



Department
for Education

Adoption cases reviewed: an indicative study of process and practice

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The views expressed in this report are the authors' and do not necessarily reflect those of the Department for Education.

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Executive Summary

Study aims and objectives (p.14)

- This small-scale study has examined the operation of adoption processes under the Adoption and Children Act 2002, through an in-depth scrutiny of twelve closed adoption cases where care, placement and adoption decisions were actively contested and/or opposed by birth parents.
- The study has focused on the robustness of procedures and the quality of practice in these cases. It has sought to address the following three questions:
 - were the required procedures and timescales followed, such that appropriate decisions could be made?
 - was there any indication that children may have been inappropriately taken from their parents and placed for adoption, because the processes were weak or had not been adhered to?
 - did case handling within the local authority and court process deliver timely decisions for children?
- The ultimate objective of the study was to **evaluate the strengths of the current adoption process and establish what changes, if any, are required** to ensure that the processes of local authority and court case handling and decision making are consistent with the principles underpinning the current legal framework of adoption in England.

Methodology (pp.15-20)

- The twelve cases were selected by **purposive rather than representative sampling from five participating local authorities** from three court areas in the north, Midlands and south of England. The sites were selected to include a range of different local authorities in respect of geographic location, demography and varied adoption performance, during the period between 2005 and 2012.
- Data collection was undertaken through a **detailed review of closed adoption files** held by the local authority or court. An adoption journey timeline was constructed for each child (from birth to adoption order) and consideration was paid to case complexity as well as the pattern of contestation by parents and judicial response.
- The study demonstrates **the value of examining the child's journey to adoption through both local authority and judicial processes**. However, observations from file scrutiny would need to be further probed through interview with professionals and parents to more fully understand the dynamics of contestation.

- In addition, given the sample size, ***further research would be necessary to establish the extent to which the present findings can be generalised to contemporary practice*** in England, and to enable the discrepancy between strong and weak performance at the case level to be accounted for more fully.

Key Findings

The adoption journey (pp. 34-38)

- For the purposes of retrospective policy and practice analysis, ***adoption journey timelines should be estimated from the child's date of birth rather than from the date of the care admission***. This enables a child-centred perspective to be taken on the child's experience and developmental trajectory.
- There was ***wide variation in the timeliness of the local authority decision to apply for a care order***. In many cases children were removed from harmful and risky circumstances in a prompt and pre-emptive way. In other cases they were left at home for years, in the face of recorded concerns and unchanging parenting they were at risk of significant developmental harm, before the local authority got a decisive grip on decision making.
- The ***accommodation of children, under s20 CA89, was used routinely as a staging post en route to the care and placement applications***.
- The child's journey to adoption placement was more likely than not to be delayed following admission to care. ***Children waited between thirteen and forty nine months to be placed, following care admission***. Only half the children were placed within the current government target period of 21 months.
- Care and placement proceedings were especially prolonged. ***The average time taken for care proceedings to conclude was fifty two weeks***. In only one case did the court conclude the care and placement proceedings within the proposed new statutory limit of twenty six weeks.
- ***The average time between the Panel recommendation of adoption and the adoption placement was just over the current twelve month national standard***. Children waited between one and nineteen months to be placed once the placement order had been made.

The process of contestation (pp. 39-42)

- Any pattern of ***contestation by parents was hard to predict*** in most cases, ***and describe*** for the sample as a whole.

- Birth parents were enabled to oppose applications and orders at all stages of the adoption process, even where these were unexpected or appeared unrealistic in the light of the circumstances. Court adjournments were used routinely to achieve this end. ***On this evidence the legal and procedural framework for decision making in adoption is robust with regard to parents' rights.*** This is despite judicial discontinuity.
- Although parents often continued to dispute the accuracy of social work statements in evidence, and the appropriateness and reasonableness of local authority plans and court decisions, ***only one parent sought to claim that his case had not been heard in accordance with due process.*** This claim was considered and dismissed by the President of the Family Division of the High Court, on appeal.
- Poor or unreliable standards of practice appeared on occasion to be associated with ***expressions of grievance by parents***, such as the extent to which they felt they were given a chance to demonstrate their capacity to change.

