

**THE CONTRIBUTION OF EXPERTS IN CARE PROCEEDINGS**

**EVALUATION OF INDEPENDENT SOCIAL WORK REPORTS IN  
CARE PROCEEDINGS**

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# EVALUATION OF INDEPENDENT SOCIAL WORK REPORTS IN CARE PROCEEDINGS

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## Disclaimer

The views expressed are those of the authors and not necessarily shared by CISWA-UK.

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## EXECUTIVE SUMMARY

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, a cap on ISW fees, and fears about a resulting reduction in the availability of ISWs. At the same time, submissions to the Family Justice Review (FJR) claimed that ISWs cause delay, simply duplicate existing local authority assessments, add nothing new and undermine confidence in social work assessments. It was also said that ISW reports result from parents utilising human rights claims to gain a second opinion of a local authority assessment – and to which courts too readily accede.

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 FJR report however acknowledged the concerns it had generated in this field including a view that that it had singled out independent social workers unfairly. The final report therefore broadened recommendations stating the court should seek material from *any* expert only when the information is not available from parties already involved; it accordingly recommended future use of ISWs should be exceptional.

The government subsequently accepted those recommendations, and by implication, claims about ISWs. It stated that it would legislate to make it clear that it would only be permissible for expert evidence to be commissioned where it is necessary to resolve the case, and the information is not already available through other sources.

But while strong views have been expressed about the use of independent social work assessments, there is little hard evidence. This evaluation, commissioned following submissions to the FJR, begins to address that lack. It is based on 65 cases concerning 121 children and 82 reports for courts in England and Wales. The sample was drawn from the records of three independent agencies providing ISWs.

### Findings

#### 1 Profile of children and parents

- Children and parents in cases referred to ISWs demonstrated multiple problems: ‘co-morbidity’ was a defining feature of the profile of children and parents in this sample.
- Most children were subject to allegations concerning more than one form of ill-treatment, most were aged six years and under, almost all were subject to an interim

care order, mostly placed outside their birth family. Most were well known to children's services.

- Most parents were subject to multiple concerns or allegations contributing to failures of parenting. Almost half had mental health problems; over 40% had drug and alcohol problems. Over half of mothers were subject to domestic abuse. Many parents (42%) were themselves ill-treated as children.

## **2 (a) Who instructs ISWs?**

- Findings do not support a view that parents are solely responsible for the use of ISW assessments – or that applications were based solely on rights to a second opinion of an existing local authority assessment.
- Parents were involved in most instructions to an ISW (79%), but most of those (64%) were joint instructions; almost half of these involved all three major parties (the local authority, the parent(s) and the guardian).
- The local authority was a party to instructions in a majority of cases (65%) – most of these were joint instructions but it was the sole instructing party in 15%. The guardian on behalf of the child was a party to 56% of instructions - all were joint instructions.

## **(b) Letters of Instruction**

- All letters of instruction (LOIs) instruct ISWs as an expert witness. Letters are drafted according to Guidance/Practice Direction on instructing experts in children cases. ISWs are referred to Guidance/Practice Direction and letters specify the principles, duties and responsibilities of expert witnesses to the court thus distinguishing experts from professional witnesses. The ISW is also required to include a statement that he/she has read, understands and adheres to Guidance on the duties and responsibilities of experts.
- Most LOIs complied with the terms of the Practice Direction but a small number fell short of the standards set, questions were repetitive, lengthy, and in some instances lacking a clear structure. The median number of tasks or questions was 13.
- Local authority social workers act as a professional witness for the applicant. ISWs have an additional role as an expert witness for the court.

### **3 The 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.
- The reasons why an ISW was instructed to assess a parent where there was evidence of a previous assessment by a local authority was because that assessment had not included this parent, or parent and 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 a previous local authority assessment was contested by parents but most (27%) were contested on grounds of content; in just 4 cases (8%) parents contested a local authority assessment on grounds of lack of independence or human rights claims.
- There were 19 cases where an ISW was instructed within twelve months of a local authority core assessment. In most of these cases high levels of conflict existed between the local authority social worker and the parent(s); in some cases an impasse had been reached.
- In most cases changed circumstances (e.g. a new partner, a birth parent not previously assessed, improved circumstances), missing information from the core assessment, further questions and new information underscored instructions to an ISW.
- Findings do not therefore support views that ISW assessments routinely duplicate local authority assessments, adding nothing new. These were not like-for-like assessments: new people, changed/new circumstances were the driving forces.
- The findings indicate that the independence and the skills of the ISW, and time to fully assess complex parents with a history of non-cooperation or engagement with local authorities are key benefits to the court of ISW assessments.

#### **4 The Assessors: skills and experience**

- ISWs employed by the sample agencies had substantial experience in child protection work; the median was 24 years. Many had held senior positions in local authorities prior to ISW work; two-thirds had a relevant higher degree.
- There is a concern that an ISW is a third social work professional to be involved with the case (in addition to the local authority social worker and the child's guardian). Findings indicate a need to unpack this issue in the context of what ISWs actually do.
- First, previous research has shown that some 40% of care cases come to court lacking a core assessment. Second, the Cafcass operating framework means that guardians are unable to undertake 'hands on' assessments where there are problems or gaps in evidence.
- Third, this perspective does not address the different duties and responsibilities. While the core welfare discipline is the same, the evaluation demonstrates that as expert witnesses for the court, the 'terms of reference' and thus the job of the ISW is different - both to that of the local authority social worker and the guardian.

#### **5 ISW assessments of parents**

- The ISWs drew on a range of theoretical frameworks and tools in engaging and assessing parents. The assessment of parenting is a dynamic a process, the approach is evidence-based and the method of enquiry is forensic.
- It is inevitable that some information is reproduced. Expert reports should be free-standing documents but they cannot start with a 'blank sheet'. Rather, they are produced in response to a set of instructions based on existing concerns, allegations and available evidence. Welfare information may vary in quality, contemporary relevance and functionality in meeting the needs of courts; some checking is necessary, ISWs demonstrate that some parents had valid complaints.
- Where the ISW agrees with the local authority social worker on the placement of a child outside of his/her birth family, they 'add value' because the assessment underscoring that recommendation is based on current circumstances, it is evidence-based, transparent and independent, and focused on the needs of courts.



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

## **6 ISW reports for courts**

- Reports were mostly of high quality; they were evidence-based, transparent in analysis and forensic in method. 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.
- The independence of the ISW as an expert witness for the court is a key factor in the assessment. Reports reflect a dynamic approach to case work moving between the accounts of different parties (in statements/evidence) and events, and back to parents. Reports demonstrate assessments are robust and focused but fair.
- Working through histories ISWs provide detailed information about parents; this information underscores analyses of parental functioning and relationships, opinion about parental capacity (to show empathy with children, to change, and to work with others). It was integrated into discussions about likely time frames, and forms an important part of the evidence on which some key questions are answered.
- However, 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 layout and no contents page made these reports time consuming to analyse. Given substantial written evidence, tight timetables and limited reading time for judges, this issue requires attention. Equally, the recording of ethnic and religious diversity requires attention, and the use of peer reviewed research increased.

## **7 Timetabling, delay and duration**

- Where there were no changes in the circumstances of a case most ISW reports were delivered to the lead solicitor on time. Where reports were delayed, in most cases it resulted from changed circumstances and was *purposeful*. Very few reports (7/63) were lodged with the lead solicitor later than the due date with no case driven factors;

almost all of these (6/7) were no more than *three days late* (3/6 spanned a week-end).

- Like other expert reports, ISW reports are generally timetabled to come in shortly before a scheduled hearing (5 -10 working days). Excluding cases which experienced *purposeful delay*, indications are that ISW reports were well in time for the next court hearing. There was no evidence that ISW reports routinely cause delay in proceedings through the late delivery of reports.
- Allowing for purposeful delay - and major travel disruption caused by heavy snow - 34% of assessments exceeded 8 weeks; 20% exceeded 12 weeks. Key features contributing to increased duration of parenting assessments were changes in the circumstances of the case and the number of children involved: cases exceeding 8 weeks were significantly more likely to involve three or more children.

## **8 Conclusions and policy recommendations**

- Findings so far do not support the view that ISWs simply duplicate existing parenting assessments and cause delay - or high use by parents seeking 'second opinion' evidence based solely on human rights claims.
- Findings also indicate that in certain circumstances courts may be severely hampered in the absence of access to the skills and expertise provided by ISWs - not least in case managing to meet the six month 'standard' for completion of care cases recommended by the FJR and accepted by Government.
- Any legislative changes and adjustment to the Family Procedure Rules and Guidance would need to take account of these findings.

### **FJR and the Government's response**

- Findings indicate this field is more complex – but potentially more fruitful - than initially indicated. The FJR did not seek hard information on the use of ISWs. Moving forward on policy change in the absence of evidence runs a high risk not simply of failing children through poor outcomes – but of increasing delay.

### **Family Justice Modernisation Programme (FJMP) and faster justice**

- Given the findings on the quality and duration of ISW reports it would appear that with minor adjustments the deployment of ISWs in certain cases may assist the FJMP to meet targets and without sacrificing quality.
- In terms of concerns and allegations cases referred to ISWs although complex are not atypical of most care cases. Thus it is not simply a case of establishing exceptional circumstances *within* cases which might necessitate the appointment of an ISW. There are structural issues such as available expertise, but also timeliness for reporting and independence as key factors to facilitate the engagement of parents and the quality of report likely to result.

### **Improvements and development to services**

- Several issues arise as to the optimal use of ISWs. In the current policy climate which seeks faster and cheaper proceedings two issues may be key. This evaluation focused on the use of ISWs within legal proceedings but where necessary and helpful to local authorities that role could be extended: first, to improve core assessments for proceedings so that where necessary these are better focused on the needs of courts, and second to provide a mentoring and training role.
- While overall quality assurance measures in agencies appear to have worked reasonably well, some areas need attention. The layout of some reports requires improvement. Certain information and its location in reports should be standard and this should include ethnicity and the child's timescale. Equally, the use of research evidence should be increased. This is an evidence-based field, clinical and welfare knowledge is dynamic, and peer reviewed evidence, used appropriately, can assist the court and make a good report compelling.

### **Gaps in the data and further research**

- Two key questions remain. First, we have yet to explore the impact of ISW assessments on judicial decision making; that is a key gap in data.
- Second, the views of local authority social workers and advocates require attention. There are some clear benefits to local authorities who – for whatever reason – have been unable to engage parents or cannot meet the PLO timetable for the filing of

evidence. The relatively high involvement of local authorities in instructions to ISWs also requires unpacking.

- A further issue is the timing and quality of some local authority core assessments. While access to a sample of these would provide valuable comparative data, of itself, that will not resolve why so many cases came to court without such a key document.

## Introduction

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<sup>1</sup>, a cap on ISW fees, and fears about a resulting reduction in the availability of ISWs. At the same time, major issues have arisen regarding allegations of delay and duplication of existing local authority assessments along with assertion that ISW reports result from applications by parents for a second opinion of local authority assessments based solely on human rights grounds - and to which courts too readily accede

Such debates are not new but they were given impetus by submissions to the Family Justice Review<sup>2</sup> along with statements that such reports should cease<sup>3</sup>. Such views, however, met with concerns within in the family justice system about fairness and access to justice for already vulnerable children and parents, and concerns about delays caused by incomplete local authority evidence at the outset of proceedings, and poor quality local authority reports during proceedings.

This is, however, a complex field. It is not well understood – at least outside the family justice system - and it is not underscored by a body of dedicated research<sup>4</sup>. With regard to assessments by local authorities first, we do know from research over many years (e.g. Brophy et al 1999a; 1999b; 2003; 2009; Masson et al 2008) that a significant percentage of local authority applications (some 40%) start proceedings without what is now called a ‘core’ assessment<sup>5</sup>. Parenting assessments are therefore necessarily commissioned within

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<sup>1</sup> Ministry of Justice (2010) Reform of legal aid (*Proposal for the Reform of Legal Aid in England and Wales - Consultation Paper CP 12/10* (Nov). [www.justice.gov.uk/consultations/legal-aid-reform-consultation.pdf](http://www.justice.gov.uk/consultations/legal-aid-reform-consultation.pdf)

<sup>2</sup> The Family Justice Review panel was appointed to review the whole of the family justice system in England and Wales, looking at all aspects of the system from court decisions on taking children into care, to disputes over contact with children when parents divorce. It was commissioned by the Ministry of Justice, the Department for Education, and the Welsh Government – see Family Justice Review - <http://www.justice.gov.uk/about/moj/independent-reviews/family-justice-review>

<sup>3</sup> Mavis M (2010) ‘ADCS chief says Independent social worker role should end’, Community Care. July (<http://www.communitycare.co.uk/Articles/09/07/2010/114875/independent-social-worker-role-should-end-says-adcs-chief.htm>).

<sup>4</sup> Although media interest in the use of experts in family proceedings has existed for sometime it has been given impetus by recent work of Ireland on the use of psychologists (see, Ireland J (2012) Evaluating Expert Witness Psychological Reports: Exploring Quality. [http://www.uclan.ac.uk/news/model\\_to\\_quality\\_assure\\_psychological\\_expert\\_witnesses.php](http://www.uclan.ac.uk/news/model_to_quality_assure_psychological_expert_witnesses.php)).

<sup>5</sup> In the early days of care proceedings this was referred to as the ‘orange book’ assessment - Department of Health (1988) *Protecting Children: A Guide for Social Workers Undertaking Comprehensive Assessment*, London: HMSO; this was followed by the ‘lilac book’ - Department of Health et al., (2000) *Framework for the Assessment of Children in Need and their Families* with an accompanying Practice Guide, DoH (2000) *Assessing Children in Need and their Families*.

proceedings – some from independent social worker experts<sup>6</sup>. We also know from research that a high percentage of care applications starting without a core assessment concern families well known to children’s services; many children were on (what was) the Child Protection Register (CPR) (now with a child protection plan (CPP), and many (over 50%, Brophy et al. 2003) were already living away from parents at the point of application. In these circumstances, a local authority core assessment should already have been undertaken.

Second, there are several reasons why local authorities may lack an assessment at the point of application. For example, research indicates that, at the point of the local authority application, some 73% of parents are reported as failing to cooperate with children’s services (Brophy 2006). Moreover, the availability of local authority resources for these detailed assessments plays a part. This includes the availability of high quality social work expertise, but also the funds and time within children’s services for these intensive assessments.

Third, the field is made more complex by the move to joint instructions of experts.<sup>7</sup> This has rather ‘muddied the waters’ regarding responsibility for the provision of evidence necessary to support a local authority’s application. Jointly instructed experts are usually jointly funded<sup>8</sup> thus the legal aid budget has increasingly met part of the cost of parenting assessments commissioned *within* proceedings where these are sought from an independent social work practitioner.

Fourth, with regard to quality issues, anecdotal information from child care lawyers indicates some local authority core assessments have been excellent but they express concern that these, sadly, are not the ‘norm’. Some lawyers and judges have expressed concern that local authority assessments are of poor quality, lack analysis and are not sufficiently focused

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<sup>6</sup> Not all assessments commissioned in within proceedings are necessarily from independent social workers – and figures do not always differentiate between assessments ‘outsourced’ by local authorities to, for example, family centres, to individual ISW practitioners or to independent agencies but for example, a national survey of expert evidence in 1999 put parenting skills assessments commissioned *within* proceedings at 23% of all cases involving expert evidence (for a review of research 2006 see Brophy J (2006) Research Review: Child Care Proceedings under the Children Act 1989. London: DCA). That ‘global’ figure was confirmed in 2008 (Masson J, Pearce J & Bader K. Care Profiling Study. London: MoJ).

<sup>7</sup> Joint instruction of experts aimed to reduce delay and the number of experts in cases - and the number that might see a child but there are disadvantages to joint instructions – and case law and guidelines have existed for many years (e.g. Mr Justice Wall with Iain Hamilton (2000) A Handbook for Expert Witnesses in Children Act Cases. Jordan Publishing; Law Society et al. (2004) ‘Experts’, in Good Practice in Child Care Cases. Law Society: London.pp19, 35, 47, 63.

<sup>8</sup> Unless a report is commissioned to support a local authority’s case on threshold, in which case the local authority funds the cost in its entirety; ISW instructions however would be unlikely to focus on threshold issues.

on the key issues for courts. Child and family psychiatrists have also criticised some social work evidence as being process driven and lacking analysis (Brophy et al. 1999).

