. As a previous Lord Chief Justice of England and Wales identified (Bingham 2011)[99] procedural fairness is an evolving concept, it is not frozen in time. It is thus subject to ongoing scrutiny as practices and procedures change, and it applies in times of plenty and scarcity alike.

44 Fundamental therefore and reiterated by Sir Nicholas Wall, President at the start of the Modernisation Programme and by the new President, Sir James Munby, is the role of the judiciary in the management of cases. The interests of the child under s.1 of the CA 1989 remain paramount, and in that exercise, cases must be dealt with expeditiously and fairly, with the court as case manager deciding what they want and giving directions to ensure it is obtained.

45 To this end the PLO focused on principles of procedural fairness by local authorities in part to be achieved by early pre proceedings preparation and disclosure and a timetable for the child with key issues identified and resolved by the court.

The PLO (2013), timescales for courts and access to expertise

46 As Sir Nicholas Wall pointed out – 'why if we have the PLO, do we have the final report of the FJR criticising delay in proceedings and demanding significant changes'[100]. The answer was said to be found in (a) varying practices across courts as to the implementation of the PLO – resulting in different case lengths, and (b) relatively little impact in courts of the PLO in how cases are managed with a greater role for advocates than judges in the management and shaping of case progression.

[98] Sir Nicholas Wall (2001) Changing the Culture: The role of the Bar and Bench in the Management of cases involving children. Paper to the Law Reform Committee of the Bar Council, 29 Nov.
[99] Bingham T (2011) The Rule of Law. London: Allen Lane, p 90.
[100] Family Justice Review, Final Report, Nov 2011, paragraph 3.55.

47 However, what was not addressed in depth (and equally not addressed by the DfE or Ofsted/CSSIW inspections) are the difficulties for local authorities in complying with the filing requirements and especially that of a relevant, analytical assessment at PLO stage 1, along with identification and assessment of potential alternative carers.

48 Moreover as indicated above, there are serious problems with electronically generated assessment reports. Case management systems have not resolved a problem reiterated over many years regarding a lack of analysis and evidence-based reports. A 're-positioning social workers as a trusted professional' – will not, alone, resolve problems.

49 Thus the changes that are required are not limited to a change of 'culture', important though that is. It is also a question of the format of reports, and fundamentally, the skills, expertise and 'wisdom' brought to bear on working with and assessing parents and others with complex - but not necessarily impossible – problems. Threshold issues are of course central but they are not the sole issue for courts, under both domestic and European legislation courts also have other duties regarding issues of rehabilitation of children and families. Therefore 'where do we go from here' and thus a robust, contemporary, evidence-based assessment of parenting and any prospect for rehabilitation - and any prospect for a kinship/other placement of a child remains key. In *specified* circumstances, ISWs undertake that task; in most cases to the standard and in the timescale courts require. Moreover instructions to ISWs, in the county court at least, appear to be a consequence of collegiate work between courts and parties in which local authorities in the main are active participants.

50 As senior judges identify, things will not change as if by 'magic'. Where a local authority has not undertaken or updated a parenting assessment because it is of the view that the court will simply order a further assessment (whatever the validity of that view) - and where it has the skills and capacity to do the work to the standard and timescale required, there may be some change. In the absence of attention to the format and quality of reports however they likely to retain the shortcomings courts have identified.

51 For other local authorities, as judges have identified, there are likely to be considerable difficulties in immediately accessing the skills, expertise and resources for the necessary work - and producing a report for the court that is '*fit for purpose'*. Time and heavy case loads for local authority social workers remain a concern. Moreover the difficulties which courts have experienced with assessments may be exacerbated by a move to locally determined assessment models following WT (2013). As indicated above, there are failures of both ability and 'systems' – the latter (the ICS) perhaps masking the former; not simply by limiting or stifling the capacity of experienced social workers to demonstrate analytical skills and to produce robust evidence-based reports, but also in contributing to a

cadre of social workers who have known no other way of producing information for courts. The result for courts however remains the same; in the absence of changes to local authority resources, the assessment document(s) may not be annexed at PLO stage 1, its format when filed remaining 'unfit for purpose', and where judges are unlikely to read it. In such circumstances it will not compare with the quality or format of reports ISWs can provide.