The local authority care application and the adoption placement plan (pp.43-53)

- Care applications could be ***categorised as 'emergency', 'planned and pre-emptive' and 'delayed'.*** In two cases the physical safety of children was the overriding concern at the point of application, and the local authority took swift action to remove children on the basis of injuries already reported. In the other ten cases it was a constellation of developmentally harmful parenting practices, or the risk of them, that led to action. In six of these cases concerns were raised pre-birth.
- When local authorities applied to the court for interim care orders, ***sufficient evidence was filed, such that in no case did local authority action appear unreasonable in the circumstances.*** Nonetheless, the standard of social work practice prior to application varied widely. ***Delayed court applications, and lack of effective intervention pre-proceedings, seriously compromised child development and well-being.***
- In most cases ***local authority case handling was consistent with statutory regulations and guidance, once children had been taken into care.*** This applies equally to care and permanence planning for 'looked after children' and Adoption and Children Act 2002 regulations and guidance for Panel approval and court authorisation of adoption placement.
- Social work practice in ***making sense of child development and child experience and in communicating plans to children in care*** usually fell short of required professional standards.

- Options for alternative ***permanent placements with relatives or friends were considered by the local authority in a procedurally appropriate way*** in all but one case. ***Steps taken to enable parents to maintain care of children at home were rarely planned and sustained in a proactive way***, once the case was in proceedings.

Court decision making processes in care, placement and adoption proceedings (pp.53-58)

- In each case ***the evidence presented by the local authority was tested by reference to further, and sometimes numerous, assessments ordered by the court***. This was either by agreement with the parties or as a result of the judge upholding applications made by parents. This process contributed to delay, which was exacerbated by frequent late filing of local authority and expert reports. ***Lack of judicial continuity***, and the proactive grip on the process this would have allowed, was a factor in almost every case.
- ***Interim care orders were granted readily on initial application and renewed in accordance with due process.***
- ***The adequacy of the local authority evidence that parents lacked the capacity or commitment to change was the main focus of debate.*** Parents questioned the extent to which the local authority judgement of them was accurate and fair.
- ***Experts were instructed in every case***, often in large number and usually in a sequential way as the proceedings unfolded. Their contribution was seen by the court and the parties to be crucial to the judicial determination of both the facts of the case, especially the capacity of parents, and the appropriate care plan.
- There was no evidence in these cases that parents were unable to benefit from their own legal representation. ***In all cases, parents' legal representatives enabled them to respond to local authority concerns and to present their own case in contest from the outset.***

Evaluation of the quality assurance roles of the Independent Reviewing Officer (IRO) and the court advisory role of the Children's Guardian (pp.59-64)

- Case file review does not provide a full picture of professional activity, however, findings suggest that ***the role of the IRO was ineffective in averting drift for children in interim foster placements*** in a number of cases.

- Although Looked After Children (LAC) reviews were held on time and chaired by the IRO, ***adherence to these procedural requirements appeared insufficient in respect of progressing effective care planning for children.***
- The sample has included a single case where very serious failings in progressing permanence planning were evident. This case stands apart from the larger sample, but nevertheless, raises ***questions about whether the IRO is appropriately positioned to challenge serious failings*** such as this.
- The profile of children's adoption journey timelines, suggests that ***weakness in the IRO role may relate to both the quality assurance of care planning for children in interim placements pre-proceedings and in duties to progress adoptive placement after the making of a placement order.***
- ***Accounts of children's wishes and feelings and analysis of children's developmental trajectories were consistently below required professional standards in regard to care planning,*** such that further questions are raised about the quality assurance role of the IRO.
- With specific regard to contestation, the Children's Guardian appeared, in a number of cases, to play ***a critical role in reminding the court of its primary focus on the welfare of the child.*** This included at the adoption application stage, although this was rare.
- There were ***examples of very effective assessment, advice and intervention from the Children's Guardian more broadly,*** which clearly aided judicial decision-making.
- Although the study sample is small, ***there is evidence that the Children's Guardian can play a key role in ensuring that contestation does not serve to detract from a focus on the welfare of the child.***
- The Children's Guardian can command authority in the court as an independent advocate for the child, but ***this contribution is undermined by late appointment or absence*** in particular.