Issues of bias and parent's rights to a second opinion - sometimes framed in terms of Article 6 and 8 of the ECHR - are also said to play a part in the use of independent parenting assessments. For example, it has been argued that local authorities are reluctant to spend scarce resources on parenting assessments because once in court, parents argue that the local authority assessment is biased or not 'independent' and they have a right to a second opinion.

Parents' Article 6 rights have been raised in policy debates (e.g. during the Family Justice Review - FJR) and it has been argued this position is supported by a decision in the Court of Appeal in 2005<sup>9</sup>. While that is a debateable interpretation of the implications of the judgment<sup>10</sup>, the question remains as to whether such reasoning is the dominant driver in this field, and if so, whether it exists in parallel with other factors.

Subsequent Practice Directions from the President of the Family Division<sup>11</sup> dealt with the instruction and duties of experts, superseding earlier guidance. They did not, however, address concerns about case management, judicial discretion and alleged tensions about applications for second opinion evidence engaging Article 6 claims. This issue continued to be raised in policy debates and was therefore addressed by the President in further Guidance in 2010<sup>12</sup>.

But perhaps the most explicit criticisms of ISW assessments emerged in submissions to the FJR<sup>13</sup>. Here it was argued ISW reports cause delay, duplicate existing assessments, add nothing new to proceedings, generally simply check the quality of the original social work

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<sup>9</sup> See, *GW & PW - v - Oldham Metropolitan Borough Council* [2005] EWCA Civ 1247 - which dealt with very specific circumstances where medical evidence was pivotal. (<http://www.bailii.org/ew/cases/EWCA/Civ/2005/1247.html>)

<sup>10</sup> That is, in a case concerning medical evidence and applicable in cases such as non-accidental head injury or pathologically 'unascertained' infant death where medical evidence is pivotal and not easily receptive to a challenge in the absence of other expert medical opinion (see comments of Wall LJ (as he then was) *Ibid.* paragraphs 10, 32 and 35 - 44.

<sup>11</sup> Practice Direction – Experts in Family Proceedings relating to Children (2008) – (<http://www.justice.gov.uk/guidance/docs/Experts-PD-flagB-final-version-14-01-08.pdf>) and [2009] 2 FLR 1391.

<sup>12</sup> President's Guidance, Bulletin No 2 (December 2010) ([http://www.familylaw.co.uk/system/uploads/attachments/0001/4513/Case\\_management\\_decisions\\_and\\_appeals\\_therefrom.pdf](http://www.familylaw.co.uk/system/uploads/attachments/0001/4513/Case_management_decisions_and_appeals_therefrom.pdf)).

<sup>13</sup> *Op cit.* note 2 above.

assessment and introduce a third welfare professional (in addition to the local authority social worker and the children's guardian).

In particular Gibb (2010) asserted that ISW assessments often simply 'replicate the findings of the assessment already undertaken by the local authority'. Gibb further argued this work undermines the confidence of families in the original local authority assessment, that the latter are best placed to provide information and thus 'the growth in commissioning 'expert' assessments should be curtailed'<sup>14</sup>.

A submission from the Association of Directors of Children's Services (ADCS) was also highly critical of the use of independent parenting assessments<sup>15</sup>. It asserted that requests for unnecessary assessments added to delay and cost in cases, and that pressure from parents' lawyers resulted in the appointment of independent assessors to address perceived gaps in local authority evidence. It added that 'in many instances the so-called 'experts' [appointed] may not be independently accredited or have significantly greater expertise than the (local authority) social workers'<sup>16</sup>. The submission did not address those cases which arrive at court without a core assessment and while it acknowledged weaknesses and gaps in social work evidence<sup>17</sup>, discussion was limited to a lack of research evidence.

Barnardo's submission to the Justice Committee quoted Plowden 2010<sup>18</sup> in stating that local authorities think that courts are too willing to accede to requests for additional assessments; and (quoting Ward 2003)<sup>19</sup> the low status and lack of confidence in social worker's expertise meant that their recommendations were sometimes given little weight by the courts.<sup>20</sup>

In the context of reviewing issues on the use of experts in general, the Family Justice Review accepted most of those criticisms and made a number of recommendations first in

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<sup>14</sup> Gibb M (2010:2) Social Work Reform Board, Submission, Family Justice Review, but note following dissonance from members of the Board, this paper was subsequently re-titled a personal submission.

<sup>15</sup> Association of Directors of Children's Services (ADCS) Submission following evidence to the Review, 21 Sept 2012

<http://www.adcs.org.uk/download/position-statements/oct-10/adcs-fjr-paper.pdf>

<sup>16</sup> Ibid. Para 6.5.

<sup>17</sup> Ibid. Para 6.1.

<sup>18</sup> Plowden F (2010) Review of Court Fees in Child Care Proceedings. London: MOJ.

<sup>19</sup> Ward H, Munro E, Dearden C, and Nicholson D (2003) Outcomes for Looked after Children: Life Pathways and Decision Making for very Young Children in Care or Accommodation. CCfR Evidence Paper No10. <http://www.lboro.ac.uk/research/ccfr/Publications/evidencepapers.htm>

See also Ward H, Brown R & Westlake D (2012) Safeguarding Babies and Very Young Children from Abuse and Neglect. London: Jessica Kingsley.

<sup>20</sup> Barnardo's (2010) Submission to the Justice Select Committee Inquiry into the Working of the Family Courts (Sept)

[http://www.barnardos.org.uk/barnardos\\_submission\\_to\\_justice\\_committee\\_inquiry\\_into\\_the\\_working\\_of\\_the\\_family\\_courts\\_september\\_2010.pdf](http://www.barnardos.org.uk/barnardos_submission_to_justice_committee_inquiry_into_the_working_of_the_family_courts_september_2010.pdf)



the interim report and then in a final report. In the interim report, for example, it stated ISWs should only be employed to provide new information to the court that cannot be provided by the local authority or the guardian and should not be used to replace assessments that should have been submitted by the social worker or the guardian, and the relevant rules should reflect this<sup>21</sup>. With regard to the position of parents it accepted the arguments, for example, put by the Gibb that courts were often too swayed by human rights arguments on behalf of parents, it stated: ‘the increased emphasis on the rights of parents, particularly the right to a fair hearing enshrined in the Human Rights Act has clearly had a major effect here. Parents’ human rights are deemed to be best serviced by the court directed assessments at the cost of delay for the child’<sup>22</sup>.

In the final report of the FJR (published after the start of this research) the team stated that they were aware of concerns that in the interim report they had singled out independent social workers unfairly, alongside a related concern around the intention that ISWs should be employed only to provide new information<sup>23</sup>. The team therefore stated ‘accordingly we have broadened our recommendations to say that the court should seek material from any expert only when the information is not available, and cannot properly be made available, from parties already involved. In relation to ISWs we note that they will be the third trained social worker to provide input into court after the local authority social workers and the guardian’<sup>24</sup>. Accordingly the final report recommended future use of ISWs should be exceptional.

The government’s response to the FJR recommendations supported some of the thinking and accepted the recommendations on experts. For example, it argued that ‘the commissioning of multiple expert reports which can duplicate or substitute the detailed evidence already offered by the local authority is now the norm.....[and] there are doubts about the value added by many of the reports while the additional delay and costs which can result can be excessive’<sup>25</sup>. The Government therefore argued it would legislate to make it clear that in commissioning and experts report ‘regard must be had to the impact on the welfare of the child... that it be commissioned where it is necessary to resolve the case and

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<sup>21</sup> Op. cit. note 2, Para 4.228.

<sup>22</sup> Op. cit. note 2, Para 4.103.

<sup>23</sup> Family Justice Review Final Report (2011) Para 3.331

<http://www.justice.gov.uk/downloads/publications/policy/moj/family-justice-final-review.pdf>

<sup>24</sup> Ibid. Para 3.132.

<sup>25</sup> Ministry of Justice (2012) The Government Response to the Family Justice Review: A system with children at its heart. The role of experts, Para 41.

<http://www.justice.gov.uk/publications/policy/moj/family-justice-review-response>.

only when information is not available, and cannot properly be made available, from parties already involved. Independent social workers should be employed only exceptionally<sup>26</sup>.

In summary therefore, while there is a range of views about the value, timing and contribution of independent social work assessments for courts, there is little hard evidence - and some challenging and interesting views.

## 2 The aims and objectives of the study

The study is in two parts, the first focusing on the work of ISWs and the second examining the impact of their work on courts. First, we aimed to evaluate the work of independent social workers in the light of the above concerns. The study explored the following fields:

- To address case complexity allegations of child maltreatment and concerns/allegations contributing to failures of parenting were explored in order to construct a profile of the children and parents in the sample cases. We also examined whether clinical evidence (e.g. paediatric, psychiatric, psychological) was available at the point of referral to the ISW, and whether some/further clinical evidence was being sought.
- We examined letters of instruction and the questions put to the ISW – and whether these (and the subsequent reports) comply with the President’s Practice Direction on the use of experts (2008)<sup>27</sup>.
- We explored the context in which ISWs were instructed and whether they were commissioned in cases where parenting or viability assessments already existed, along with ascertainable reasons for the ISW assessment.
- We evaluated the content of ISW reports, exploring the depth and breadth of the assessment, the model of social work practice engaged, with supporting frameworks and tools engaged. As a measure of value and ‘added value’ to the court, we evaluated the quality of reports according to a piloted criteria, developed to extrapolate key features of reports central to an assessment of parenting and risk for the purposes of court proceedings. These include the structure and presentation of the assessment, the clarity of analyses undertaken, transparency in how views are

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<sup>26</sup> Ibid.

<sup>27</sup> Op. cit. note 11 above.

reached (i.e. the relation of opinion to an evidence base), the synthesis of key information into a 'balancing' exercise in which factors (positive and negative) are evaluated and how this information is brought together to answer the questions set, thus arriving at a conclusion and recommendations.

- We also explored whether all the questions in the letter of instruction (LOI) were answered – and the degree of transparency and evidence-base underscoring that exercise.
- With regard to issues of delay, we examined the timescales set for reports and whether these were met – and the reasons for any delay, the duration of assessments and variables that might be associated with increased duration.
- We explored whether cooperation and engagement with families had been a problem for the local authority and how the ISW negotiated that difficulty.
- In the context of claims that ISW may not be independently accredited or have significantly greater expertise than the local authority social worker, we aimed to examine the background and expertise of ISWs.

### 3 Sample size and selection

The study so far reports on findings from an examination of records from three independent agencies providing expert witness services. The agencies are based in the East Midlands, the West Midlands and in East Anglia; two of the three agencies offer social work and clinical expertise for family proceedings.<sup>28</sup>

The cases described below were selected from the database of each agency. From the total population of referrals for an ISW report within s.31 proceedings over a 12 month period, we selected cases retrospectively in date order beginning with those completed by the 31 March 2011. We aimed to examine 99 cases overall. However about two thirds into the sample, and in consultation with the funder (CISWA-UK), we stopped collecting data: indications were that further work was likely to re-produce findings so far. It should also be noted that the actual time taken to access and evaluate data (see below) was double that estimated. In the light of those issues, we agreed to stop at 65 cases.

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<sup>28</sup> For example offering experts in the field of paediatrics, psychology, child and family and adult psychiatry.

Access to data was via agency Case Management Systems (CMSs) and to files containing letters of instruction, ISW reports for courts and, where available, indexes to the court bundle. Access was remote, through a web link using passwords. No restrictions were placed on our selection method or choice of cases by the participating agencies. All data are fully anonymised: parties, professionals, courts, and agencies are not identified.

The schedule for data collection – both quantitative and qualitative - was piloted by three researchers on three cases per agency each cases coded separately by the researchers. At the end of the pilot stage a good level of consistency was achieved in coding the content of reports (85%); this was followed by redrafting of a small number of questions (and following input from the Advisory Group) and additional guidance notes. The main fieldwork was undertaken by two researchers; each researcher undertook 50% of cases per agency, cases allocated to researchers on a random basis.

There is no comprehensive data on ISW experts. This raises questions with regard to representativeness and the degree to which findings can be generalised to the wider population of ISWs instructed in proceedings. However, although the total population of ISW experts is not known, indications are that there is some ‘cross-over’ between the various avenues through which ISWs may provide expert witness services courts. Some may act as self employed children’s guardians, some as self employed independent social work experts, and some as associates working through independent agencies (as in the case of this sample) – and some may do all three. In which case, the findings are likely to be reflected in a proportion of the wider population of ISWs. Without a comprehensive database of ISWs it is not possible to formally check the representativeness of our sample.

## CHAPTER 1 – PROFILE OF CASES AND CASE COMPLEXITY

### 1 The sample size and selection

- The sample consists of 65 cases concerning 121 children subject to proceedings under s.31 of the Children Act 1989.
- Cases were randomly drawn from the records of three independent agencies providing expert assessments for family courts.
- Completed cases were selected, retrospectively, in date order, covering the period December 2010 – 31 March 2011.
- The agencies are based in the West Midlands, the East Midlands and East Anglia but take referrals from across England and Wales.

### 2 Types of Assessment

- The sample contained 82 reports
- Most of these (83% - 68/82) were assessments of one or both parent/more than two parents:
  - 72% (59/82) were parenting assessments (including addenda); of which 4% (3/82) were community-based assessments (including addenda)
  - 10% (8/82) of reports were viability assessments of parents (including addenda).
- Assessments of relatives/others as potential carers for children accounted for 17% (14/82) of reports:
  - 10% (8/82) reports were full kinship assessments
  - 6% (5/82) of reports were viability assessments of relatives/others.<sup>29</sup>
- Overall, an addendum report was requested in 25% (16/65 cases):
  - Most (14/16 – 88%) were commissioned to address further questions not included in the original LOI and/or because the circumstance in the case had changed since the original report submitted by the ISW.
  - The request resulted from, for example, further evidence from a clinical assessment which the ISW was asked to consider, or following a fact finding hearing (and a change of position by a parent), or a relative coming forward to offer support to a parent as a sole carer, or a parent previously assessed as part of a couple, subsequently seeking assessment as a sole carer.

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<sup>29</sup> One further assessment in the 'non-parent' group was a specialist risk assessment of a relative as a potential support for a parent wishing to provide sole care for a child and where there are concerns regarding allegations of sexual abuse by the relative some years ago. The independent social worker deployed specialist skills and training in interviewing and assessing alleged perpetrators of sexual abuse.

- Two addendum reports (13%, 2/14) were sought because there was some dispute as to the content of the original report<sup>30</sup>
- About half of requests for an addendum report were restricted to a 'paper exercise'; data for the remainder (7) indicate more than one further interview was necessary.

### 3 Clinical/other expert reports: (a) reports filed by referral to an ISW and (b) reports to be commissioned in the case

- Most cases (81%, 51/65) indicated some medical/other specialist evidence had already been filed in current proceedings by the time the ISW was instructed (this includes cases where an entire bundle from any previous proceedings and contain such evidence was filed within the current case)
- In just over half of cases (55%, 36/65) indications were that medical/mental health evidence was to be obtained.

### 4 Courts

- Except in certain circumstances, applications for care orders start in the Magistrates' Family Proceedings Court (FPC).<sup>31</sup> By the time ISW assessments were commissioned in this sample, most cases had been transferred to a county court care centre/care centre in combined court (CC).
- Overall, just over one third of cases (34%) were heard in London family courts.

### 5 Parties instructing ISW experts

- Most first/only LOIs<sup>32</sup> were based on joint instructions (64%, 40/63 cases<sup>33</sup>) and joint instructions involving the three major parties (local authority applicant, parent(s) and child(ren) accounted for 48% (30/63) cases:
  - The local authority was involved in instructions in 65% (41/63) of cases: as a party to joint instructions in 52% (33/63) of cases and as the sole instructing party in 13% (8/63) of cases.
  - Parents were involved in instructions in 79% (50/63) of cases: as a party to joint instructions in 59% (37/63) cases and as the sole instructing party in 21% (13/63) of cases
  - The child was a party to joint instructions in 56% (35/63) of cases.
- Grandparents were involved in 14% (9/63) of instructions: as a party to joint instruction in 8% (5/63) of cases, as sole instructing party in 6% (4/63) of cases.

<sup>30</sup> In one case a parent argued the ISW had misunderstood what she had said; the ISW was asked to address the parent's concerns. In a further case there was a difference of view between the ISW and a local authority social worker; the ISW was asked to address the difference.

<sup>31</sup> For example, where there are ongoing proceedings concerning another child of the parent in a higher court, in which case applications would be consolidated in that court.

<sup>32</sup> This section excludes LOI for any addendum reports.

<sup>33</sup> Information from databases lacked information on two LOI.