52 In these circumstances there are likely to be tensions and dangers inherent in guidance which expects the court to insist that where there are gaps in evidence, these are addressed by the applicant - or the guardian. We have already stressed the difficulties faced by local authorities (in terms of skills and time – and IT systems). The available time per case and models of working preclude guardians undertaking detailed assessments of parents/others according to the domain headings, incorporating this into an independent report for the court. The PLO (2013) demonstrates guardians will continue to identify gaps in evidence and advise the court on how best these can be addressed by others.[101] To enable courts to meet timescales therefore, guidance will need to be sufficiently flexible to recognise:

(a) The needs of courts for skilled and experienced practitioners able to produce analytical, evidence based, forensically driven reports which meet the court's timescale required, and,

(b) The realities of resources limitations for some local authorities.

In this context, utilising the skills and expertise of ISWs both pre and within proceedings is likely to remain necessary – if courts are to meet current challenges and move forward with appropriate speed and confidence and to do so in a manner which reflects a court practice which is without fear or favour.

[101] See Appendix 2 – PLO (2013) para 7.

APPENDIX 1

CASE MANAGEMENT IN PUBLIC LAW PROCEEDINGS: 2003 - 2010

Milestones in protocols for the management of cases 2003 - 2010

1 In November 2003 the 'Protocol for Judicial Case Management in Public Law Children Act Cases' [2003] 2 FLR 719 was published and among other things it set a guideline of 40 weeks for completion of cases. This was followed by 'The Practice Direction Guide to Case Management in Public Law Proceedings' [2008] 2 FLR 668 (the 'Public Law Outline' or 'PLO'); this was revised with effect from 6 April 2010 (PLO 2010, herein). This is now replaced by the PLO (2013) – see AP-2

2 The Practice Direction – PLO [2008] was one of five changes aimed at transforming public law children proceedings. Also issued was a Practice Direction on the use of experts, new funding for parents who have received a pre-proceedings letter from the local authority, and changes to public law fees. A further change was 'The Children Act 1989 Guidance and Regulations: Volume 1', issued in March 2008. Chapter 3 dealt with care and supervision proceedings, Annexes 1-3 provided a template pre-proceedings letter, the 2008 PLO and PLO flowcharts. The Ministry of Justice, in partnership with the then Department for Children, Schools and Families, issued Guidance entitled 'Preparing for Care and Supervision Proceedings: a best practice guide'(Aug 2009).

3 The original (2008) PLO set out the overriding objective of 'enabling the court to deal with cases justly, having regard to the welfare issues involved.' As in non-family civil cases, dealing with cases justly includes dealing with the case expeditiously and fairly, proportionate to the nature and issues of the case, ensuring parties are on an equal footing, saving expenses, and using the court's resources appropriately.

4 The PLO set out four stages for managing cases with deadlines for tasks at each stage:

Stage 1 comprised the issue of proceedings, at day 1, and first appointment at day 6.

Stage 2 covered the Case Management Conference, by day 45, and the Advocates' Meeting no later than 2 days beforehand.

Stage 3 set the Issues Resolution Hearing between 16 and 25 weeks, with the Advocates' Meeting between 2 and 7 days before.

Stage 4 required the Final Hearing, within 40 weeks since issue.

5 The original PLO set out various case management tools one of which was the case management documentation, comprising the following documents:

- Application Form
- PLO1 Form (Checklist)
- Schedule of Proposed Findings
- Allocation Record and the Timetable for the Child
- Case Analysis and Recommendations from CAFCASS
- Local Authority Case Summary
- Other parties' Case Summaries
- Draft Case Management Order

6 At the issue of proceedings, there was also a lengthy checklist of documents required from local authority applicants (See Jessiman, Keogh J and Brophy J (2009) An early process evaluation of the Public Law Outline, Research Series 10/09, MoJ: Appendix 1). This list was revised in the 2010 revision but not reduced overall (see below).