1. Introduction

The contemporary legal framework for adoption was put in place by the Adoption and Children Act 2002 (ACA 2002). This reconciled adoption law with the principles embodied in the Children Act 1989. It ensured compliance with the European Court of Human Rights (ECHR) and the Human Rights Act 1998 (HRA 1998). Law and statutory procedures are designed so that children can expect that their welfare will be given paramount consideration in decision making through care and placement proceedings. Birth parents can expect that due process will be ensured where they wish to contest the decisions made to remove children permanently from their care and place them for adoption.

Nonetheless, despite the integrity of the legal framework and the principles that underpin it, questions continue to be raised about the appropriateness of the decisions taken by the local authority and the court respectively, to recommend an adoption placement and to dispense with parental consent. A better understanding is needed of aspects of practice in evidence use and case handling in adoption that could and should be addressed to improve confidence in adoption decisions that have been disputed.

This study is designed to illuminate the operation of adoption processes through an in-depth scrutiny of a small number of cases where decisions were contested by birth parents at the placement order stage and sometimes beyond.

1.2. The legal framework for adoption and case management rules, regulations and procedures

While the Children Act 1989 (CA1989) sets the general framework for the support of children in need and planning for their future if they become looked after, the ACA 2002 provides the framework for decision making and case handling in adoption. It also amended the CA1989 to introduce Special Guardianship and other provisions associated with enhancing permanence planning. In particular, under the provisions of the ACA 2002, the welfare of the child throughout life must be the paramount consideration for courts and adoption agencies in all decisions relating to adoption. However, no child can be adopted without parental consent unless the court decides consent can be dispensed with and makes a placement order. Birth parents can apply to revoke a placement order, with the leave of the court, up to the point where the placement is made. Leave will only be granted if there has been a change of circumstances since the order was made. On notification of the application by the prospective adopters, the birth parents can seek leave from the court to oppose the making of the adoption order. Again, leave will only be granted if there has been a change of circumstances. The intention of the legislation was to ensure that the decision to dispense with parental consent, where it is not given, and to authorise the placement of a child for adoption, can be taken early in the adoption process. This would provide greater certainty and stability for children and prospective adopters as any contest would normally have been dealt with prior to placement. It was intended also to reduce the extent to which birth parents were faced with a *'fait accompli'* at the final adoption hearing.

The provisions of the *Family Procedure Rules* introduced by The Courts Act 2003, as amended subsequently and supported by Practice Directions, are intended to ensure that

the court is enabled to deal with cases justly¹, having regard to any welfare issues involved. Rules for case handling in care proceedings commencing before April 2008 were set out in *The Protocol for Judicial Case Management in Public Law Children Act Cases (Protocol)*, which came into operation in November 2003. Following the *Review of the Child Care Proceedings System in England and Wales*, published in May 2006², the *Public Law Outline Guide to Case Management in Public Law Proceedings (PLO)* was introduced³. The PLO was updated in April 2010.

Local authority case management with regard to the court-related provisions in the Children Act 1989 is statutorily prescribed in *The Children Act Guidance and Regulations Volume 1*. These were first published in 1991 and revised in tandem with the PLO in 2008⁴ and in response to the *Review*. Case management requirements with regard to care planning, placement and review for all children looked after by the local authority are set out in *The Children Act Guidance and Regulations Volume 2*, updated in May 2010⁵. This includes revised guidance on the role of the Independent Reviewing Officer (IRO). The related duties and responsibilities of adoption agencies under the Adoption and Children Act 2005 were set out in the *Adoption Agency Regulations 2005* and related *Statutory Adoption Guidance* and *Adoption National Minimum Standards*. These were all amended in 2011⁶.

1.3. Contested adoption

Birth parents can contest the adoption of their children in a more or less active way. They can refuse their consent at the placement and adoption application stages, and do no more to oppose. Alternatively, they can contest the case actively.