- Where parents were the sole instructing party (21%, 13/63 cases), ascertainable reasons fell into two, almost evenly split, groups:
  - In the first group, while there was evidence of previous assessments by the local authority of a parent/extended family members<sup>34</sup>, the assessment had not included the parent now seeking an independent assessment (6/13)
  - In the second group, a previous assessment had included the parent but the report was contested by the parent as limited/inaccurate in some degree (7/13).
- Four cases indicated issues of independence/human rights were raised: in all cases this was not a 'freestanding' complaint; there were other concerns about the quality of a previous assessment (some of which were shared by a guardian) and for example the fact it had not included a new partner. In each case instructions to the ISW were joint, involved the local authority, the guardian and the parent(s).

## 6 Letters of instructions

- All first/only letters of instruction (LOIs) to ISWs set instructions in the context of guidance on the use of expert evidence in children cases:
  - Letters referred the ISW to the responsibilities and duties of experts in children proceedings as these were set out in the Practice Direction<sup>35</sup> (2008) (41% did so), or they referred the ISW to previous Guidance<sup>36</sup>.
- With regard to compliance with the requirements of the Practice Direction:
  - Overall, questions in LOIs to ISWs were mostly clear (83%).
  - However a *limited* number of letters (17%, 10/59) included a repetition of some questions, some poorly drafted questions and the occasional question which could not be answered by an ISW. There was also a small number of letters in which many questions were posed (see below) with little indication of attention to defining the key issues and logical sequence of questions<sup>37</sup>.
  - While all letters referred to instructions following 'an order of the court', few (13%) enclosed a copy of order - but this would usually be included in the court bundle.

<sup>34</sup> These included core assessments, viability assessments (of a parent and/or relatives) a residential assessment, kinship assessments).

<sup>35</sup> Practice Direction: Experts in Family Proceedings relating to Children (1 April 2008) (<http://www.justice.gov.uk/downloads/guidance/protecting-the-vulnerable/care-proceeding-reform/experts-pd-flagB-14-01-08.pdf>) now superseded by Practice Direction 25A – Experts and Assessors in family proceedings (this Practice Direction supplements FPR Part 25 (6 April 2011)

<sup>36</sup> Appendix C - Code of Guidance for Expert Witnesses in Family Proceedings Protocol for Judicial Case Management in Public Law Children Act Cases.

<sup>37</sup> It may be the case that parties had been unable to agree questions thus all those drafted by each were included in the LOI, or perhaps lack of time to construct a working hypothesis/key issues which would arguably inform the sequence of questions. As indicated below (see Para 7) in these circumstances the ISW generally identified key issues, addressing these within the assessment process then returning to the questions and re-arranging the order in an appropriate sequence for the court. It is however questionable whether the initial LOI met the criteria of Para 1.5 of the Practice Direction (2008): questions should be manageable in number, clear, concise and focused.

- LOIs did not routinely list 'essential reading' (13% - 5/63 did so); although all referred the ISW to the court bundle which was enclosed/sent.
  - Just over 40% of letters identified other relevant people in proceedings (i.e. other experts in the current or any previous proceedings); and all noted the right of the ISW to speak to those people, provided accurate notes were taken of any such discussions<sup>38</sup>.
  - Some 45% of letters identified experts *to be* instructed; all stated the right of the ISW to speak to those experts provided the above terms of the Practice Direction in this regard were met.
- Almost all LOIs (92%) set out specific questions which the ISW was required to address/answer.<sup>39</sup> Almost all questions posed (96%) were within the ambit of the ISW's expertise and skills<sup>40</sup>.
  - Almost all LOIs (81%) set out the context to instructions (i.e. a case background). In many letters, this was extensive; but in some this detail was relatively brief, referring the ISW to the court bundle for the 'full story'.

## 7 Number of questions and tasks required in letters of instruction

- Counting the list of questions, as these are set out in the LOI, may be misleading as an indication of the magnitude of the task set for experts. Questions may include several sub-categories, some of which may require extensive work in their own right.
- A more informative approach is to explore how many specific *tasks* are likely to be generated for experts by lead questions and sub categories.
- If tasks are calculated as these relate to each adult to be assessed (e.g. assessing a parent alone, with a new/different partner, with/without the support of an extended family member – and determining the support services each combination is likely to need) - and with reference to the needs (current and long term) of *each* child in a case, the number of questions to be addressed by the ISW frequently increases – sometimes substantially.
- A task-based analysis gives a more accurate picture of the work, expertise and time required of the ISW. In this sample and for the first/only LOI:
  - The range of tasks generated by questions was between 1 and 36<sup>41</sup>

<sup>38</sup> Para 5.1 (6) (7) Practice Direction (2008)

<sup>39</sup> That is, in requesting a 'Parenting Assessment' in the context of the assessment framework some very specific questions relating to the parent(s) and subject children/others were listed; letters which did not follow a request for type of assessment, with a list of specific questions pertaining to the adults and children, tended to be those requesting a Viability Assessment.

<sup>40</sup> As this was set out in the author's qualifications, skills, and experience in the report itself or a C.V. attached to the report. A limited number of questions were either beyond the expertise of the ISW (requiring clinical expertise) or were unanswerable given circumstances at the time of assessment.

<sup>41</sup> Those with very small numbers tended to be requests for a viability assessment.



- Most letters of instruction (66%) contained no more than 15 tasks/questions
- The median was 13.

## 8 Children – a profile

- The sample cases concerned 121 children/young people
- *Age*: at the date of letters of instruction children ranged from 35 days to 15 years:
  - most (64%, 77/121) were aged six years and under
  - 13% (16/121) children were infants under one year
  - 17% (24/121) were aged 10 years and over.
- *Ethnicity*: recording of children's ethnic group status in LOIs and reports was problematic and cannot be relied upon as an indicator of ethnicity<sup>42</sup>. Just under half of cases (49% - 32/65) contained information on ethnic group; those cases concerned 52% (62/120) children in the sample:
  - 33/62 children (53% of children) for which information was available were recorded as White British
  - 11/62 (18%) were reported as of Pakistani origin.
- It might be suggested that where there is no information on ethnic group, samples are likely to be White British (on the basis that people are likely *not* to indicate ethnic group for White British children and more likely to state this for those who are not White British).
- However, under the Children Act 1989 (welfare checklist) attention is drawn to the characteristics of children<sup>43</sup>, and there is also extensive guidance on attention to issues of ethnicity, religion and language in assessments – and to the importance of recording ethnicity in reports for courts<sup>44</sup>. Equally, the Public Law Outline (PLO) Guidance to Experts (Appendix C) stated the importance of attention to and recording of issues of diversity<sup>45</sup>.

<sup>42</sup> Care is necessary with the interpretation of this finding: information on children's ethnic group should, in theory, be included in social work statements to which the ISW has access. However, as indicated in the conclusions below, there is a strong argument for including this in the profile of all families (in the LOI and the ISW report as a stand-alone document).

<sup>43</sup> S1 (3) (d) CA 1989 (welfare checklist).

<sup>44</sup> DoH (2000:37) *Assessing Children in Need and their Families: Practice Guidance*, Section 2. London: TSO; limitations in the recording of information in expert reports for courts on issues of ethnicity and cultural and religious diversity were highlighted in Brophy J, Jhutti-Johal J and Owen C (2003) *Significant harm in a multi cultural setting*: London. MoJ. Absent or incomplete recording of parents' ethnic group status was highlighted in a study of serious cases reviews; see Rose W and Barnes J (2008) *Improving Safeguarding Practice. A Study of Serious Case Reviews 2001 – 2003*. London: DCF.

<sup>45</sup> The need to improve descriptive and substantive attention to issues of diversity in expert reports for courts was highlighted Brophy et al. (2003) and taken forward in *The Protocol for Judicial Case Management in Public Law Children Act Cases* (2003) and subsequent updates (*Public Law Outline: Guide to Case Management in Public Law Proceedings* (2008) and *Practice Direction Public Law Proceedings Guide to Case Management* (2010) (see,

- *Gender*: 51% of the sample children are male, 49% are female.
- *Location*: indications are that the majority of children were already living apart from birth parent(s) by the time the ISW assessment was commissioned: 19% of children were living with a parent or relative at the point at which the ISW undertook an assessment.
- *Orders in force at assessment*: almost all children (94%) were subject to an interim order at the time the assessment was commissioned<sup>46</sup>.
- *Number in sibling groups*: most cases (72%) contained no more than two children; a further 14% contained three children, and 8% concerned four children. Thus while larger families featured in the sample (with five to eight children), they constituted a very small part (6%) of the sample; however they did present increased complexity and substantial challenges to the assessment exercise.

## 9 Child ill-treatment: a picture of allegations/concerns and multiple ill-treatment

- Caveats apply to these data: they are intended to give a picture of the concerns/allegations about maltreatment of children in cases but they may not be a comprehensive statement of those forming the basis of the threshold criteria as alleged by the local authority<sup>47</sup>:
  - 48% of children/young people were subject to concerns/allegations which included physical injury/risk of injury
  - 7% were subject to concerns/allegations which included sexual abuse/risk of sexual abuse
  - 67% were subject to concerns/allegations which included emotional abuse/risk of emotional abuse
  - 80% were subject to concerns/allegations which included neglect/risk of neglect.
- Indications are that most children (75%) were subject to allegations covering multiple forms of ill-treatment:
  - 45% were subject to two categories of abuse
  - 28% were subject to three categories of abuse
  - 3% were subject to four categories of abuse

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[http://www.justice.gov.uk/downloads/protecting-the-vulnerable/care-proceeding-reform/public\\_law\\_outline.pdf](http://www.justice.gov.uk/downloads/protecting-the-vulnerable/care-proceeding-reform/public_law_outline.pdf).

<sup>46</sup> Three children were subject to an EPO/PP immediately prior to proceedings.

<sup>47</sup> Unlike previous research in care proceedings (e.g. Brophy et al. 1999; 2003; 2009; Hunt et al 1999; Masson 2008), this information is not taken from the local authority application and supporting social worker evidence in the court file. Rather it is drawn from the LOI and the ISW's report - and in most cases referral was before a fact finding hearing, thus the issues identified remain concerns/allegations and are not necessarily a comprehensive statement of the local authority's case.

## 10 Child maltreatment: indications for children's health and development

- Information (from LOIs and ISW reports) indicates concerns/allegations covering a range of health/development effects on children/young people. For many children there were indications of multiple effects on health and development.
  - These included evidence of substance addiction in new babies, physical injury, self harming behaviour, mental health problems, and school problems (including attendance problems, bullying/being bullied, and isolation by peers).
  - A significant number of children were said to be suffering delay in cognitive development, and many (over 40%) were reported as exhibiting emotional problems including attachment disorders.
  - A small number of children (about 10%) were described as 'silenced' by ill-treatment; and professionals were concerned such children would be unable to tell an adult about distress, or think another adult could/would help, or could be trusted to help.
  - A small number indicated evidence of 'offending' behaviour by children, including involvement in drug and alcohol misuse, inappropriate sexualised behaviour and a possible perpetrator of sexual abuse.
  - A small number of cases also reported children had taken on responsibilities beyond their years (e.g. caring for siblings, highly vulnerable/volatile or needy parents, or grandparents, with physical/mental health conditions). These responsibilities affected children's health, schooling and self esteem.
  - Many children had observed substantial and sustained domestic abuse (both physical and emotional) targeted at their mother (55% of mothers experienced domestic abuse). Evidence indicated domestic abuse had been a part of their home life for a considerable period – sometimes years.
  - Some homes (about 20%) were described as chaotic and unsuitable for children at the time they were removed.

## 11 Parents – a profile

- *Numbers of parents:* the first/only assessment concerned 32 mothers and 34 fathers.
- *Previous involvement in care proceedings regarding another child:* for most parents this was their first experience of care proceedings involving a child but 24% had previously been involved in proceedings regarding maltreatment of another child.
- *Socio-economic status:* most parents are poor: 69% are wholly or partially dependent on state benefits.
- *Ill-treatment in childhood:* 42% of parents were themselves abused as a child.

- *'Known' families:* almost all households (over 95%) were known to local authorities: over 60% of *children* were well known (37% had been known for over five years; 26% for between 2 – 5 years).
- *Ethnic group of parents/carers:* information on the ethnic group of parents was poor: 46% of reports provided some information covering 45 adults. Of these, most (64%) were White British. As indicated above, it may be the case that people only state ethnic group status where the sample is not White British, but in this context that cannot be assumed – and the status of each parent needs to be addressed.
- *Parents living together/separately:* the birth parents of most children (86%, 100/117) were not living together at the point of the assessment.

## 12 Problems and failures of parenting: a picture of concerns/allegations

- Indications of key factors underscoring local authority concerns/allegations and contributing to failures of parenting in the sample reports were<sup>48</sup>:
  - Mental health problems – cited for 39% of mothers and 8% of fathers
  - Illicit drug misuse - 29% of mothers, 22% of fathers
  - Alcohol abuse – 26% and 20% respectively
  - Involvement in crime - 20% and 34% respectively
  - Permitting inappropriate visitors to their home - 19% and 6% respectively
  - Mother is subject to domestic abuse by male partner – cited in 55% of cases
  - Parent has a learning disability - 11% and 6% respectively
  - Inability/failure to protect child from partner/others – 29% and 17% respectively
  - Parent(s) unable to cope with/control a child – 28% and 15% respectively
  - Lack of cooperation/engagement with local authority – 48% and 29% respectively
  - Lack of cooperation with health agencies – 29% and 15% respectively
  - Chaotic lifestyle - 20% and 8% respectively.
- For almost all parents, information indicated multiple concerns/allegations contributing to failures of parenting<sup>49</sup>:

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<sup>48</sup> Some 21 variables were coded for mothers, fathers/others; the above findings - with the exception of learning disability – are presented where they are on or above the twenty percent mark. As per note 47 above, these categories were constructed from previous research on care proceedings and caveats apply.

For mothers:

- the range of variables was between 0 and 12
- 63% (34/54 mothers) contained no more than five variables
- 20% (11/54 mothers) indicated at least eight variables
- The mean for mothers was 5.17.

For fathers:

- the range was between 0 and 9
- 68% (27/40 fathers) had no more than four variables
- 15% (6/40) had at least eight variables
- The mean for fathers was 3.73.

### 13 Identification of need for further work with parents

- Some 56% of ISW assessments recommended direct/further work with parents, some directed at individuals, some at couples, and some at parent-child relationships. These included:
  - Therapeutic services for parents who themselves had been abused as children
  - couple counselling and individual counselling
  - domestic violence programmes
  - anger management programmes
  - parenting classes
  - adoption counselling

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<sup>49</sup> See note 47 above, categories constructed from previous research on care proceedings and caveats therefore apply.

## 14 Key findings and implications – family profiles and instructions

### (a) Parties instructing ISWs: single and joint letters of instruction

- Parents were a party to most LOIs - 79%. However, most (59%) were joint instructions.
- Cases where a parent was the *only* party to instruct an ISW and where that instruction was based on a complaint about an existing local authority assessment were rare (4 cases). Equally, there were no cases where issues of independence/human rights as a 'stand-alone' claim, underscored a parent's application for an independent assessment.
- The local authority was a party to instructions in the majority of first/only LOIs to ISWs - 65%.
- The child was a party to instructions in over half of first/only LOIs (56%) - all these were joint instructions.
- Thus while parents were involved in most LOIs to independent social workers, that finding has to be placed within the context of joint instructions and the circumstances of the case (see below). Findings on instructing parties do not support the view that parents are solely responsible for the use of ISW assessments basing claims on a right to a second opinion of an existing local authority assessment.

### (b) Indicators of case complexity:

#### *(i) The profile of children and parents and complexity*

- The profile of parents and children referred to ISWs demonstrate multiple complexities, both with regard to children and adults. Most children were subject to allegations concerning more than one form of ill-treatment; and most cases contained multiple concerns about the implications of alleged maltreatment on the health and development of children. Most children were young, two-thirds being six years and under. Almost all children were subject to an interim order during proceedings, and most were placed or remained outside of their birth family. Most cases concerned no more than two children but larger sibling groups presented additional complexity.
- Most parents were subject to multiple concerns/allegations contributing to failures of parenting: most children were subject to allegations of more than one form of ill-treatment. In other words, as demonstrated by other studies on care proceedings, co-morbidity remains a strong feature in the profile of families in proceedings<sup>50</sup>.
- Overall, nearly half the sample parents (47%) had mental health problems, 42% had drug problems, 45% had alcohol problems (some both, some all three); and there were concerns about involvement in crime in most cases (54%). A high number of

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<sup>50</sup> Indeed, in a recent review, the research on recorded parental problems from initial referral stage, to initial assessment, child protection conference, care proceedings and serious injury or death, key features such as drug/alcohol problems, mental illness and domestic violence not only co-exist but increase in magnitude as research samples progress along a continuum – see Table 1.3 Cleaver H, Unell I and Aldgate J (2011) (2<sup>nd</sup> Ed.) *Children's Needs – Parenting Capacity*. London: TSO.

mothers (55%) were subject to domestic abuse. Equally, a high proportion of parents were recorded as unable/unwilling to protect a child from a partner/others (46%). Moreover, a high proportion of cases (70%) included allegations of the failure of parents to cooperate with children's services, and many cases (44%) indicated lack of cooperation with health agencies.