The revised PLO - 2010

7 The (2010) PLO had three main features: elaboration of the 'Timetable for the Child' principle, reduction of documents required at issue of proceedings and streamlining PLO forms. The revised version maintained the same core structure as the original, and the four key stages and timings as above. Firstly, documents were streamlined, for example the Case Management Documentation list was reduced to: The Application Form and Annexed Documents, Cafcass' Case Analysis and Recommendations, the Local Authority Case Summary, and other parties' case summaries.

8 However (as Blacklaws and Quinn (2010) identified) almost all of the same documentation remained in the early stages of proceedings: the difference was when and how they were presented. Much of the documentation while not required at issue was required by the 'First Appointment' - 5 days later.

9 Secondly, the documentation required at issue was then set out in the Annex of the Application Form (rather than in additional prescribed forms). The documents to be annexed to the Application Form being:

- Social work chronology
- Initial social work statement
- Initial and core assessments
- Letters before proceedings
- Schedule of proposed findings
- Care plans

10 The revised version required the following checklist documents by the First Appointment:

- Previous court orders, judgments, & reasons,
- Any relevant assessment materials
- Initial and core assessments
- Section 7 & 37 reports
- Relatives & friends materials (e.g. a genogram)
- Single, joint or inter-agency materials (e.g. Health & Education or Home Office & Immigration documents)
- Records of discussions with the family
- Key local authority minutes & records for the child (including Strategy Discussion Record)
- Pre-existing care plans (e.g. child in need plan, looked after child plan & child protection plan).

11 The PLO (2010) therefore did not diminish the overall documentary burden on local authorities; rather the burden was shifted and thus diminished at issue.

12 The core assessment however remained a key document – to be annexed to the Application Form and filed at issue by the applicant at PLO-Stage 1.

APPENDIX 2

CASE MANAGEMENT UNDER THE MODERNISATION PROGRAMME - PLO (2013)

Some key points

1 Practice Direction 36C (July 2013) sets up a pilot scheme introducing a second revision of the Public Law Outline. Commencement of the pilot revised PLO will be determined by local courts on one of four dates between July and October 2013[102]. Following commencement, the revised PLO will operate in public law proceedings in that court.

2 Among other aims a key purpose of the revised PLO is to move care proceedings towards completion within 26 weeks, in accordance with the Children and Families Bill. The President has also taken the opportunity to revise certain documents required.

Alterations to the structure and format of social work statements

3 The revised PLO sets out a defined structure for social work statements and requires that social work statements are limited to that structure.

4 It also addresses priorities for the court in the presentation of information with the most important information to be presented at the start of the document in the form of a summary of what is sought and why, and the welfare checklist.

Alterations to the documentation to be filed at issue of proceedings

5 The revised PLO breaks all documents into three categories:

(a) Annexe Documents - those which are to be filed and served and be placed in the court bundle (social work statement, chronology, care plan, threshold document, and *social work assessments* [emphasis added] which are relied upon in the statement).

(b) Evidential Documents – those which are to be served on the parties but not placed into the bundle (previous court orders and facts and reasons/judgments, information from other agencies, previous court reports).

(c) Decision-Making Records – those which are to be made available to the parties on request, but will not form part of the court bundle (letters before proceedings, child in need plans, key local authority meetings and minutes).

6 The local authority threshold document is to be limited to no more than two pages.

The child's guardian

7 The court will direct the Guardian to file an initial case analysis. This is likely to be before the case management hearing (CMH) on day 12; it must incorporate an analysis of the key issues that need to be resolved in the case including:

(a) a threshold analysis

(b) a case management analysis, including an analysis of the timetable for the proceedings, an analysis of the Timetable for the Child and evidence which any party proposes is necessary to resolve the issues

(c) a parenting capacity analysis

(d) a child impact analysis, including an analysis of the ascertainable wishes and feelings of the child and impact on the welfare of the child of any application to

[102] 1st July 2013, 5th August 2013, 2nd September 2013 and 7th October 2013.

adjourn a hearing or extend the timetable for the proceedings
(e) an early permanence analysis including an analysis of the proposed placements and contact framework.

Key stages to case management
8 The number of stages remain unchanged at four (Stage 1 – Issue and allocation; Stage 2 – Case Management Hearing; Stage 3 – Issues Resolution Hearing, Stage 4 – Final Hearing) but with **changes to names and purposes**.