There are four key points at which active contestation can occur:

- At the (interim) care application stage: by arguing that the facts are not found in relation to the threshold conditions for a care order or that the welfare of the child does not justify removal from/retention in care;
- At the placement application stage: by arguing that the welfare of the child would be met best if the child was not placed for adoption and by refusing to consent to that plan on the grounds that the options of a return home or a placement with relatives have not been appropriately assessed and supported;

¹ Dealing with a case justly includes, so far as is practicable: ensuring that it is dealt with expeditiously and fairly; dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues; ensuring that the parties are on an equal footing; saving expense; and allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

² Department for Education and Skills/Department of Constitutional Affairs (2006) *Review of the Child Care Proceedings System in England and Wales*.

³ Ministry of Justice (2008) *The Public Law Outline. Guide to Case Management in Public Law Proceedings*

⁴ Department for Children, Schools and Families (2006) *Children Act Guidance and Regulations Volume 1: Court Orders*, London: TSO

⁵ Department for Children, Schools and Families (2010) *Children Act Guidance and Regulations Volume 2: Care Planning, Placement and Case Review*, London: TSO

⁶ See Department for Education

<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/g0072314/guidance>

- After the placement order is made: by seeking the leave of the court to apply for the revocation of the order because there has been a change in circumstances;
- At the adoption application stage: by seeking the leave of the court to oppose the making of an adoption order and to have the placement order revoked because there has been a change in circumstances.

More generally, parents can dispute matters as they arise through proceedings where they consider case handling and/or decision making has not been conducted in accordance with legal rules.

In the large majority of adoptions in England birth parent consent is dispensed with by the court and a placement order made, following care proceedings. At 31 March 2012, 2,680 children were placed for adoption. Of those, 320 were placed with consent and 2,360 with a placement order. In the year ending 31 March 2012 1,890 adoption orders (55%) were made unopposed, and 1,550 (45%) where consent was dispensed with, following opposition to the application. 'Opposition' here includes those situations where parents simply withhold consent on notification of the adoption application and those where they seek leave actively to oppose the making of an adoption order.⁷

The current study is concerned with that group of cases where adoption was actively contested by at least one parent, at one or more of the key legal decision points.

⁷ This is the definition found in the Department for Education Notes of Guidance for recording adoption. See: <http://www.education.gov.uk/researchandstatistics/stats/childrenlar/b00200554/children-looked-after-general-guidance-2011-12>

2. Research Design and Methodology

2.1 Aims and objectives

The aim of this research is to provide findings and messages for practice from a review of 12 closed adoption cases in England that were contested actively by the child's birth parents. The focus is on case handling and the use of evidence in decision making within the legal framework established by the Adoption and Children Act 2002, as implemented from December 2005.

The study seeks to show:

- whether required procedures and timescales were followed, such that appropriate decisions could be made;
- whether there was any indication that children may have been inappropriately taken from their parents and placed for adoption, because the processes were weak or had not been adhered to;
- whether case handling within the local authority and court process delivered timely decisions for children.

Based on a review of court and local authority files, the research is not intended to question the legal judgements made in each case. Instead, the focus is upon the robustness of procedures and the quality of practice, as suggested by the file scrutiny.

The ultimate objective is to evaluate the strengths of the current adoption process and establish what changes, if any, are required to ensure that the processes of local authority and court case handling and decision making are consistent with the principles underpinning the current legal framework of adoption in England. This evaluation is restricted to adoption cases that were actively contested by parents.

2.2 Research questions

Specific attention is given in this study to the following case handling and decision making processes:

1. *The overall adoption process:*

To what extent were key decisions made in line with legislation and statutory guidance?

Were there any delays in local authority and/or the court processes? If so what were the reasons for this?

To what extent were the wishes and feelings of the child, birth parents and other relevant persons in the child's life sought and taken into account throughout the process?

Did the case give rise to any particular difficulties at any stage and, if so, why and how were they resolved?

2. *Local authority decision making processes in relation to care order application and adoption placement plan and their quality assurance:*

At what point and why was the child taken into care?

What evidence did the local authority have that the child was suffering, or at risk of suffering, significant harm?