- Most children were well known to children's services prior to the application (63% for more than two years).
- Most parents are very poor, struggling on the lowest rung of the socio-economic ladder: almost 70% were wholly or partly dependent on state benefits. Many (42%) had themselves been ill-treated as a child, some having grown up in the care system, others whilst not removed, were recorded by the ISW as having suffered substantial abuse as children. Over half (56%) were identified by the ISW as in need of support/further support, or therapeutic programmes.

*(ii) Courts and complexity*

- A further indication of complexity is the level at which a case is heard with most cases in this sample already transferred to a county court care centre by the time an order was made for the instruction of an ISW. This also raises issues of timing in the instruction of ISWs.

*(iii) Other experts and complexity*

- Most cases (81%) included some clinical or other specialist evidence at the point of referral; 55% indicate some/further expert evidence was being sought.

*(iv) Letters of instruction – expectation of ISWs as experts*

- All letters treat ISWs as expert witnesses: letters are constructed according to the Guidance, or more recently the Practice Direction, on instructing experts in children cases. Instructions refer the ISW to that Guidance and specify the duties and responsibilities of expert witnesses, thus distinguishing ISWs from professional witnesses.
- The principles of expert practice are specified, including independent advice and assistance to the court; a non partisan approach; transparency in method (setting out clearly the evidence on which opinion is based) providing reports which are balanced, well researched and unbiased. ISW are reminded of the need to adherence to issues of confidentiality and disclosure; etc.; as are the areas into which the ISW should not stray - issues of 'fact', as opposed to those on which they can advise the judge – including those which are the prerogative of the court – provided they are qualified to express such an opinion.
- This expert instruction is confirmed in a number of ways in the ISW report (see below); and the ISW is also required to include a statement that he/she has read, understands and adheres to the Guidance on the duties and responsibilities of experts.

- Most letters complied with Guidance/Practice Direction but a small number (10) fell short of the standards set, questions being repetitive, lengthy in number, and, in some cases, lacking a clear focus/structure.
- The number of questions posed was considerable, and the actual tasks set increased these. However, a task-based analysis is a more meaningful measure of the work and time required. The range of tasks/questions was between 1 and 36, the median being 13. This is another indication of complexity.
- The complex profile of children and parents, expectations of ISWs in terms of the range and depth of tasks/questions to be answered – coupled with duties and responsibilities to the court as an expert witness – indicate an ‘added value’. This is *not* to say that social workers do not deal with the complexities posed by highly vulnerable families – clearly they do, but as a professional witness for the applicant. Crucially, social workers do not have an additional role as an expert witness appointed by the court. Their role as professional witnesses, rather than expert witnesses, dictates the focus and the principles on which they work, and the presentation of their evidence (see below, chapter 4 - Report).



## CHAPTER 2 – THE ASSESSMENTS

### 15 Parents, carers and potential carers assessed

- 72% of assessments were of a birth parent(s): in 25% of cases the mother only was assessed, in a further 25% the father only; while in 22% parents were jointly assessed, and in a further 3% a birth father and partner were assessed.
- Assessment of grandparents accounted for 14% of cases
- In some 4% of interviews with parents/others, the ISW worked through an interpreter.

### 16 Interviews with parents, other carers and potential carers

- The range of interviews undertaken by ISWs with parents/other carers or potential carers during an assessment process was between 1 and 21<sup>51</sup>:
  - 10% of assessments were based on one interview only (6/61 reports) - these were primarily viability assessments
  - most assessments (71%) involved no more than five separate interviews with a parent(s); and excluding single interview assessments, the mean was 5.2<sup>52</sup>
  - interviews were dynamic in method, and extensive in the range and depth of information covered with parents and others (see Para 31 below).

### 17 Assessment interviews cancelled or 'failed' by parents/others

- Most appointments (73%) made with parents and other carers/potential carers went ahead as planned; while 27% of cases (for the first/only report) noted at least one cancelled/'failed' appointment. The reasons and the rescheduling of appointments were detailed in the assessor's report for the court. The impact of rescheduled appointments on the timely delivery of reports is detailed below (see Para 41 below)<sup>53</sup>.

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<sup>51</sup> At the top of the range, cases with 10, 13, 14, 15 and 21 interviews respectively, each represented one case. The latter were complex cases which became more so during the assessment process affecting the number of interviews and duration of the process. For example, two cases contained three children and several adults to be assessed (mother and a new partner, father and a new partner, each to be assessed as a couple but the father also to be assessed as a sole carer). The case had complex intergenerational and family dynamics and a history of non-compliance with professionals. The local authority had undertaken viability assessments but not core assessments of either household. In a further case the ISW revealed 'disguised compliance' by parents which hid some serious risks, the local authority not having undertaken a detailed assessment of the parents.

<sup>52</sup> This compares with similar findings on the views of child and family child psychiatrists regarding the need for several interviews with families in care proceedings (Table 3, Brophy J (2001) Child Psychiatry and child protection litigation. London. Royal College of Psychiatrists (Gaskill).

<sup>53</sup> It should be noted that not all appointments that had to be rescheduled resulted in a delay in the report reaching the lead solicitor or courts - see chapter 5.

- Most adults (81%) were seen in their own home<sup>54</sup>.

## 18 Parenting assessments: ISW interviews/discussions with professionals

- During the assessment process, almost all ISWs (90%) held discussions with other professionals involved with children and parents (by phone or face-to-face):
  - *The social worker/team manager*: some 58% of ISWs held discussions with the local authority applicant (53% held discussions with a social worker and a further 5% had discussions with a social worker and his/her team manager)
  - *Foster carers*: some 35% interviewed a child(ren)'s foster carer(s)
  - *Contact centre staff*: 38% held discussions with contact centre staff (28% had a discussion with a worker; and a further 10% had a discussion with the manager).
  - *Schools*: 22% of ISWs contacted a child(ren)'s school (13% talked to the Head; and a further 8% talked with a child's teacher)
  - *Health Visitors and Family Support Workers*: some 7% of ISWs interviewed a health visitor; and 8% interviewed a family support worker
  - *Others*: some 33% of ISWs also interviewed a range of other professionals.

## 19 Parenting assessments: ISW observations of contact sessions, interviewing children and use of existing evidence about children

- For parenting assessments, most ISWs (77%) observed a child(ren) during at least one contact session with parent(s)/other carer/potential carer:
  - some ISWs (29%) undertook observations in more than one setting
  - almost one third (32%) read/evaluated another observer's contact records
  - As indicated above, 38% interviewed contact centre staff.
- In 14% of cases, the ISW was given leave to interview a child/young person.
- Reports demonstrate that ISWs make extensive use of existing information and evidence from and about children, from statements and reports disclosed in the court bundle (see below). Just under half (48%) also draw specific attention to the views of children/young people in their report.
- This information (observational evidence and evidence from other documents disclosed to the ISW) and the methods of assessment (see below) - and the interplay of the assessment process with parents - goes to the core of the work of the ISW in assessing and interpreting parenting capacity and risk, in the light of the needs of children – see below).

<sup>54</sup> Other venues included a solicitor's office and the home of a relative/friend.

## 20 Parenting assessments: ISW interviews/discussions with extended family members/others

- In over two thirds of cases (68%), the ISW interviewed a least one extended family member/friend during the assessment of a parent(s):
  - Grandparents were the most likely to be interviewed (maternal grandparent(s) were interviewed in 32% of cases, paternal grandparent(s) in 15% of cases)
  - The siblings of a parent(s) and others (e.g. a sister and brother in law; a brother and sister in law) were interviewed in 18% of cases
  - Other relatives were interviewed in 34% of cases
  - A close friend of a parent was interviewed in 16% of cases<sup>55</sup>
- Most relatives/friends (65%) were seen in their own home.

## 21 Local authority assessments – parents and children in current proceedings<sup>56</sup>

- Most cases (93%, 57/61) indicated the local authority applicant had filed at least one assessment relating to the care of a child(ren) in the current application:
  - 15% (10/61) of cases indicated an initial social work assessment had been completed
  - 52% (32/61) of cases indicated the local authority had undertaken at least one viability assessment of someone (a parent, or carer, or potential carer)
  - 71% (43/61) of cases indicated at least one core/parenting assessment had been undertaken at some point<sup>57</sup>.
  - 41% (25/61) of cases indicated another type of welfare assessment had been undertaken (e.g. a pre birth assessment).

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<sup>55</sup> Percentages exceed 100 because more than one category or person was interviewed in some cases.

<sup>56</sup> That is, assessments indicated as having taken place regarding care of the subject child(ren) prior to the instruction of the ISW. It is important to note the sources of data for evidence of prior assessments were: the index to the court bundle (where available), the content of letters of instruction and the ISW report. Not all agencies were able to supply/obtain a copy of the index to the bundle in the sample cases. And while letters of instruction did not list the documents in the court bundle supplied, some (but not all) ISWs listed documents read at the start of their report or listed these in an appendix. Thus the evaluation relied on a combination of sources and, in the absence of comprehensive access to all indexes, we cannot claim comprehensive coverage – and the detail of some indexes was problematic. The sources we examined therefore provide a 'reasonable to good' indication of 'prior' local authority assessments but this may not be as comprehensive a picture as that possible from an analysis of court files.

<sup>57</sup> This includes three residential parenting skills assessments; it cannot be concluded all parenting assessments were completed: indications from the work of the ISW were that at least some were not, with parents withdrawing or the local authority suspending the assessment.

## 22 Reasons for commissioning an ISW assessment

- The major reason why an ISW was instructed to assess a parent, where there was evidence of previous assessment(s) by the local authority, was because a 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<sup>58</sup>.
- In 18% (9/49) of cases, an existing assessment was out of date.
- In 16% (8/49), a previous report was not accepted by the court/guardian or did not meet the court's needs.
- In 35% (17/49) of cases, a previous report was contested by parents; as indicated above, most of these cases (27%, 13/49) were contested on grounds of content.
- In 39% (18/49) of cases, a previous report was seen as limited in other ways.

## 23 Local authority core assessments

- There were 19 cases indicating that a local authority core assessment had been completed *in the twelve months preceding* the instruction of an ISW.
- In a majority of these cases (68%), there was evidence of a high level of conflict between the local authority social worker and the parent(s); in some instances an impasse had been reached.
- For those cases (13/19) where 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 which case further assessment would be indicated, in any event.
  - In 2/13 cases, key information was missing from the local authority assessment (in one case, information on one child was missing, and in another the assessment had not addressed a parent's learning disability).
  - In one further case, the reasons were unclear but the report was extended to include a father and his partner; in a further case, the assessment was linked to a kinship assessment already undertaken by the ISW within current proceedings.
  - In a final case, a mother argued that she had made substantial changes in her life - all on her own initiative; and these changes were evidenced in the ISW report.

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<sup>58</sup> Note multiple reasons were possible.

- 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 specific questions suggesting outstanding/new information was required:
  - In most of these cases (5/6), in addition to specific questions for the purposes of current proceedings, additional questions focused on outstanding issues such as appropriate contact arrangements, whether further support might be needed for a parent and if so what, and further/updated information on a parent undertaking treatment for alcoholism and anger management, etc.
  - In 2/6 cases, the previous core assessment had not included a parent and new partner – although, in one case, the local authority had already undertaken a viability assessment of a father (negative), but when findings from a clinical report were outstanding.
  - In one case, a father contested the content of a local authority assessment. The ISW report confirmed the outcome of that assessment, but identified gaps in the local authority care plan regarding sibling placement, and recommended they be placed together.

For example:

- **Case 1:** A core assessment and a pre-birth assessment existed for a baby removed at birth (other children having also been previously removed from the parents and in relation to whom there was clinical evidence). The parents argued they had made changes; and contact centre staff identified some improvements. An ISW, with specialist skills in the area of risk posed by the parents, was jointly instructed to assess the parents' understanding of past concerns, any changes made motivation to change and timescales for change, along with an assessment of the dynamics of the couple relationship, observations of contact and any current deficiencies in capacity to parent. The report was detailed, evidence-based and analytical in terms of current issues for the subject child. The outcome was, however, negative.
- **Case 2:** It was unclear whether a core assessment in this case had included the father. An ISW was jointly instructed to undertake a parenting assessment of the father. A detailed report concluded the father was not able to meet the needs of the children, and the ISW supported a plan for adoption. The ISW highlighted the timetable for the children and the importance of placing them together. The report explained the father's parenting style, its impact on the children, why the children should not be placed with him, and his understanding of local authority concerns. The report noted the father's cooperation and engagement with the ISW assessment process.
- **Case 3:** This case concerned several children. A core assessment had been undertaken by the local authority. An ISW was jointly instructed to undertake a parenting assessment. The ISW concluded that the parents did not accept failures of parenting, and it was therefore not possible to advise what would help

them improve their parenting. The report provided evidence of the extent of denial by the parents, and a strong evidence base for an opinion that they lacked capacity to change. In addressing placement and future contact, the ISW advised that any contact with the parents should be carefully managed and monitored, and that there should be contact between the siblings.

- **Case 4:** A local authority assessment was challenged by the parents. Equally, it did not meet the evidential needs of the court. An ISW was jointly instructed to assess the parents further. The ISW, who had specialist skills and experience in assessing minority ethnic families reported that the local authority had misinterpreted cultural contexts to parenting, and that views had become entrenched. The ISW disagreed with the conclusions of the local authority assessment – both with regard to the father’s lack of openness and that he was unable to meet his children’s emotional needs. The ISW outlined the level of cooperation and engagement of the father during the assessment process, and recommended rehabilitation of the children with their father.

## 24 Local authority assessments of parent(s) and another child in previous proceedings

- Overall, in 23% of current cases (15/65), documentation indicated a parent(s) had been involved in previous care proceedings regarding another child.
- In only eight cases was there information, in data sources, on the assessments undertaken in those earlier proceedings.
- With the exception of one case, all the 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, and the mean was 166 weeks.

## 25 Cooperation and engagement between parent(s) and the local authority

- Some 66% of ISW reports on parents explored the history of parental cooperation with the local authority. This was addressed in some detail with parents during the assessment (see below).
- In just over half of cases (51%), the independence of an ISW was explicitly identified as one of the key factors in the decision to seek the assessment.

## 26 Cooperation and engagement by parents with the ISW

- Given the high level of parental involvement in joint instructions to ISWs (see above Para 5), it is not perhaps surprising to find almost all engaged in the assessment process.

- However, the sample contained a high number of parents (over 77%) where there were serious concerns/allegations of failures of parents to cooperate with local authorities. In initial interviews, at least, many parents expressed distrust and anger towards the local authority/ a particular social worker – and sometimes to all professionals.
- Despite that background, and on occasion evidence of initial reserve or hostility when first meeting the ISW, most parents were described as polite, welcoming, open and willing to engage in what was for many a distressing, and at times painful, process. Reports demonstrate that some parents engaged in detailed discussions about being ill treated as children with a surprising degree of openness.
- Evidence of non-cooperation with the local authority was addressed directly with parents, and their views and versions of events explored and checked against evidence in the court bundle. This history was then reflected back to parents with skill and sensitivity, but also robustness when versions of events needed to be challenged or explored further.
- This approach could achieve some shifting of position and acknowledgement by a parent of some, if not all, local authority concerns - this being a prelude to assessing capacity for change and the possibility of future cooperation. That investigation (of both sides of the argument) also enabled ISWs to confirm elements of a parent's account of their relationship and difficulties with a local authority.
- While there were a number of failed interviews (see above), almost all were re-scheduled, and almost all parents completed the process. This was the case even where it was probably apparent, before the end of the process, that the assessment would not ultimately support their application.