Alteration to the naming and purpose of hearings
9 The **first hearing is now the 'Case Management Hearing' - and by day 12** (unless the court is notified that a contested interim care order hearing is required before day 12).

10 There will be an advocates' meeting no later than **two clear days before the CMH**, at which the advocates (and any litigant in person) will:

- Consider the local authority evidence
- Identify any disclosure requirements
- Identify the respective positions of each party, to be incorporated into a draft order
- Identify any proposed experts and draft the questions
- The local authority is then to produce a draft case management order and lodge this with the court no later than 11.00am on the working day before the CMH.

The Case Management Hearing (CMH)
11 The court will define the key issues in the case, identify the evidence that will be required to resolve those key issues, set a timetable for the child, and make case management directions to conclude the case within 26 weeks.

12 The revised PLO envisages the possibility of a further case management hearing (FCMH) but states this must not take place later than day 20.

Pre Proceedings Checklist document – assessments of children and parents
13 In line with changes to local authority assessments following Working Together (2013) (and removal of the distinction between initial and core assessment) the revised (2013) PLO now states – under the Pre-Proceedings Checklist – Annex Documents to be attached to the Application Form and filed with the court at issue:

'The current assessments relating to the child and/or the family and friends of the child to which the social work statement refers and on which the LA relies'

14 Thus, in England a local authority assessment - of the child and parent(s) - remains a key checklist document to be filed at PLO stage 1, as are assessments of other potential carers. The core assessment remaining relevant for operation of the PLO in Wales.

APPENDIX 3

METHODOLOGY

The evaluation: original objectives

1 In this the final part of a two part evaluation of the work of independent social work expertise in care proceedings, we aimed to build on the issues and concerns underscoring the study and findings to date from stage one by exploring the views, practices and experiences of some 23 senior judges during in-depth qualitative interviews.

The judges and courts – sample selection

2 There are 43 county courts hearing public law cases located across seven regions in England and Wales, each with a senior Circuit Judge – the Designated Family Judge. Selection of courts (and thus the DFJs) was purposive: we aimed to capture the views and experiences from a number of DFJs in each region to reflect experiences in courts dealing with a high volume of cases over a 12 month period and with several local authority applicants, but also those hearing a relatively small volume of applications and a single or small number of local authority applicants. Utilising figures for completed applications in the 12 months 2010-11, we selected courts according to the above criteria and from each region. The breakdown by region and judges is set out in table 1.1 (Section 1) and reproduced below:

Table 1.1 – Judges interviewed by court circuits/regions

Regions	Sample DFJs	Total DFJs in region
1 - London	1	1
2 – Midlands	5	10
3 – North East	3	6
4 – North West	3	4
5 – South East	3	10
6 – South West	3	8
7 – Wales	2	4
Total	20	43

3 Thus the sample consisted of 20 of a possible 43 Designated Family Judges. Initially we estimated about 24 DFJs would be required: the sampling procedure produced 23, two judges did not respond but three additional Circuit Judges were selected – some of whom

assisted us with pilot interviews (see below). As table 1.1 demonstrates, coverage in each region ranged from just under a third to three quarters of all DFJs in a region. Overall therefore we interviewed 23 senior judges. All the judges are highly experienced; most DFJs had at least 10 years' experience hearing public law applications; many had substantially more, many sit or have sat as deputy High Court Judges. As indicated in Section 1 (paragraph 21) in addition to a case load (usually of the more complex cases), DFJs also have responsibility for policy leadership and for the family courts under their jurisdiction. While it is likely the range of views and practices in the use of ISWs - and the underscoring reasons - will find resonance with the remaining population of (13) DFJs in England and Wales, the approach of other Circuit and indeed District Judges and those of Family Proceedings Courts may differ. Given the qualitative nature of the work with judges, findings cannot be viewed as statistically representative of all judges working in this field (albeit we have sampled a significant percentage of DFJs) but the framework in which we have placed this work (i.e. the needs of courts regarding timely and high quality assessments, local authority contexts - and the provision of documents - in which courts work) provides a range of views from senior and experienced judges and thus a key starting point for discussion.