How did the local authority reach the decision that the child should be placed for adoption, and why was adoption the preferred permanence option?

What other permanence options were considered (e.g. that the child should be cared for by a relative) and why were they ruled out?

What steps did the local authority take to rehabilitate the birth parents to allow the child to return home?

What was the impact of the Independent Reviewing Officer (IRO) role across all stages of the process?

What value did the Adoption Panel add to the social worker recommendation that the child should be placed for adoption and to the quality of the documents submitted to the courts, and did the decision-maker agree with the Panel's recommendation?

3. *Court decision making processes about care, placement and adoption:*

What was the quality of the evidence⁸ put to the court, and how well did it present a balanced argument about the birth parents' ability to care for the child?

Were any experts instructed to give evidence and, if so, what was the rationale for this?

How did the CAFCASS Children's Guardian contribute to the decision making process?

What specific value was added by the lawyers representing the different parties, and are there any lessons to be learned around, for example, challenging timeframes or identifying issues that might have been resolved earlier in the process?

2.3 Methodology

2.3.1 Overview

The study has examined twelve closed adoption cases, which were contested by birth parents.

The criteria for case selection were as follows:

- the court had dispensed with birth parents' consent through the making of a placement order and had subsequently made an adoption order;
- adoption orders were made under the AACA 2002, and legal proceedings commenced after 2005.

⁸ Written evidence alone was the subject of the enquiry.

Cases were taken from three family court jurisdictions covering a Northern conurbation, a Midlands city and county area and a Southern city and county area. Five local authorities were selected from these areas. The case files, held by the local authority and the courts, were the source of the documentary evidence of case handling and decision making evaluated in the study.

Files held by CAFCASS and by the parents' lawyers were not consulted.

2.3.2 Sampling

The sampling of courts, local authorities and cases was purposive rather than representative, consistent with the small-scale nature of the study.

The three court areas were selected on the basis of ease of access within the research timeframe. The five local authorities providing the case sample were those, amongst the seven approached, who responded positively to the request for access to cases. One local authority did not respond at all. The other declined involvement because of current service pressures. The performance of three of the local authorities met the thresholds established in policy for timeliness in the adoption system. The other two authorities fell significantly short in meeting the overall target for moving children into their adoption placement following the final care admission. To this extent these local authorities exemplified the range of practice currently to be found in the English adoption system.

Case selection criteria were designed to ensure the final sample of twelve cases provided examples of active parent contestation across the court process. In two of the three court areas, the senior solicitor for participating local authorities was asked to provide a sample of two or three cases that met the sampling criteria. In one court area, the court manager undertook the sampling to enable the study to progress according to timescales.

The sampling criteria were that:

- birth parents had contested the local authority adoption plan at the final care hearing and/or had sought leave to revoke a placement order;
- birth parents had sought leave to oppose the making of an adoption order, on the basis that they could demonstrate a change of circumstances;

In addition, examples of contested cases that had progressed to the Court of Appeal were also requested.

The cases offered as a result of this process were included in the final sample on a rolling basis to allow the full range of contested case scenario criteria to be represented. In ten cases one or both parents contested the adoption placement and in six cases there was opposition to the adoption application. In one case a parent sought leave to appeal the adoption placement decision in the High Court and the European Court of Human Rights (ECHR), in turn. These base figures obscure a complex pattern of contestation, which is described further in Section 4 of this report.

The case sample included children admitted to care in their infancy and those who were older. In each case an 'index' child was identified. This was the child whose circumstances had triggered the care application that led to the adoption plan and subsequent placement and order. In seven cases the index child was the sole focus of concern. In the other 5 cases care and/or placement planning concurrently included one or more sibling. In this way the twelve cases involved care proceedings in respect of twenty five children, of whom eighteen were subsequently adopted.

Half of the twelve index children were described as white British, five as of mixed heritage and one as black African in origin. For seven of the children the care admission leading to adoption placement came within days or weeks of their birth. In the other five cases this admission came when the children were between twelve months and six years and five months of age. The circumstances of the care, placement and adoption applications in each case are described below, in Section 3 of this report. Their individual 'journeys' to adoption are described in Section 4.