## 27 Key findings and implications - assessments of parenting

### (a) Duplication of local authority assessments

- The findings do not support views that ISW assessments routinely duplicate local authority assessments, add nothing new, or simply check what the local authority has already done.
- A key issue underscoring the decision to instruct an independent social work assessment was the local authority's inability – for whatever reason – to undertake an assessment. Thus a considerable percentage of cases (43%) lacked a *current* local authority assessment to duplicate or check. In these circumstances, the ISW adds a considerable amount of information – and value.
- It is, however, also important to note that a proportion of cases concern parents/carers with previous experience of care proceedings. As indicated above, 23% of parents had been subject to proceedings regarding maltreatment of another child. Caution is necessary, as we only had access to information about those 'prior' cases in just over half of the current cases in which this was a feature (8/15 cases). However, almost all these 'prior' cases were completed well over a year before the current proceedings - some considerably longer.
- A larger study, with multi-level sources of data, would cast more light on such families (where parents have had a child removed in earlier proceedings); but the 'direction of travel' indicates a considerable gap between sets of proceedings, new circumstances arising in families, and a history of difficulties of cooperation with professionals. In these situations, there may be considerable benefits to an early and independent assessment.
- This is, however, a complex area, and the involvement of the local authority in joint instructions of ISWs requires investigation. It may represent a pragmatic response in the current climate; further work would benefit from an examination of the views and experiences of local authority child care lawyers. However, instructions which include the local authority applicant may also suggest recognition of the potential benefits of instructing an ISW. These benefits may be various; findings indicate that they include ISWs having manifest independence, and the skills and time fully to assess highly complex parents with a history of non-cooperation with professionals. Sharing the cost of the assessment is another possible benefit.

### (b) Courts are too willing to accede to applications for additional assessments

- These findings raise questions about this view of court practices and we require further sources of data including some observations of court hearings. This evaluation demonstrates that a substantial number of ISW assessments are not in practice 'additional' assessments, and in these circumstances courts may be faced with little choice. Whether, in practice, most local authorities would prefer to undertake an outstanding assessment required by the court, and have the resources to produce comparable assessments (within the timeframes met by ISWs – see below), remains a question. However, problems exist for courts where an existing



assessment is out of date (i.e. does not address current circumstances) or does not meet the needs of the court, and/or where parents contest the content – and where the local authority cannot meet the timetabling demands of the PLO<sup>59</sup>.

**(c) Advantages to the court of an expert ISW**

There are also advantages to the court in an expert ISW assessment. For example, it gives the court ultimate control over instructions where parties cannot agree (ensuring a ‘fit’ between the needs of the court and the questions posed); and, crucially, control over timing. But in addition, there are some specific benefits which accrue from the status of the ISW as an expert witness in children cases. These relate to the principles on which they work and thus the particular document they produce - as prescribed by their duties and responsibilities to the court, rather than to parties (see above)<sup>60</sup>.

**(d) Parents, ‘second opinion’ evidence and human rights claims**

- While parents were more frequently involved in instructions to ISWs than other parties, as indicated above, most were joint instructions, and most reports were not ‘second opinion’ evidence (most did not address a comparable report filed in current proceedings). It was rare for human rights issues/claims to feature in the ascertainable reasons for instructing an ISW and in no case was this issue a freestanding complaint. Other sources of data might throw further light on this issue but the ‘direction of travel’ suggests that existing local authority assessments raise concerns about quality/content and that is what features most in the reasoning engaged by parents rather than claims grounded in terms of human rights.

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<sup>59</sup> President’s Guidance, Bulletin No 2 (Dec 2010) – Case management decisions and appeals applies: applications for additional assessments or expert reports as a matter for the court

<sup>60</sup> This is not to argue that ISW assessments are expert in the (lay) sense of ‘better’ than local authority assessments – that may or may not be the case so far as a core assessment is concerned – rather, an ‘expert’, for the purposes of court proceedings, performs a different role (see above, Section 6 - letters of instruction: duties and responsibilities of experts in children cases).

## CHAPTER 3 - FRAMEWORKS AND TOOLS ENGAGED, SKILLS AND EXPERTISE APPLIED

### 28 Independent social work practitioners: qualifications, experience and specialist expertise

- Overall, ISWs employed by the sample agencies for care proceedings had substantial experience in child protection work:
  - The minimum post qualifying years was six, the maximum was 42 years, the mean was 25 years and the median 24 years
  - A majority (85%, 135/159) had 15+ years post qualifying experience; 12% have between 11 and 15 years
- Over two-thirds (68%, 108/160) had a relevant higher degree.
- Prior to a first appointment as an independent social work practitioner/children's guardian, in addition to those who had been working as social workers (15%, 20/130) many were either senior practitioners (19%, 25/130) or had held managerial positions in local authority children's care/other agencies (34%, 43/130). These posts included:
  - team managers, assistant directors, senior practitioners, team co-ordinators, adoption managers, heads of safeguarding, heads of care, operational managers, area directors and service managers.
- In addition to child protection skills and experience, a majority of ISWs have additional expertise in specialist areas. These include:
  - learning disability, and mental illness (including personality disorders)
  - sexual abuse, and risk assessments of alleged perpetrators/convicted offenders and their families
  - domestic violence and abuse
  - assessing parenting and maltreatment in minority ethnic families and travelling communities
  - substance misuse and parenting
  - direct work with children (wishes and feelings, life story work, therapeutic play techniques, joint investigation and memorandum work)
  - adult capacity
  - kinship assessments
  - international children work, and children in asylum and immigration cases
  - adoption and fostering
  - standardised/psychometric testing and use of specialist structured assessments to assess risk of violence
- Most ISWs (76%) have completed over 31 reports as welfare experts in care proceedings.

- Some ISWs are engaged in writing and delivering training materials for social workers.

## 29 The frameworks engaged in parenting assessments

- ISW assessments of parenting are a dynamic process (see below) and no one single approach was adopted. Rather, a range of perspectives, theoretical frameworks and tools/measures were engaged in the narrative of the report (see below). These included an ecological/developmental approach (60%)<sup>61</sup>, but also a substantial use of psychodynamic and family systems approaches (84% and 53% respectively).
- While an assessment of current and future risk which parents and others may pose to children is incorporated into each of the above approaches, an additional 20% of assessments utilised certain standardised tools during assessments (see below, standardised measures).
- In 10% of cases (6/62), the ISW addressed the cultural/religious framework of a parent; and in 12% (8/62), the cultural/religious framework of a child(ren) was addressed.

## 30 Viability assessments

- Overall, almost all viability assessments (mostly over 90%) addressed standard headings: extended family networks, social/community support networks and housing and financial situations along with histories and experiences of parenting.
- All viability reports explored the assessed person's understanding of a subject child(ren)'s emotional and physical needs; and most (82%) explored safety issues and capacity to parent.
- Equally, almost all reports (91%) explored willingness to accept professional advice; while just over a third (36%) explored support issues which might mean there would be a need to put specific support in place.
- Reports were not, however, limited to the above headings. Some LOIs posed further questions to be addressed; and, in terms of depth and thoroughness, some viability reports appear to differ little from full assessments.
- Over two thirds (6/11) engaged an ecological/developmental framework<sup>62</sup>, and a psychodynamic approach was evidenced in the narrative and referenced in the text; while over half included a family systems approach.
- Numbers are very small: 4/11 recommended proceeding from the viability assessment to a full parenting or kinship assessment; none recommended a further

<sup>61</sup> E.g. DoH, DfEE and HO (2000) Framework for the Assessment of Children in Need and their Families. London:TSO.

<sup>62</sup> Ibid.

viability assessment, or clinical/other input; and three were followed by an addendum report.

### 31 Use of standardised tools/measures

- Just over a third of ISWs (35%, 23/64) utilised standardised measures during assessments:
  - 18% (9/23) used the Strengths and Difficulties Questionnaires and Scales<sup>63</sup>
  - 16% (8/23) used the Parenting Assessment Manual (PAMS, McGaw 2000) (developed for assessing parents with a learning disability)
  - 18% (9/23) employed measures/scales for assessing parents' perceptions of past/present experiences, agency involvement and perceptions of children, and measures of self perception/self esteem
  - 16% (8/23) used a Genogram or an Ecomap
  - Other measures/tools, for example, addressing inappropriate sexual/violent behaviour, questionnaires addressing alcohol use and vignette exercises were deployed in assessments but in smaller numbers.

### 32 The Assessment Exercise

- The ISW assessment of parenting is a dynamic process, the approach is evidence-based, and the method is forensic.

#### Focus on children

- The profile of children is set out in some detail. Reports set out the allegations of maltreatment and the implications for children's health and development, as identified in the case so far.
- Information is drawn from documents in the court bundles, including the local authority application for a care order, social work statements, the social work chronology, and - where available - any assessment of parents/others<sup>64</sup>, initial/interim analyses from a guardian if available, plus any clinical assessments filed to date and any statements from parents. So, for example:
  - where children have been assessed by a paediatrician, information on growth and developmental milestones, and the stated aetiology of any problems, will be incorporated
  - findings from any psychological/psychiatric assessments to date will be incorporated (e.g. regarding attachment and behavioural problems and needs)
  - Information about how children are progressing and 'presenting' in day care and school settings is also incorporated.

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<sup>63</sup> The assessment framework practice guidance pack (questionnaires and scales, and assessment recording forms) was developed by the DoH (2000) in collaboration with clinical, research and accumulated practice experience about the developmental needs of children. The aim of the practice guidance was to make transparent the evidence base for the Assessment Framework, thereby assisting professionals in their tasks of analysis, judgment and decision making.

<sup>64</sup> Initial, viability and core assessments, but note that for those cases where a core/parenting assessment was available, this was usually completed several months before current proceedings.

- A 'picture' of the needs of the child is constructed in terms of safety, stability, stimulation, physical care and emotional health and development, in both the short and long term.
- This information is supplemented by observations of children during contact sessions and, where leave was granted, by talking directly to children.
- While it is not usually part of their brief to report on children's views, ISWs highlight key views from reports based on direct work with children.
- The profile of children which emerges from this analysis forms the criteria against which parents are assessed as to their understanding of, and their willingness and capacity to meet, children's immediate and long term needs.
- In the course of assessing parenting capacity (see below), that profile may be further extended through reference to research evidence on outcomes for children who have suffered parental maltreatment. Research evidence also informs features that parents/carers may have to demonstrate as proof of real motivation to change, for example, to meet the needs of children described as requiring 'better than good enough parenting' to deal with the emotional and psychological (and sometimes neurological and physiological) consequences of maltreatment.
- Although most ISWs are not instructed to assess children directly, they demonstrate the need to have a clear picture of children's needs in order to assess whether parents understand their needs and have the capacity to meet them. They also provide a comparison for the portrayal of children and their needs, as this emerges in the narrative of parents.

### **Key theories and frameworks engaged in assessments**

- Reports demonstrate that independent social workers are eclectic in their use of theoretical frameworks and tools: an ecological and developmental approach was engaged in 60% of reports, and psychodynamic and family systems approaches in 84% and 53% respectively.
- A key value is having the training, skills and experience to reflect on and interpret information and observations, and the ability to employ a range of approaches to assess vulnerable and frequently volatile parents in complex relationships and with intergenerational problems.

### **Parents as people**

- Assessments began with a detailed examination of a parent's own experiences and views about being parented during childhood. This provided a framework for:
  - examining current thinking and recent behaviour in caring for children
  - exploring whether a parent has/can develop empathy for a child

- contributing to explorations of responsibility – or culpability – for ill-treatment
- ISWs obtain a considerable amount of intimate and often painful information from parents about their lives:
  - this could result in recognition by a parent that he/she had imported their own self reported experience of poor parenting into current parenting attitudes/practices
  - that acknowledgment could be a springboard for exploring the emergence of empathy for a child and perhaps a real understanding of the need for change
  - it could also inform views on the likely time frame for change that is deemed possible.
- Early education, adolescence and relationships, through to a current or most recent partner, were discussed and analysed. In particular, patterns in the choice of partners and family dynamics were identified and reflected back to parents.

### **The process**

- Most ISWs employed the Framework for Assessment of Children in Need and their Families (DoH et al. 2000). Thus the dimensions of parenting capacity and family and environmental factors are addressed, as those are set out in the framework (see below, chapter 4 – Reports).
- The assessment involves a series of interviews (see above, chapter 2) in which issues are explored with parents and information ascertained, analysed and reflected upon, checked with existing evidence disclosed (for example, compared with what parents may have said to other professionals and in their own statements), and further discussed with parents.
- The process is directed by the LOI and the needs of the child. It is forensic in method, so that where there are discrepancies in information, these are pursued with parents. The approach is sensitive but robust; and it also allows for the possibility of more than one version of events and explanations of mistakes, as well as acknowledgments of errors and dishonesty, and reasons for mistrust.
- The assessment process, in practice, is a ‘journey’ with parents/carers, but with the ISW in control of the agenda, and the impact on and implications for children is central to the agenda. For example:
  - issues of involvement in crime are examined with parents against evidence disclosed to the ISW
  - incidents of domestic violence are pursued in detail against information contained in the court bundle
  - evidence of substance misuse is discussed against documented evidence
  - limited explanations, denial, and evasions are approached directly
  - parental understandings and honesty - including given backgrounds and family dynamics (and whether both may be compromised) - are explored in detail

- areas of risk are made explicit with parents, as are the necessary indicators professionals require in order to move forward
  - past cooperation with professionals, and potential for future cooperation, is explored, looking at attitudes to engagement, how these developed and where/if they are susceptible to change, as well as whether alleged lack of cooperation in fact reflects any failure by the local authority to engage parents.
- In some assessments, parents participate in practical exercises. These include preparing something in writing about their understanding of concerns, or working through a series of vignettes/pictorial representations of children's potential emotional needs and issues of safety, security and stimulation, or working through options for instigating boundaries for children without resorting to physical punishments.
  - The assessment could include discussions on why parents might scapegoat one particular child, why a parent might be motivated to continue to prioritise a partner over the needs of children, and issues underscoring poor attachment (including discussions about the influence of a parent's own early experiences of attachment as a foundation for the character of their care giving).
  - The key to this process is that it is dynamic, with the ISW checking and reflecting on evidence and returning to parents – who are given the time and space also to reflect on information, attitudes and the formation of 'mindsets' and options. The process is evidence-based, the approach is forensic - both with regard to the attitudes and behaviours of parents, but also with regard to the work of the local authority where, for example, parents complain about approaches or lack of services/support.

### **Duplication**

- It is inevitable that some information in cases will be reproduced; experts do not and cannot start with a 'blank sheet' but rather have a set of instructions based on existing allegations, a construction of events by parties, and the evidence in the court bundle.
- Welfare information may vary in quality, contemporary relevance and functionality, so far as the needs of courts are concerned. As demonstrated above, an assessment may not be current and some checking of information is necessary.
- Exploration of 'duplication' of assessments is, however, a complex exercise; and findings demonstrate that it cannot be assumed that because assessments bear the same name (kinship, parenting, viability etc), that they are necessarily comparable in terms of timeframe, subject, content and quality.
- The value of the court framework, in gaining parental co-operation, cannot be underestimated. However, the study indicates that that is not the sole factor explaining parents' engagement in an ISW assessment.
- ISW and local authority assessments may reach the same conclusion on certain issues – but on further/additional evidence, producing a significantly more robust

basis for making crucial decisions. For example, it may indeed be the case that a parent has made significant changes in lifestyle and attitudes since the original assessment; but these have to be assessed against the needs of the child in an evidence-based exercise. It may be the case that changes are identified as sufficient or, sadly, insufficient for the needs of child. Further assessment may not confirm all or part of a previous assessment on the same subject. However, where new/changed circumstances raise possibilities that child may be returned to a birth parent/relative, a further assessment may provide a fuller, more detailed evidence-based analysis enabling a judge to feel confident in moving forward.

- 13 cases provided evidence of a local authority core assessment, or a residential parenting skills assessment, in the six months prior to the instruction of an ISW. Changed circumstances, new adults, and/or missing information from the assessment account for most of the reasons underscoring the appointment of an ISW (9/13 cases) while in two cases, the specialist skills of the ISW were the rationale for the instruction.



### 33 Key findings and implications – frameworks, tools, skills and expertise

#### (a) Issues of experience and expertise

- Findings demonstrate this body of independent social work experts has a high level of experience and expertise unlikely to be matched by most local authority social workers undertaking core assessments. That, however, is only one part of the current equation in evaluating uses and value.