4 The breakdown of county courts by volume of work and number of local authority applicants is set out in table 1.2 in Section 1 and reproduced below:

Table 1.2- Courts by volume of applications and number of LA applicants

No. of courts in this category	Volume of applications over a 12 month period.[103]	Max. number of LA applicants for courts hearing this volume of work
4	<115	2
4	116-200	4
2	201-250	2
6	251-351	5
4	352-900	21

5 Most courts hear (transferred) applications emanating from several local authority applicants.

[103] Figures for England have been calculated from published Cafcass data: www.cafcass.gov.uk/media/6455/Cafcass Care study2012 FINAL.pdf pp34-38. As indicated in Section 1, at the time of the start of the fieldwork and for compatibility across the range of data sets we have used, the most up to date sets were for 2010-11.

6 Overall, the sample courts hear applications from 90 'feeder' local authorities in England and Wales. This offered a potential to explore a range of practices regarding the timeliness of assessments filed in proceedings, and opportunities to explore a range of judges' experiences of the quality of work of applicants and thus approaches to case management perhaps with authorities with different 'cultures', resources and approaches to case preparation or 'front loading' of cases in the 'shadow of proceedings'. The range of applicants also provided an opportunity to explore the approach of judges to case management issues and the use of independent social work expertise.

The themes and questions

7 We explored three key areas in judicial decision making: the first was concerned with the welfare context in which independent social work assessments might be commissioned, and we therefore explored views about the timing, availability and quality of local authority core assessments. Second we focused on decision making regarding the use of ISW assessments returning to allegations of duplication, delay, the impact of human rights issues and questions of confidence in local authority social work assessments. We set discussions in the context of some key milestones in policy and practice developments. We then explored views and experiences regarding the values of reports and the impact of ISW assessments and recommendations on decision making – of courts and by other parties. Finally, we explored views about the impact of the Family Justice Modernisation Programme, changes to the rules on use of experts (FPR Part 25), and a 26 week deadline for case completion on the use of ISWs.

The interview schedule

8 Theme A – The context: local authority assessments

- We explored views and experiences of the timing, quality and value of local authority core assessments (e.g. whether such assessments are filed at the start of proceedings and whether there had been any noticeable changes over time exploring key milestones such as pre and post the Munro report (2011); the FJR (2011) and the final report of the judicial response – modernisation programme (2012).

- We also explored views about the format of core assessment reports they saw (whether they conform to an electronically generated document, a Word document or a mixture), views about the format and whether formats have changed over time.

- We explored views about the quality of LA core assessments for the purposes of proceedings – again exploring views about practices across the milestones above.

9 *Theme B – frequency of use, timing, quality, value and impact of ISW expertise*

- We explored views about how frequently judges thought they ordered a parenting assessment by an ISW; we also looked at views about the frequency of ISWs for kinship assessments. We also explored whether judges felt their use had changed over time, and the reasons for any changes – and again, we set the discussion in the context of the milestones above, plus the amended Practice Direction on use of experts (Jan 2013).

- We then turned to the reasons which have underscored judges' use of ISW experts for parenting assessments and for kinship assessments. Allied to this we also explored with judges some of the key findings in stage one – aiming to cast further light on some of the findings but also some of the issues and concerns voiced in legal and welfare policy arenas. For example:

    - We returned to the relatively high level of involvement of local authorities and guardians in instructions to ISWs and asked judges about the nature of involvement.
    - We addressed the extent to which judges acceded to applications to instruct an ISW, the reasons for this and any role human rights (HRs) issues might play in decision making.
    - We explored whether local authorities routinely objected to applications, and whether judges ever refused an application for an ISW.
    - We also explored whether judges had noticed any changes over time in the involvement of the local authority in instructions (again setting the discussion in the context of policy concerns and milestones as above).

- We then looked at the timing of instructions and whether judges saw any problems or barriers to earlier instruction of ISWs (for parenting and kinship assessments).

- We then turned to views and experiences regarding the quality of ISW of parenting and kinship assessments and we asked judges whether assessments have any value and/or 'added value' for their work in bringing cases to trial.