2.3.3 Access and ethics

Relevant permissions were sought to enable research access to confidential case file information. Consent to access court files was obtained from Her Majesty's Courts and Tribunals Service (HMCTS), with the President of the Family Division of the High Court granting over-riding privileged access to files in the three court areas. Access to confidential adoption files and social care records was granted by the Secretary of State for Education and by the participating local authorities. Personal contact with the Designated Family Judge in each of three County and Family Proceedings Courts, and with the Director of Children's Services, also served to facilitate speed of access on the ground. Ethical clearance was granted by the respective ethics committees at the Universities of Sussex and Lancaster.

All data was securely stored on the researchers' personal encrypted laptops and personal computers, which are password protected. Individual case files were assigned a case file and site number, no names or addresses of either family members or research sites were recorded.

Each child has been assigned a fictitious name for the purposes of dissemination. Additional changes have been made to child identities and case details in the vignettes and subsequent analysis in order to protect further the identity of children and family members.

2.3.4 Data collection

The research has comprised a detailed review of case files (court files and local authority closed adoption files). This allowed the evaluation of the written evidence that was used in each case, as held on those files. Files held by CAFCASS and by the lawyers for the children were not consulted. No interviews were undertaken so it was not possible for the parties involved to explain more fully the reasons for the nature and timing of decisions taken. No direct observation was undertaken of evidence use and decision making in conferences or courts.

Documents typically included in each case file and scrutinised in the review included: initial, core assessments and parenting assessments, minutes from child protection case conferences and LAC reviews, contact records, minutes from legal planning/pre-proceedings meetings, local authority applications for court orders, local authority position statements, parents' position statements/responses to local authority statements, interim and final care plans, witness statements, reports from experts, independent social workers and drug and alcohol testing services and transcripts of judgements.

Given the volume and diversity of documents contained in the files, the review of the files was guided by three data collection tools to enable the production of:

- the child's adoption journey timeline;
- the family profile and key details of child and family case complexity;
- a qualitative review and evaluation of local authority and court processes at the key decision points in the adoption system where parents could contest.

An initial pilot review of three case files in the first local authority site was undertaken by both researchers together. This was intended to ensure consistency in data collection processes. Amendments to data collection tools were then made, following Advisory Group discussion and further reflection by the research team. The remainder of the cases were then subject to detailed review by the researchers operating independently in the field, and in consultation.

All documents contained in the court and local authority files were read until a point of 'saturation' was reached in each case, with no new data being revealed by further scrutiny. In some cases missing data was added following correspondence with relevant local authority officers. For the most part files were complete. Their size and construction indicated clearly the cumulative and repetitive nature of the documentation required of the local authority in making the case for adoption in the face of parental contestation. At least one full day of reading was required in each case and usually more.

A Research Officer was employed to create an Excel data-base for the collation and analysis of adoption timeline data.

2.3.5 Data analysis and reporting

The data collection strategy has sought to reduce the mass of data that the files (court and local authority) contained, whilst resisting the production of an overly mechanistic picture of each individual case characteristic and trajectory. This strategy has enabled a review of intervention and outcome in each case and across the sample that is robust and nuanced. In particular, it has facilitated the thematic analysis of the procedural integrity overall of local authority and court processes whilst also illuminating the complexity and particularity of each contested adoption journey. The decision was made to convey complexity in reporting the findings by presenting vignettes of the cases and using the case examples to illustrate the thematic analysis. This is consistent with the exploratory nature of the research and the absence of standardised benchmarks or agreed measures of best practice in the management of contestation at each stage.

The parameters for the detailed descriptive and qualitative review of case handling and decision-making were determined by the research questions. These are concerned with

the timeliness and robustness of case handling and decision making by the local authority and the court.

The timeliness of the child's adoption journey, in the context of the complexity of the case circumstances, was of initial interest. The analysis has enabled a timeline of each child's adoption journey to be identified and a map produced of the outcomes for the sample as a whole. The progress of each child can be compared with the progress currently of all children adopted in England, as indicated by national data sets. The timeliness of decision making in each case can be compared also with statutory requirements and policy expectations, as set out in the adoption Scorecards, published in May 2012⁹.