#### (b) Introducing a third social work professional

- One concern expressed about the use of ISWs is that it simply introduces a third social work professional in addition to the local authority social worker and the guardian. And indeed the President's Practice Direction states that those seeking permission of the court to instruct an expert must provide the court with details as to why the evidence cannot be provided by social services under a core assessment, or by the children's guardian in accordance with their statutory duties<sup>65</sup>.
- As indicated above, there are several reasons why a local authority may not have provided a current assessment. In any event, evidence over many years demonstrates that they do not do so for a significant proportion of families (43%) subject to proceedings<sup>66</sup>, and concerns have been expressed about a proportion of the assessments that are filed.
- With regard to Cafcass and the statutory duties of guardians, the policy trend within Cafcass is moving firmly away from any 'hands on' assessment of families, to that of an appraisal/monitoring of local authority records. The Cafcass operating framework, embedding a 'proportionate working model', means that guardians are no longer permitted to engage in direct work with families to fill any gaps in local authority evidence, and indeed a guardian may not necessarily see a child<sup>67</sup>. Despite the best efforts of practitioners, therefore, there appears to be something of a lacuna for a significant number of vulnerable families, for whom neither the local authority nor Cafcass can provide. However, it is also important to note that there are fundamental differences in the statutory role and duties of each professional.
- It is of course the case that the local authority will have information on, and have observed/monitored, families. Some have achieved cooperation, but that may not have been sustained. But evidence indicates that at least some of that work has not been matched with a written assessment, or up to date assessment.
- In these circumstances, the ISW assessment is not introducing a 'third social work professional'; rather, it may be the first comprehensive assessment in current circumstances, dealing with the questions posed by the court. Equally, where a core

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<sup>65</sup> As indeed did the earlier 2003 Guidance (Code of Guidance for Expert Witnesses Appendix C Para 2.3) Protocol for Judicial Case Management in Public Law Children Act Cases.

<sup>66</sup> That is, prior to what is referred to as the 'Baby P' effect, and before the Laming Inquiry into the murder of Victoria Climbié (2003) - see, Brophy J (1999) Expert Evidence in Child Protection Litigation: Where do we go from here? London TSO.

<sup>67</sup> Key Performance Indicators (KPIs) for Ofsted's inspection of Cafcass do not currently include seeing the child.

assessment exists, there can be 'added value' from an independent assessment. While the skills base may be similar, the evaluation demonstrates that as expert witnesses for the court, the ISW's assessment, and the 'terms of reference' for the job are different.

**(d) ISW assessment**

- Assessment of parenting by this sample of ISWs is a dynamic process, the approach is evidence-based, and the method of enquiry is forensic.
- The findings demonstrate that this sample of ISWs is highly experienced. They are able to draw on a range of theoretical frameworks and tools in engaging parents; and, they have the skills and experience to analyse and interpret information and observations, and to present the court with an evidence-based opinion of the capacity of parents to meet children's needs.
- Parental interviews are sensitive and skilled, but also robust. As an expert for the court, the ISW is able to explore the possibility of more than one version of events and explanations of behaviours. The assessment is a 'journey' with parents/carers but the needs of children are in the driving seat.
- The ISW adds value because they are usually providing assessments of parenting in the absence of a comparable report.
- Where they recommend placement of a child outside of his/her birth family – and thus aspects of social work evidence - they 'add value' because the assessment underscoring that recommendation is based on current circumstances, it is evidenced-based, transparent, independent and focused on the needs of courts.
- It is inevitable that some information in cases will be reproduced. Expert reports should be free-standing documents: they do not and cannot start with a 'blank sheet', but are rather produced in response to a set of instructions based on existing concerns, allegations, options and available evidence.
- Welfare information may vary in quality, contemporary relevance and functionality, so far as the needs of courts are concerned. Some checking is necessary and ISWs demonstrate that some parents may have valid complaints.
- An assessment by an experienced ISW may reduce the likelihood of a contested hearing, and so it may enable courts to meet increasingly tight timetabling targets and assist in the early resolution of a case. This requires further research.
- In certain circumstances, an ISW may also assist the local authority. The views and experiences of local authorities in this regard require research. Equally, the views of parents require examination, perhaps especially in the light of the number parents who have had more than once child removed from their care.

## CHAPTER 4 - REPORT FOR THE COURT

### 34 Answering all the questions

- In most cases (73%, 47/63), all the questions in the LOI were addressed and answered by the ISW. For those reports where some questions were not answered (25%, 17/64), the ISW set out the reasons. These included<sup>68</sup>:
  - Early conclusions to key questions regarding parenting capacity, understanding of a child's needs, local authority concerns and assessments of capacity for change were seen to discount any need to answer later questions
  - Questions were outside of the ISWs expertise, for example, requiring clinical expertise for a prognosis and thus timescales
  - Recasting and reordering lengthy and repetitious questions, placing key issues and questions together, and so rendering some questions already answered or unnecessary
  - Explaining why some questions were unanswerable - on the basis of the evidence disclosed, or given the circumstances of the case, or without leave to see a child, or in the absence of clinical evidence. For example, asking the ISW to assess attachment and the ability of a parent to meet a child's needs where the father had never lived with the child and had not had contact for some time; questions about the impact of immigration where immigration status was not clarified; or questions about safeguarding, regarding a relative where concerns were not explicit and where the ISW had not been asked to assess the relative.
  - Questions about timescales which were poorly drafted or impossible to answer. This was especially so with regard to some questions about timescales for parents with drug and alcohol problems and issues of certainty. Some questions did not appear to reflect contemporary views regarding the need for such parents to demonstrate an ability to live in the community drug free, before questions of rehabilitation of a child, contact/unsupervised contact and timescales for these, can addressed.
  - Equally, questions about timescales for therapy, for a parent who had yet to be referred, were difficult to answer with any certainty.
  - Some questions, for example, about a child's long terms needs and parenting capacity, could not be addressed until mental health evidence was filed and available to the ISW.

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<sup>68</sup> Based on an analysis of qualitative data from a sub-sample of just over 50% of reports selected to give representation across the three agencies.

## 35 Providing additional information

- The final question in most instructions gives leeway to an ISW expert to include any further information, views or observations he/she thinks relevant and which are not covered in the questions posed. In 41% of cases, additional information was added, including issues/concerns covering<sup>69</sup>:
  - *Delayed intervention* - for example, where it had been clear for some time that parents were not complying with the terms of an agreement under which children were placed with them.
  - *Insufficient information passed to prospective carers* - about the needs of maltreated children, resulting in an application for kinship care and thus an assessment based on unrealistic expectations - given children's needs.
  - *Lack of robust attention to both parents* – where the ISW identified 'disguised compliance' and collusion to be a feature in the behaviour and attitudes of both parents (not simply the mother).
  - *Lack of attention to sibling relationships* – for example, where the local authority had failed to address conflict between siblings or where there was a lack of attention to sibling relationships in adoption plans/where there was no indication that the local authority would seek to place siblings together.
  - *Lack of clinical assessment* – where a child exhibited cognitive, behavioural and development problems.
  - *Lack of identification of a serious alcohol problem* - identified in the ISW assessment but which had not featured in questions put to the ISW in the LOI.
  - *Lack of strategic over view and robust assessment* – several local authorities in succession had taken a 'fresh start' approach to a complex family<sup>70</sup>. This enabled the family to continue a pattern of disguised compliance, resulting in significant delay in taking proceedings.

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<sup>69</sup> Based on a sub-sample of 50% of such reports selected to give representation across the three agencies.

<sup>70</sup> Having located this issue in an assessment, the report refers to the work of Brandon et al. who first highlighted this problem and coined the phrase to describe the approach taken by a number of successive local authorities with complex families (Brandon et al. (2008), *Analysing Child Deaths and serious injury through abuse and neglect: what can we learn?* (England, 2003 - 2005) <http://www.education.gov.uk/rsgateway/DB/RRP/u014591/index.shtml>; Brandon et al. (2009) *Understanding Serious Case Reviews and their impact* (England, 2005 - 2007). <http://www.stscb.org.uk/downloads/GoodPractice/biennial-report.pdf>.

## 36 Presentation of information for courts: meeting the duties of experts

### (a) Clarity of objectives

- Almost all ISWs (91%, 52/57) set out the family/personal goals of parents/potential carers<sup>71</sup>. Most also made it clear to parents what they, as the assessor, wanted to achieve in the assessment (77%), and where necessary, what was expected from a parent(s) in terms of evidence of willingness/capacity for change (93%).

### (b) Key factors: independence, balance, transparency in the evidence relied upon and the analysis undertaken

- As experts in children cases, most ISW reports (85%) set out an explicit ‘balancing’ exercise in their report, detailing both negative and positive elements of parenting, children’s needs and views, parent’s views about local authority evidence and, where necessary, local authority practices:
  - Where appropriate/possible, the ISW identified what had been tried by the local authority with a parent (20%, 13/22); while (12%) commented on why this had not achieved the desired result.
  - About 35% provided new information from a parent.
  - Almost all (96%, 50/52 cases) set out the strengths of parents; and most set out (from disclosed evidence/instructions) the background to the case and how poor parenting was prior to proceedings.
  - Almost all (94%) set out the parent’s/carer’s initial understanding of the local authority’s concerns and allegations.
  - Most (85%) addressed issues of parental denial.
  - A limited number (14%) identified evidence of change in the parent’s attitude/understanding of local authority concerns over the course of the assessment process.
  - About a third of assessments raised concerns about borderline IQ on the part of parents.

Against those issues were placed:

- The likely impact on children if parenting attitudes and behaviours did not change
- Most (83%) set out/repeated, at this point, what specifically was required from a parent as evidence of change or a willingness to change.

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<sup>71</sup> For a limited number of parents/carers this proved difficult as they were unable or unwilling to articulate these issues in discussions.

- Most ISWs (89%) gave a detailed analysis of why changes had not occurred, or were unlikely to be achieved
- Most (77%) highlighted areas of help/support for parents (further services, better/different engagement by the local authority)
- Just over half of ISWs (54%) addressed the views of other experts as these were detailed in the reports disclosed to the ISW.

### 37 Use of research evidence

- Overall, 50% of ISWs referred to research in the body of their report:
  - research evidence was cited in 58% of reports on parents<sup>72</sup>
  - research was cited in 35% of reports on relatives.
- Some ISWs made extensive use of research evidence, for example, in exploring the implications of parental behaviours, attitudes and perceptions on the current and future safety, and emotional and psychological wellbeing of children.
  - In particular, some ISWs draw on research in explaining the impact on children's emotional health and development following serious emotional abuse and neglect, and domestic abuse.
  - Research underscored an analysis which, for example concluded that, given serious ill-treatment, a child required more than 'good enough' parenting for emotional and psychological survival, and where, with support, a parent may be able to provide better parenting where the parent had demonstrated those (research/clinically based) indicators associated with real motivation to change.
  - For these ISWs, research evidence also informed the psychodynamic framework within which ISWs explored the history of parents who themselves had been ill treated as children. It was integrated into the analysis of the impact of early childhood events on current functioning. This was especially so with regard to *explaining* a parent's likely 'capacity for change', issues of honesty and cooperation, and the blocks that might exist given childhood experiences, and thus difficulties in giving a timescale in which change might be possible.
  - In some reports, the ISW also discussed what research evidence had to say about what would be required from a parent to change the 'direction of travel' indicated by the assessment/other evidence.
- Most use of research evidence (60%) was explicit and transparent, with the relevance for a specific issue/view fully explained in the narrative of the report.

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<sup>72</sup> That is, viability assessments, parenting assessments, community based assessments and related addenda.

- Just over half of ISWs reports (53%) included research references – although this varied slightly from reports where all research cited was *fully* referenced (within the text, or footnotes and with a list of all references placed in an appendix) to a limited number where the citation was limited to the author’s name and year of publication.
- 38% of reports cited research where the relevance was not explicit – at least for a reader not familiar with the literature. For example, in a limited number of reports, a reference was added to the end of a paragraph, suggesting the ISW thought the research added weight/authority or further explained a view, but failed to identify precisely how<sup>73</sup>.
- There were no examples of references to research which might raise doubts about a view/dominant views in a particular field. One ISW noted an area where there was limited research evidence to assist professionals and courts. There were no examples of an ISW indicating areas where he/she was unsure of relevant research.

### 38 Presenting conclusions – synthesis of key information

- The conclusions in reports were set out in relatively short sections. They focused clearly on the stated concerns about a parent’s current and potential parenting, and assessed capacity for change as had been addressed and analysed during the assessment process – and the implications for placement and contact (90%).
  - Any changes identified, either during the course of the assessment or which the parent had already embarked on prior to assessment were reiterated (82%)
  - These factors were considered alongside the current needs of children (95%, 54/57) and their likely future needs (82%, 45/55).
  - In relevant cases, Information (from disclosed evidence, the assessment process, and, in some cases, research evidence) was brought together to indicate the likely impact for children – in terms of safety, health and development - if existing patterns of parenting continued (69%, 22/32).
- In the process of coming to a view, most (80%, 49/61) stated/restated a hypothesis (a formulation of what a case is about) pulling together key features for the court

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<sup>73</sup> The issue here is that, while most experienced child care advocates and judges who are ‘ticketed’ to hear care applications are likely to be familiar with key research, this does not necessarily apply across the board (and the introduction of a more specialised family judiciary has recently been rejected by Government (Response the Family Justice Review, Feb 2012). Outside of specialist family courts/combined family centres, magistrates and legal advisers and some judges may deal with limited numbers of care applications; and child welfare and development is not included in formal legal education and is not compulsory in further education (CPD requirements). Equally, child welfare knowledge is not a unitary category of knowledge – it is dynamic and dialectic in method. Thus, if research is to be helpful to the court, it is for the expert to explain its utility both in general terms but specifically in relation to the issues to be decided for ‘this parent and this child’, and it should be fully referenced - whatever the ‘type’ of report. On that basis, we have looked at all reports (viability assessments, full parenting assessments, community based assessments, kinship assessments and addenda) in an analysis of the substantive use of research evidence.

(92%, 57/62). Most ISWs provided a good synthesis of key issues in the context of children's needs.

- In those cases where parental change was deemed necessary, most reports (84%, 26/31) detailed what was necessary from a parent, with the implications for the health and development of children if no change occurred – and an opinion, drawn from the assessment, as to the likelihood of change/attempts at change occurring.
- Almost all reports were transparent in how conclusions were reached. Those rated 'excellent' in this regard (see below) provided a detailed analysis, with 'signposting' by reference and cross reference to sources, throughout the report. This enabled courts – and parties - to track the 'journey' in terms of the issues; and made answering questions, and reaching conclusions, an evidenced-based and transparent exercise.

### 39 Making recommendations

- *Orders and applications:* ISWs tended not to comment on the appropriate order for a child. Rather, the focus was on the assessment outcomes for parents, as against the needs of the child constructed as a 'picture' of children's placement needs.
- In some cases, this resulted in a clear opinion/recommendation, for example, about children remaining with a parent, or for a rehabilitation programme, or the need to find a permanent family which could meet the specific needs of a child – and implying a court order, or suggesting safeguards to support a family placement, or suggesting an order (e.g. placement of a child under a Special Guardianship order).
- *Children's therapeutic needs:* in almost one fifth of cases (18%) ISWs identified therapeutic services required for children.
- *Parents' needs:* as identified above, 56% of ISWs also identified areas for direct work/further work with parents, some directed at individuals, some at couples, and some at parent-child relationships.

### 40 Overall rating of the report for the court

- The overall contribution of reports was rated according to a range of factors pertaining to expert reports for courts in children cases and the needs of courts. These include whether and how all questions were answered, the layout of the report and accessibility of information, clarity in the use and impact of standardised measures, transparency in the analytical process and interpretation, the focus on key areas of parenting and risk in the light of the documented and observed needs of children, and clarity regarding areas of duplication and conclusions.
- Most reports were rated as 'good' or 'excellent'; relatively few were poor or inadequate on any indices:



- Addressing the questions in the LOI: most reports were excellent (46%) or good (49%)<sup>74</sup>
- Layout of the report: 16% were excellent; 63% were good; 16% were poor; and 5% were inadequate
- Use of tools/scales/standardised measure: 27% were excellent, 73% were good
- Clarity and transparency in analysis and interpretation: 48% were excellent, the remaining 52% were good
- Information about issues of change: 69% were excellent; 31% were good
- Information about time frames: 23% were excellent, 51% good and 25% poor
- Information about the needs of children: 27% were excellent; 64% were good
- Clarity about any areas of duplication: most were excellent or good (39% respectively); 23% were poor
- Information to assist the local authority: 37% were excellent; 63% were good.
- For reports where the layout was coded as 'excellent' and for many that were coded as 'good', key features were the organisation of the report, ease in identifying analyses and 'signposting' throughout the report.
- Reports can usually be divided into four areas: the first part presents the framework for the exercise, the second part contains the assessment process itself, the third answers the questions in the LOI and the final section contains the conclusions and recommendations.
- Key features in reports graded 'excellent' or 'good' were a contents page and a 'running' comment (analytical) section.
  - A contents page with headings *and* subheadings listed - each with a paragraph and page number - enables the court see the parameters of the assessment at a glance. It also enables issues to be quickly located in the event of a conflict about whether/how these featured in the assessment and conclusions.
  - Use of a number of 'comment' sections (i.e. summary of findings and analysis at the conclusion of each heading) enables a 'running analysis' of key findings. These are then brought together to answer the questions in the LOI and underscore the conclusions and recommendations.
- For example, a report based on an assessment of parenting and where the layout was rated as 'excellent' would contain most/all of the following:

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<sup>74</sup> On a scale of 1 – 4, 1=excellent; 2=good; 3=poor and 4=inadequate.