- We asked judges about any limitations or problems for the court in ordering an ISW assessment.

- Turning to questions of impact, we asked judges:
  - whether they had any experience of an ISW report changing the 'direction of thinking' and/or planning in a case and any impact on outcomes in terms of orders and placement of children
  - about any experience of cases where it was felt that the need for an ISW was borderline
  - any experiences of cases where an ISW report had added little or nothing to the issues on which the court had to decide
  - in addition to any limitations/problems judges might have described earlier, we returned to the issue of delay and asked judges specifically whether ISWs caused delay in cases.

10 Theme C - The Family Justice Review (FJR) and the Modernisation Programme

- The Judicial Response to the FJR indicated a change of 'culture' is required from all professions. Perhaps foremost for courts was said to be a move to a more inquisitorial style of case management with regard to the use of experts. In this final section we explored with judges:
  - what impact they thought the above changes would have on their use of independent social work experts, and,

  - returning to human rights issues we explored how this issue is played out in applications to instruct an ISW and in judges' decision making regarding leave for an ISW assessment.

Design and methods

11 The evaluation employed qualitative methods to explore the above issues with a sample of senior judges. The selection of courts was purposive on the criteria outlined above, thus the selection of DFJs was the outcome of the profile of the courts selected.

12 The design and aims of this stage of the study were especially suited to a qualitative study and a process evaluation of decision making. Process evaluations are usually aimed at elucidating and understanding the internal dynamics of a programme or operation or

model of practice[104]. For this work the key questions focused on how different 'players' (in this case judges) might operate in the process of bringing cases to trial, within a defined legal framework and when certain expertise external to key 'players' (the local authority, the guardian and the court) might be sought.

13 The method in general explores what factors come together (and their respective strengths and weaknesses) and how they are experienced, understood and acted upon by other participants in the process. In this evaluation the factors we explored were those of local authority cultures, resources, skills and expertise in the light of legal requirements, the evidential process in preparing cases for trial, and how those factors come together to help explain the case management activities of judges in determining welfare evidence in cases – and when and from whom assessments are to be commissioned.

14 We thus aimed to explore with judges their views and experiences of managing the legal process along with concepts of welfare, fairness and justice as well as speed, cost and early placement of children. Through interviews we identified experiences and responses to both local resources and to changes in policy and perhaps, some practice. Through this method – and in addition to examining the evidential basis for claims regarding the court's use of ISWS - we aimed to identify anticipated outcomes to the new regime regarding use of ISWs but also factors in the process which may have unintended consequences for the success of the modernisation programme in speeding up cases without loss of quality.

15 Interviews were undertaken between February and April 2013; they were in-depth, based on a semi structured interview schedule according to the themes and questions set out above. The questions were open ended and judges were free to raise any other issues they felt relevant to this field of examination. All interviews bar one were undertaken in judges' chambers. Four pilot interviews were undertaken by the researchers – three of which were undertaken by two researchers working together. Following assessment of the pilot schedule and timing issues, a final schedule was agreed and the remaining fieldwork undertaken on a one-to-one basis. All interviews were recorded and almost all were fully transcribed[105].

[104] Patton M Q (2002) Qualitative Research and Evaluation Methods. (3rd Ed) Thousand Oaks, California: Sage Publications.

[105] Two final tapes were not fully transcribed in part because of cost limitations and because analysis of the proceeding interviews indicated the 'direction of travel' in the relevant court and for feeder authorities. We therefore used the interviews to check key findings and for any new material; the final interview was undertaken by two researchers who then worked together on the analysis and where relevant, the coding of qualitative material.

16 All judges were contacted by letter or email, setting out briefly the background to the evaluation, the relevant permissions, the issues we wished to explore, the timescale for the study, and the time we required for the interview. Shortly before the interviews judges were sent a list of the themes and questions to be pursued and a summary of key findings from stage one. Interviews were timed to last about 55 minutes; in practice this was often an underestimate – most judges had a considerable amount to say about the issues and for those with several local authority applicants, issues under theme 'A' above (local authority practices) took considerably more time than we had anticipated.