## **A front cover page**

This gives the necessary identifying details and key dates:

- Name of ISW and key qualifications with dates
- Respondents in the case
- The subject(s) of the assessment (parents/other(s))
- The children (names) and the name of their guardian
- Date of completion of the report
- Child's case – court reference number
- The court hearing the case
- The date of the hearing for which the report is filed

## **Contents page**

The headings (with page and paragraph numbers):

### *Part one:*

- The Assessor
- Family composition
- Profile of the child(ren)
- Instructions
- Key issues/hypothesis addressed
- Summary of conclusions reached
- Background to the instructions
- Professionals and others interviewed during the assessment
- List of documents read (or attached as an appendix)
- Process of assessment

### *Part two:*

- Assessment of [mother/father/other]
- Basic details and individual functioning
- assessment of mental health and psychological functioning
- use of alcohol and illicit substance
- Comment
  
- History of [mother's/father's/other's] childhood and adolescence
- Education and employment
- History of relationships
  - Relationship with partner X
  - Relationship with partner Y
- Comment

- Criminal convictions
- Comment

- Understanding of local authority concerns
- Comment

- History of parenting of subject child(ren)
- [Mother's/father's/other's] perspective on these events and understanding of children's needs
- Comment

- Observation of contact
- Observations of contact – comments by supervisor
- Comment

- Wider Family
- Subheadings – per family member
- Comment

- Housing

Comment

Employment and finances  
Comment

Social integration and community resources  
Comment

Parenting capacity  
-Basic care  
-Ensuring safety  
-Emotional warmth  
-Guidance and boundaries

Relationship with social services/other professionals  
Comment

The [mother's/father's/other's] proposals for the future  
Comment

*Part three:*  
Answering the questions in the LOI

*Part four:*  
Conclusions and recommendations

Expert's declaration

References  
Appendices

- Part one – framework
  - While a 'working hypothesis' (i.e. a construction of what the case is about) was not routinely included at the beginning of most reports, where this was stated it tended to be followed by a summary of the conclusions<sup>75</sup>.
  - With regard to family composition (sometimes in a table), at its best this sets out information on each adult (date of birth, relationship to the subject child(ren), location, ethnic group/religion etc), along with information on the children including their current placement (e.g. in foster care, with a parent or relative).
  - For adults assessed this section lists interview dates and location along with dates of any 'failed' interviews.
  - This section also lists extended family members and case-related professionals interviewed (e.g. social worker, treating clinician etc.) with dates and whether these were by telephone or face-to-face interviews.

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<sup>75</sup> It is debatable as whether conclusions should be stated at the beginning of a report: there is concern that judges will not read the assessment. However, with limited time, judges may already start with the conclusions and recommendations as set out at the end of the report. A brief 'working hypothesis' could be constructed from the LOI, and if necessary, it could be amended as the assessment progresses and is concluded.

- The dates, times and duration of observations of contact between children and parents may also be included in this section.
- Part two – assessment process
  - The assessment comprises the largest part of the report, set out according to the headings in the contents page. Each heading is numbered, with subsequent related paragraphs numbered as an extension to the main heading. Where information is taken from, or compared with, that in other documents disclosed in the court bundle, this is fully referenced (according to the citation in the index but with full page/paragraph references to the specific document).
  - In the best reports, each section is followed by a comment (effectively, an analysis) of the information as this relates to the issues and needs of the children.
- Part three – answering the questions
  - The specific questions in the LOI are then set out and answered according to the sequence in the LOI. In answering questions, the ISW utilises findings from the assessment. These are again fully referenced (to the specific paragraph/comment in the main body of the ISW report and/or to a document in the court bundle).
- Part four – conclusion and recommendations
  - At its best, the above layout, with tracking and signposting, enables a succinct and fairly brief conclusion; and it enables a reader to see precisely where relevant evidence is located in the body of the assessment, how it was analysed and underscores an opinion and recommendations.
- The above illustration of a report layout represents an assessment based on one parent. In practice, assessments may include several adults (e.g. a mother and new partner and another birth father, and/or a father and a new partner, and a grandparent as a potential support to the main carer).
- Instructions are likely to ask for an assessment of a parent as part of a couple, and alone – and for an assessment of one, or some, or all of the children in proceedings, including the ISW’s assessment of the children’s immediate and long term needs. The ISW will also be asked to comment on parents’ likely future cooperation with professionals in each of a range of possible child placements; and to comment on future contact arrangements. The report headings will reflect that complexity, with the assessment exercise addressing each adult under the headings set out above.
- ‘Signposting’ enables the reader (the court, advocates, and indeed parents) to track the development of key issues (i.e. attitudes and behaviour) in parenting, as these relate to the needs of children, and thus - where necessary - capacity/willingness to change. It also enables identification of how parenting attitudes and behaviours have changed, or may be changing, or have the potential for change.

- The key to an 'excellent' layout is thus fourfold: the structure reflects the forensic nature of the exercise, and enables the reader to track the key issues and the evidence on which expert opinion is based, and the recommendations made. Each heading in the assessment is concluded with a comment (an analysis) and thus confirms the 'direction of travel' against the detailed needs of the children. Finally, layout and method enables the process to be fully transparent.
- Reports coded poor/inadequate on layout mostly reflected the reverse of the above features, for example such reports could lack some/most of the following:
  - Limited information on the cover page
  - Lacked a contents page
  - Lacked an initial table or paragraph setting out the details of the children and parents/carers assessed
  - Contained relatively few headings within the assessment narrative
  - Lacked numbered paragraphs
  - Paragraphs could be very long, in practice covered more than one issue, and in places could become somewhat 'process' driven
  - Contained inadequate referencing to information drawn from other documents
  - Lacked a comment (analysis) at the end of each domain of the assessment
  - LOI questions could be embedded in the text without numbering
  - Where reports lacked clear 'tracking' of evidence and cross referencing of key issues, this made checking the evidence-base for conclusions a time consuming exercise.

## 41 Key findings and implications – report for the court

- Reports almost always answered the questions in instructions or stated the reasons why some were not answered. The number of questions posed was sometimes extensive, suggesting little time to filter questions to a working hypothesis/agreed key issues. Attention to this factor by advocates would be helpful.
- Overall, reports were mostly of high quality. At the ‘excellent’ end of the scale, reports were evidence-based, transparent in analysis, and forensic in method.
- By this, we mean not simply ‘deep exploration’, but rigorous discipline and method in identifying key issues from the assessment and disclosed papers, for the questions to be addressed with parents. At its best, this enables a reader to track these issues from the background to the case, through the narrative of the assessment, and the analysis of each domain of assessment, through to the conclusions reached. This method also applied to the use of child welfare knowledge/research, where key research (for example, on attachment issues, the impact of domestic violence, etc) could be traced throughout the report, with supporting explanatory materials.
- The organisation and presentation of the assessment process, the application of the results to the questions posed in the LOI, the answers given and the conclusions reached, was impressive in that, in the best reports, it was evidence-based and transparent in that process.
- There were, however, some quality assurance issues. The recording of ethnic and religious diversity was poor, and the structure and layout of some reports was also poor. As detailed above, reports with a poor layout and no ‘signposting’ were time consuming to analyse and in places, somewhat ‘process’ driven. While most key information was usually included, in the context of substantial written evidence, increasingly tight timetables and limited reading time for judges this requires attention.
- The importance of layout is not simply one of personal/presentational style. It is linked to knowledge of the needs of courts, and skills and experience in the interpretation and analysis of information. It is also probably fair to say that agency ‘house styles’ may have a role in this.
- The reports demonstrate that interviews with parents are robust and focused, but also fair in balancing information: they move between the information on, by and directly from parents; and, in series of interviews, ISWs work through the veracity of statements and allegations with parents. In ‘excellent’ reports this process is transparent (cross referenced with citation to paragraphs in other documents).
- From working through histories of childhood, ISWs include substantial information about parents. This information underscores later discussions of parental functioning and relationships, capacity to show empathy for children, capacity/willingness to change, and issues of trust and cooperation with professionals. It was integrated into discussions about likely time frames; it preceded the section setting out and

answering the questions in the LOI; but also formed an important part of the evidence on which certain questions were answered.

- The report thus reflects a dynamic approach to case work; and it is forensic in method, moving between the accounts of different parties (in statements/evidence) and events, and back to parents. Reports demonstrate that ISWs also hold in the balance why a parent might not feel able to honest; why cooperation and trust and denial might be rooted in issues other than, or as well as, a desire to hide wrongdoing/mistakes from professionals; and/or why a parent might down play/be unable to acknowledge the impact of ill treatment on a child.
- The indications are that the independence of the ISW is a crucial factor in this part of the process. The ISW thus adds components, working as an expert witness for the court, which a local authority social worker (as the applicant for the order) cannot do. Thus, while ISW assessments of parenting have features in common with local authority assessments, the role carries some important differences.

## CHAPTER 5 - DURATION AND DELAY

### 42 Meeting the due date for delivery of report to lead solicitor and meeting the filing date for the next court hearing

- The timescale from an enquiry to an agency regarding a proposed ISW assessment, to the first/only letter of instruction, averaged 33 days, with a median of 22 days.
- Overall, in most cases (68%, 43/63<sup>76</sup>), reports following the first/only letter of instruction were delivered to the lead solicitor by the date specified in the LOI.
- Analysis of the remaining cases (33%, 21/63) demonstrates that where reports were later than the LOI due date, they fell into four categories. A majority (85%, 14/21) fell into the first three categories below; delay resulting primarily from changes in the case following referral, and 'delay' was constructive and purposeful<sup>77</sup>:
  - *Substantive changes within cases*  
9/21 reports were subject to substantive changes in the circumstances of the case following instructions, for example, a parent became ill or died; a partner or potential carer withdrew from the assessment; further evidence came to light which the ISW was asked to consider; the ISW identified information from an on-going/proposed psychiatric/psychological assessment that would need to be taken into account in a parenting assessment; or the ISW identified a clinical assessment that was necessary. Thus, the ISW assessment was delayed until that information became available; and dates were reviewed with the lead solicitor, with assessments resumed to be ready by a new 'due date'.
  - *Hidden complexity within cases*  
Although very small in number (3/21), reports in these cases indicate that cases were complex on referral, and the ISW revealed them to be even more so during the assessment. Reports suggest cases that are preceded by several years of non-cooperation and poor engagement with families, poor/incomplete previous core assessments, parties who have become 'stuck'/'enmeshed', parents who are well practised in 'disguised compliance', and lengthy proceedings prior to the instruction of an ISW.
  - *'Failed' interview dates*  
An equally small number of reports (2/21) suffered a knock-on effect on timing because parents could not/did not comply with the initial interview dates<sup>78</sup>. Interviews were re-scheduled and reports were lodged 3 and 5 days respectively beyond the due date<sup>79</sup>.

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<sup>76</sup> In two cases, dates for one or all of this exercise were missing.

<sup>77</sup> That is, a delay in the specified timetabling which serves an identified and necessary purpose.

<sup>78</sup> And in one case the ISW had to re-arrange a date.

<sup>79</sup> In most cases with evidence of one or more failed and rescheduled appointments (11 cases), the ISW nevertheless completed the work and submitted the report by the due date in the LOI.



- *Delayed reports*: seven reports (7/21) were lodged with the lead solicitor later than the due date with no discernible case generated reasons for delay. In almost all cases (6/7), the report was delayed no more than 3 days – and half of these spanned a week-end.<sup>80</sup> Data suggests pressure of work as the main reason.

#### 43 Duration of ISW assessments: date of the LOI to submission of report to lead solicitor<sup>81</sup>

- The mean duration for assessments of parenting<sup>82</sup> *as per the questions set in the LOI* was 75 days (just under 11 weeks); the minimum was 27 days, and the maximum was 179 days<sup>83</sup>.
- Parenting assessments over 8 weeks  
Although 64% (28/44) of parenting assessments exceeded 8 weeks, 10 of these experienced purposeful delay (see above); a further three cases suffered delay following heavy snow in England and Wales causing major disruption to transport an necessitating a later start date. Taking both events into account (13/28 cases), in practice, 34% of assessments (15/44) exceeded 8 weeks.<sup>84</sup>
- Parenting assessments over 12 weeks  
Some 34% (15/44) of parenting assessments exceeded 12 weeks; excluding those cases that experienced purposeful delay (see above) and delay caused by severe weather conditions, in practice, 20% (9/44) exceeded 12 weeks.
- Key features contributing to increased duration of parenting assessments were changes in the circumstances of a case post instruction and the number of children

<sup>80</sup> In 3/6 cases the delivery date to the solicitor was a Friday and the report was lodged on the following Monday; in a further case a date for observation of a contact session had to be re-scheduled for child related reasons which were beyond the control of the ISW.

<sup>81</sup> Calculated on the number of days between the date of the letter of instruction/date letter received by the agency and the date the report was lodged with the lead solicitor. Not all of these days (i.e. weekends, bank holidays) will be working days.

<sup>82</sup> That is, excluding community-based assessments, viability assessments and any addenda.

<sup>83</sup> This case contained several features associated with increased duration (i.e. additional complexity as the case progressed, adult mental health problems, multiple and serious health problems in several children, and criminal proceedings; the index to the core bundle indicated substantial documentation was disclosed to the ISW, the case being subsequently transferred to the High Court). In terms of duration (a) the parent failed to keep two appointments and a contact session was cancelled – these were re-arranged; (b) following the LOI, the ISW was asked to consider with the parent findings from a psychiatric assessment of the health, emotional/psychological and developmental needs of the children – the assessment yet to be commissioned ; and (c) once the report became available, the ISW was requested to address the parent's real understanding of and willingness/capacity to meet the complex needs of several children, these spanning serious emotional/behavioural disorders, learning disability and mental health problems. The parent had a problematic history in which co-operation, honesty and trust – and a history of criminal activities - gave serious cause for concern. However this parent had not been the subject of a core assessment by the local authority. The child psychiatric report became available four months following the date of the first LOI to the ISW, and the 'due date' for the ISW report was thus amended; and the time between the date of receipt by the ISW of the clinical report to the delivery of the completed ISW report was five weeks and three days. During the period up to receipt of the clinical report, the ISW had undertaken five assessment interviews with the parent, with a further interview following receipt of the clinical report.

<sup>84</sup> Note this calculation excludes any addendum which might follow.

involved; assessments which exceeded 8 weeks were significantly more likely to involve three or more children<sup>85</sup>.

- Addenda  
Where a parenting assessment was followed by an addendum report (13 cases), the mean duration for such reports was 21 days, the minimum was 7 days, and the maximum 23 days<sup>86</sup>
- Kinship  
For kinship assessments (7 cases), the mean was 52 days (just over 7 weeks), the minimum was 17 days, and the maximum 79 days

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<sup>85</sup> Kendall's tau-c=0.22 p<0.05; the trend was the same for those that exceeded 12 weeks but the difference was not statistically significant, due to the smaller numbers.

<sup>86</sup> One further case had an addendum to the assessment of a parent, followed by an addendum which incorporated a full parenting assessment of two further adults: duration for this report took the maximum to 68 days. This report concerned a parent and potential carers with learning difficulties and a child with a high level of need; and there were extensive problems of engagement with the parent who at one stage was represented by the Official Solicitor.

## 44 Key findings and implications - duration, timetabling and delay

### (a) Defining 'delay'

- It is important to distinguish between increased duration of ISW assessments to meet the needs of a case (purposeful delay), and other causes of delay; but it is also important to obtain robust information on the impact of any initial delay on court hearing dates.
- However, in addition to exploring the realities of alleged delay, work should explore whether ISW assessments make an identifiable contribution to early agreement between parties and settlement of cases.
- It has been suggested that delay is caused by the very instruction of an ISW, late in the day, and where the local authority does not think the assessment is necessary. Indeed, it is argued that the instruction of an ISW is nearly always imposed on local authorities.<sup>87</sup> As indicated above, that requires further multi level research.