Qualitative data analysis

17 The framework for the analysis of transcripts was set by the themes and associated questions we pursued. We decided against using a software qualitative data analysis package – in part because of time and cost implications but also because based on our existing work in this field we already had a clear framework and a mechanism for organising and analysing data for this part of the evaluation. In addition to the interview schedule a further schedule was prepared to permit coding aspects of the interview data. This was then circulated and tested against further transcripts – extending or modifying the codes - to ensure the whole corpus of views and experiences were identified. Each interviewer undertook the task of coding parts of the transcript for the interviews they had undertaken. Transcripts were thus coded, marked up and held electronically. We also used the second schedule to add 'labels' linking us to supporting and other relevant views and their location in the transcript. We then identified key themes in the range of responses to each question.

18 Responses to each question within pre set themes were then organised across a spreadsheet. Two researchers worked on both horizontal and vertical analysis of interview data. For certain key questions respondents were grouped according to responses; this is for ease of presentation of very detailed qualitative data – not to indicate any numerical significance. Rather we 'grouped' responses and then aimed to identify the picture behind the views and thus the approach to case management practices. The coding schedule thus permitted early groupings and key examples of views and experiences. This method of analysing the data also enabled us to check very quickly a specific response to a question in terms of other responses/observations the judge had given (the 'horizontal' analysis) thus the spread sheet enabled us to keep track of the wider context in which a judge was answering a specific question. In effect, it enabled us to constantly re-contextualise views and experiences according to key issues in the 'local framework/culture'. We also used word searches to check transcriptions for key concepts and aspects of local practice.

Quantitative analyses undertaken – published data sets

19 Towards the end of the fieldwork the 'direction of travel' regarding the format of local authority core assessments was becoming clear. We therefore explored additional materials – in part to determine whether the concerns of many judges were specific to the legal arena or whether there was another explanation for the limitations of the document filed in proceedings.

20 For this we looked at three extra sources of data: First, for all 90 feeder authorities implicated in the study we explored Ofsted and CSSIW findings on the completion of core assessments within the statutory timescale of (what was) 35 days. These data are publicly available on the relevant websites[106]. Findings were added to a table and summarised in an anonymised form in Section 1 above – paragraph 31.

21 Second, we then selected a random sub sample of 60 of the 90 feeder local authorities (52 in England and 8 in Wales). For the 52 authorities in England (only) we explored Ofsted inspection ratings for the 'quality of provision' or 'quality of practice' (whichever format applied to the latest published inspection report).

22 Third, for all 60 local authorities we explored the relevant Ofsted and CSSIW reports setting out (qualitative) inspection judgments as to the 'timeliness and quality' of assessments. We also searched for and noted inspectors' comments on the integrated children's system (ICS) and also any comments on assessments for courts. Inspection reports are also in the public arena located through search facilities on the relevant websites.

23 These data were also added to a table which contained the ID labels for the 90 relevant local authorities. We also explored the volume of care applications per 10,000 children in each feeder authority. However, we could not present these data while preserving the anonymity of 'feeder' authorities. Thus we had three additional sources of data on assessments in table format; these are presented in an anonymised form in Section 1, paragraphs 31 – 45.

24 This exercise was more time consuming than envisaged. We discussed moving beyond data on completion of core assessments within the statutory timescale with the advisory group - because some of the issues indicated there was merit in further investigation; there was support for doing that work. In practice, it increased our timescale

[106] See note 20 - Section 1 above.

but added key data setting the evaluation - at least for local authority social workers - in a wider policy framework than their work for courts. While in methodological terms this exercise was not what might be described as 'goal free exploration' (we were trying to elucidate issues which might throw further light on judges' experiences of the timing and format of core assessments), in practice, the additional findings appear crucial in endeavours – by local authorities, courts and policy makers - to improve the quality of assessment evidence.

Ethical issues

25 The evaluation proposal was subject to scrutiny by the Department Research ethics Committee (DREW), Department of Social Policy and Innovation, University of Oxford. This procedure covers the ethical considerations of the study, holding and access to data, how it will be held and stored (i.e. in anonymised form) and what will happen to it at the end of the project. This procedure also addresses what benefits (direct or indirect) which may accrue to respondents, what risks be may involved and procedures to dealing with these.

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