### (b) Delay in this sample

- Where there were no changes in the circumstances of a case, post instructions, most reports (67%, 42/63) were delivered to the lead solicitor by the LOI due date.
- For most reports that were delayed, in most cases (22%, 14/63) 'delay' resulted from changes in the circumstances of cases post instruction and was *purposeful*.
- The findings concur with previous studies based on a random sample of care applications: proceedings are a dynamic process in which changes can occur during investigation and preparation for the final hearing.
- For those few reports (11%, 7/63 first/only reports) lodged with the lead solicitor later than the due date and with no apparent case driven factors, almost all reports were no more than *three days late* – and half of these (3/6) this spanned a weekend only.

### (c) Likely impact on court hearing dates

- With regard to the impact on court hearings, while local practices may vary, ISW assessments of parents and relatives are usually seen as critical to decision making; and, like other expert reports, are timetabled to come in shortly before a scheduled hearing (5 -10 working days)<sup>88</sup>.

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<sup>87</sup> Although the numbers are small, that view has been given further prominence by a subsequent report from Ofsted: Right on time: exploring delays in adoption (April 2012) [[www.ofsted.gov.uk/resources/right-time-exploring-delays-adoption](http://www.ofsted.gov.uk/resources/right-time-exploring-delays-adoption)].

<sup>88</sup> For lay/policy audiences, it is important to understand this leeway; it enables advocates to read and digest the findings, discuss with their client and then discuss the way forward with other parties. It thus facilitates a small space in which experienced advocates can move to a position of agreed and not agreed issues in preparation for the next hearing, thus saving on court time and costs. It can be an especially important period for parents where an experienced advocate can advise and support them where critical/difficult information has emerged, and for local authority applicants - if further work is recommended with parents.

- Excluding cases where changes in circumstances resulted in *purposeful delay* which pushed reports ten or more days beyond the LOI due date, indications are that reports were well within time for the next court hearing<sup>89</sup>.

**(d) ISW reports as a cause of delay**

- There is no evidence that ISW reports routinely cause delay in proceedings through the late delivery of reports.

**(e) Duration**

- When the changing and dynamic nature of cases is considered - all other things being equal - most parenting assessments were completed by 8 weeks. Where the assessment process exceeded 8 weeks (36%), almost all cases were subject to purposeful delay; but findings also indicate that the number of children in cases is a significant factor in increased duration of assessments.

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<sup>89</sup> Whilst the study aimed to collect data on hearing dates (the next hearing and final hearing), this information was not widely available – nor was any change to dates necessarily recorded/easily identifiable. Thus we are limited to *estimates* regarding impact on court hearings. However, given the limited delays identified in delivering reports to solicitors, and the usual leeway when timetabling the filing of reports with the court and the date of the actual hearing, the indications are positive.

## CHAPTER 6 – CONCLUSIONS AND RECOMMENDATIONS

### 45 Key findings

- Concern has been expressed that ISWs simply duplicate existing parenting assessments, that they cause delay and that there is a high use by parents seeking ‘second opinion’ evidence based solely on claims under Article 6 under the ECHR. Findings from this study do not support those concerns.
  - It was found that ISW reports mostly provided new evidence not already available to the court. This is already in line with recommendation 3.132 of the FJR.
  - In the absence of changes within cases and *purposeful* delay, ISW reports were almost always delivered to the date specified in the LOI. There was no evidence that reports delayed scheduled hearings.
  - There was no evidence of high use of ISWs by parents seeking second opinion evidence based solely on Article 6 claims under the ECHR – indeed as a ‘stand-alone’ application in this sample this was rare. Perhaps Article 6 is used in a ‘make weight’ argument but arguably it would be unlikely to succeed unless there were real weaknesses in an existing assessment or clear evidence of bias.
- Findings indicate that courts would be severely hampered in the absence of access to the body of expertise and the evidence provided by ISWs - not least in case managing to meet the 6 month deadline for care cases recommended in the FJR<sup>90</sup> and accepted in the Government’s response to it.<sup>91</sup> Any legislative changes and adjustment to the Family Procedure Rules and Guidance would need to reflect an understanding of that finding.
- Moreover as expert witnesses *for the court* the evaluation identified that ISWs have ‘added value’. They are able to engage with difficult and disaffected parents where, for whatever reason, relationships with the local authority are frequently at an impasse, where parents and children face a powerful state agency and where certain child welfare questions remain outstanding. While the independence and status afforded by the court process cannot be underestimated, that alone does not explain the ISW’s success in this regard.
- Alongside considerable skills and experience in assessing vulnerable parents and children within care proceedings, other values follow from the ISW’s role and responsibilities as an expert for the court:
  - Independence (from all parties but with an overriding duty to the court to observe the paramourcy of the best interests of the child)

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<sup>90</sup> Annex 1 (detailed response to each FJR recommendation): Case Management, pp 103 – 112, Ministry of Justice, Department for Education (2012) The Government’s response to the Family Justice Review. <https://www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf> Ministry of Justice.

<sup>91</sup> Ibid. pp 68-71.

- Demonstration of 'balance' in reporting the outcome of the assessment process and key findings
  - Ability to spend sufficient time with parents and engage in reflective practice
  - Skills in observation, interpretation and analysis of information
  - Clear specification of what is needed from parents and others to demonstrate capacity for change – and what they might have achieved so far
  - Use of research in presenting issues and opinions
  - Provision of a report which is evidence-based and forensic in method
  - Ability to work to instructions posed by parties and by the court and for the most part, answering all the questions posed
  - Ability to draw out key hypotheses in a list/hierarchy of questions posed
  - Delivery of reports on time
  - Provision of skills and expertise tailored to the specific needs of the case (e.g. in assessing parents with a learning disability, where there are allegations of sexual abuse, domestic abuse etc).
- There has been something of a misconception in the debate about independent social work practitioners in care proceedings: their work has been portrayed as simply doing what social workers do (i.e. fulfilling the welfare task). That is not correct: whilst they undertake a welfare task providing high quality welfare reports, they also have an additional role. It arises from their duties and responsibilities to the court as an expert witness and permits them to undertake tasks for the court which a social worker - as a professional witness for the local authority - cannot. Moreover the work of the ISW can move cases forward in a way not achievable by local authorities or children's guardians.

#### **46 Referrals to agencies over a 12 month period**

- The sample was drawn from referrals to three independent agencies over a three month period. Over a 12 month period, the total number of referrals for an assessment in public law proceedings was in the region of 480 cases. This figure excludes referrals from local authorities for pre-proceedings assessments.

#### **47 The Family Justice Review and Government response**

- The volume and quality of work provided by ISWs – and the high level of involvement by children's guardians and local authorities in instructions to ISWs - suggests that this area is more complex than originally posed in submissions to the FJR. The Review did not seek hard information as to the use and value of ISWs. Moving forward on policy change in this field on the basis of anecdotal evidence runs a high risk not simply of failing children through poor outcomes – but of increasing delay.
- Cases which are referred to ISWs – although complex – are representative of most care cases. Thus it is not simply a case of establishing exceptional circumstances within cases which might necessitate the appointment of an ISW; there are structural issues such as available expertise - and in some cases the need for expertise tailored to the issues in the case - but also timeliness for reporting, and

independence as a key feature to facilitate the engagement of parents (and thus the quality of report likely to result).

- While some parents, for example, those who have had a previous child removed may have 'lost confidence' in a social worker/local authority, that concept does not of itself explain the response of all parents – or indeed other professionals who currently instruct an ISW. Equally, where skills and/or resources in local authorities are lacking, that situation will not improve overnight; and it will not assist in the aim of improving local authority evidence to remove from local authorities a source which enables them to meet the evidential needs of the court.

#### **48 Family Justice Modernisation Programme (FJMP) and faster justice**

Given the findings on the quality and duration of ISW reports it would appear that with minor adjustments (see below - Improvements) the deployment of ISWs has the capacity to assist the FJMPs to meet targets without sacrificing quality: they have the potential in highly contested situations to provide high quality reports that answer the specific questions required by the court - and can largely do so within the required time frame.

- We were unable to track where in the process ISWs were usually instructed; indications are that it was likely to be sometime after the start of proceedings. There may be good reasons for that (e.g. couples separate, a new partner needs to be assessed, a relative comes forward to care for a child, the guardian identifies a father not previously identified/assessed). In order to improve the contribution of ISWs in meeting the proposed 26 week timescale for cases (see below) it might be helpful to give earlier attention to the appointment of an ISW to undertake outstanding assessments.

#### **49 Improvements and development to services**

- Several issues arise as to the optimal use of ISWs. In the current policy climate which seeks faster and cheaper proceedings, two issues are key. This evaluation focuses on the use of ISWs within legal proceedings but agencies also provide assessments to assist local authorities in pre-proceedings work. Where necessary and helpful to local authorities that role could be extended on two fronts: first, to improve core assessments for the purposes of proceedings so that these are better focused on the needs of courts and second to provide a mentoring and training role.
- While overall quality assurance systems appear to have worked reasonably well in this sample, there are some areas that need attention. Recording of ethnic group status in reports should be standardised and routine (using the census categories). The timescale for the child should also be recorded – in the profile of children. And the layout of some reports requires attention; that might also reduce some of the more lengthy reports. Consideration should be given to certain standard information and its location in reports. Equally, while there was considerable use of research (just over half the sample) that proportion should be increased. This is an evidenced-

based field, welfare and clinical knowledge is dynamic and peer reviewed evidence used appropriately can make a good report compelling.

## 50 Gaps in the data and the need for further research

- Two key questions remain. First while the evaluation of the content and timing of ISW reports is positive, the impact on judicial decision making remains a gap in the data.
- Second, the views and experiences of local authority social workers and advocates require attention. The picture presented by aspects of this research may cast some doubt on the wholly negative views said to be held within local authorities about ISWs. There are some clear benefits to local authorities who – for whatever reason – have been unable to engage parents or cannot meet the PLO timetable. As indicated above, the relatively high involvement of local authorities in instructions to ISW requires unpacking. Anecdotally it is suggested that local authorities are nearly always ‘shoe-horned’ into this - or it imposed upon them by the court where they would prefer to undertake the outstanding work themselves. However there is also some acknowledgment that the local authority would be unlikely to meet the timescales as they are met by ISWs.
- A key issue is the timing and quality of some social work assessments. While access to a sample of local authority core assessment reports would provide valuable information for comparative purposes, of itself that will not resolve why cases came to court without key documents. In other circumstances, the approach of courts, for example, where they experience difficulties in obtaining reports from Cafcass has been to try and work with parties to find a solution which also meets the needs of courts. That approach may also contribute to decisions regarding the instruction of ISWs.



## References

Association of Directors of Children's Services (ADCS) (2011) Submission to the Family Justice Review Review (21 Sept).

<http://www.adcs.org.uk/download/position-statements/oct-10/adcs-fjr-paper.pdf> [Accessed March 2012]

Barnardo's (2010) Submission to the Justice Select Committee Inquiry into the Working of the Family Courts (Sept). [www.barnardos.org.uk/barnardos\\_submission\\_to\\_justice\\_committee](http://www.barnardos.org.uk/barnardos_submission_to_justice_committee)

Brandon M, Belderson P, Waren C, Howe D, Gardner R, Dodsworth J, and Black C (2008) Analysing Child Deaths and serious injury through abuse and neglect: what can we learn? (England, 2003 - 2005)

<http://www.education.gov.uk/rsgateway/DB/RRP/u014591/index.shtml>; [Accessed March 2012]

Brandon M, Bailey S, Belderson P, Gardner R, Sidebottom P, Dodsworth J, Waren C and Black C (2009) Understanding Serious Case Reviews and their impact (England, 2005 - 2007) Research Report No DCFS-R129. Department of Children Schools and Families (DCFS). <http://www.stscb.org.uk/downloads/GoodPractice/biennial-report.pdf>. [Accessed March 2012]

Brophy J (2006) Research Review: Child Care Proceedings under the Children Act 1989. London: DCA).

Brophy J (2001) Child Psychiatry and child protection litigation. London. Royal College of Psychiatrists (Gaskill).

Brophy J, Jhutti-Johal J and Owen C (2003) Significant harm in a multi cultural setting: London. MoJ.

Brophy J (1999) Expert Evidence in Child Protection Litigation: Where do we go from here? London TSO.

Cleaver H, Unell I and Aldgate J (2011) (2<sup>nd</sup> Ed.) Children's Needs – Parenting Capacity. London: TSO.

Department of Health (1988) Protecting Children: A Guide for Social Workers Undertaking Comprehensive Assessment, London: HMSO.

Department for Education and Employment and Home Office. (2000) Framework for the Assessment of Children in Need and their Families. London: TSO.

Department of Health (2000) Practice Guidance Assessing Children in Need and their Families. London: HMSO (Packs -

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4008144](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008144)).(accessed [April 2012]

Family Justice Review (2011) Interim Report (March)

<http://www.justice.gov.uk/about/moj/independent-reviews/family-justice-review> [Accessed March 2012]

Family Justice Review Final Report (2011) (Nov)  
<http://www.justice.gov.uk/downloads/publications/policy/moj/family-justice-final-review.pdf>  
[Accessed March 2012]

Gibb M (2010:2) Social Work Reform Board, Submission, Family Justice Review  
(now see, <http://www.familylaw.co.uk/articles/BASW27102010>).

Hunt J, Macleod A and Thomas C (1999) *The Last Resort: Child Protection, the Courts and the 1989 Children Act*. London TSO.

Ireland J (2012) *Evaluating Expert Witness Psychological Reports: Exploring Quality*.  
School of Psychology, University of Central Lancashire.  
([www.uclan.ac.uk/news/model\\_to\\_quality\\_assure\\_psychological\\_expert\\_witnesses.php](http://www.uclan.ac.uk/news/model_to_quality_assure_psychological_expert_witnesses.php))

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.

Law Society (2004) *Good Practice in Child Care Cases*. Law Society: London. (Now updated 2<sup>nd</sup> Ed. 2010).

Masson J, Pearce J & Bader K. (2008) *Care Profiling Study*. London: MoJ.

Mavis M (2010) 'ADCS chief says Independent social worker role should end', *Community Care* (July) (<http://www.communitycare.co.uk/Articles/09/07/2010/114875/independent-social-worker-role-should-end-says-adcs-chief.htm>).

Ministry of Justice (2010) *Reform of legal aid (Proposal for the Reform of Legal Aid in England and Wales - Consultation Paper CP 12/10)* (Nov).

Ministry of Justice (2003) *Protocol for Judicial Case Management in Public Law Children Act Cases*. London MOJ.

Ministry of Justice, Department for Education (2012) *The Government's response to the Family Justice Review: A system with children at its heart* (2012)  
[www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf](http://www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf) Ministry of Justice.  
[Accessed March 2012]

Ofsted (2012) *Right on time: exploring delays in adoption* (April).  
[www.ofsted.gov.uk/resources/right-time-exploring-delays-adoption](http://www.ofsted.gov.uk/resources/right-time-exploring-delays-adoption) [Accessed April 2012]

Plowden F (2010) *Review of Court Fees in Child Care Proceedings*. London: MOJ.

Rose W and Barnes J (2008) *Improving Safeguarding Practice. A Study of Serious Case Reviews 2001 – 2003*. London: DCF.

Wall, Mr Justice, with Hamilton Iain (2000) *A Handbook for Expert Witnesses in Children Act Cases*. Jordan Publishing;

Ward H and Skuse T (2003) *Outcomes for Looked after Children: Life Pathways and Decision Making for very Young Children in Care or Accommodation*

Ward H, Brown R & Westlake D (2012) *Safeguarding Babies and Very Young Children from Abuse and Neglect*. London: Jessica Kingsley.

## **Case law and Practice Guidance:**

GW & PW - v - Oldham Metropolitan Borough Council [2005] EWCA Civ 1247  
(<http://www.bailii.org/ew/cases/EWCA/Civ/2005/1247.html>)

Practice Direction: Experts in Family Proceedings relating to Children (1 April 2008)  
(<http://www.justice.gov.uk/downloads/guidance/protecting-the-vulnerable/care-proceeding-reform/experts-pd-flagB-14-01-08.pdf>)

Practice Direction 25A – Experts and Assessors in family proceedings; this Practice Direction supplements FPR Part 25 (6 April 2011)  
[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_25a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_25a)  
[Accessed March 2012]

President's Guidance, Bulletin No 2 (December 2010)  
([http://www.familylaw.co.uk/system/uploads/attachments/0001/4513/Case\\_management\\_decisions\\_and\\_appeals\\_therefrom.pdf](http://www.familylaw.co.uk/system/uploads/attachments/0001/4513/Case_management_decisions_and_appeals_therefrom.pdf)). [Accessed March 2012]