The evaluation of the robustness of local authority and court processes has been undertaken for each key stage of decision making and overall, in the light of the contestation pursued by parents at each point. The quality assurance and support of these processes, by the IRO and Children's Guardian respectively, has also been reviewed in the light of the evidence available on the adoption file.

2.3.6 Limitations and cautions

This is a small scale, qualitative study of closed adoption cases in England, which had been contested formally and actively by birth parents at one or more key stages in the process between 2005 and early 2012. It provides insights into case handling, decision making and practice quality assurance at each of those stages in cases of this kind, and overall, at that point in time. It is the first study of contested adoption undertaken in England, since the implementation of the AACCA 2002.

The legal framework provided by the AACCA 2002 applied to all twelve of the study cases. However, the statutory rules, regulations and procedures for case handling were in the process of change during the time in which the cases were managed through to adoption. In eight cases local authority intervention was undertaken at, or shortly after, the point of transfer from the Protocol to the Public Law Outline (PLO) in April 2008. In only two cases did work commence after May 2010, when current care planning, placement and review requirements were updated. In addition, it should be noted that heightened anxiety about child protection practice in England began to be expressed from late 2008, following extensive publicity about the circumstances of the death of Peter Connolly, aged 17 months. Since that time referrals of concern to local authorities, numbers of cases managed under child protection plans and rates of application for court orders for care and adoption placement have all risen substantially. It is important to note that the practice reported on in this study took place during this period of changing perspectives on the nature of risk and the expected response.

The study design enables patterns of performance to be identified in respect both of compliance with procedures by the local authority and court and quality of practice in cases where children were taken into public care and subsequently adopted. In particular, the study was designed to illuminate strengths and weaknesses of practice in illustrative cases, where contestation was active. The use of documentary evidence alone provided a relatively standardised case data set and allowed for comparative

⁹ See:

<http://www.education.gov.uk/childrenandyoungpeople/families/adoption/a00208817/adoption-scorecards>

analysis. However, it did not allow interpretations of practice to be tested in ways made possible by direct observation of practice and/or qualitative interviewing of participants subsequently. This restricted the extent and depth to which the unfolding dynamics of decision making and contestation could be understood and evaluated.

Further studies, of a larger and comparative kind, would be necessary to establish the extent to which the present findings can be generalised to contemporary practice in England and to enable the discrepancy between strong and weak performance at the case level to be accounted for more fully, where parents actively contest. The national data set¹⁰ indicates an unusual degree of variation between local authorities in the overall rates of consent to the adoption of their children by parents. It will be necessary for patterns as well as rates of contestation to be understood better as part of any future research strategy in this field.

¹⁰ See: <http://www.education.gov.uk/rsgateway/DB/SFR/s001084/index.shtml> Table LAD2: Children who ceased to be looked after during the year ending 31 March by reason episode ceased by Local Authority

3. The Study Case Vignettes

3.1. Introduction

The case vignettes are intended to enable a child-centred understanding of the study cases. They seek to present case characteristics and patterns of contestation in a way that encapsulates their complex and dynamic nature.

The concept of the child's 'adoption journey' is employed to provide a focus to the vignettes.

The age of the child at the care admission that led to adoption placement, the trigger for that admission and the wider family and parenting relationship context are both briefly outlined. Contestation in each case is summarised and the overall complexity of the case is evaluated, by reference to this combination of child, family relationship and care factors.

3.2. The infants

Lily (Case 1)

Lily was taken into care shortly after her birth. She was accommodated by the local authority under CA1989, s20 when she was six days old, while a mother and baby placement was found, to enable a parenting assessment to be completed. This followed careful local authority pre-birth planning to address concerns about the risks posed by her mother's learning disabilities and general vulnerability, associated with a history of chronic childhood abuse and neglect. Lily has a mixed heritage.

Adoption journey

In Lily's case the adoption placement was delayed by the time taken in court to confirm her mother's consent, in the face of accumulating evidence of her limited parenting capacity and the decision by her mother's own professional carer not to proceed with an application for Special Guardianship.

The local authority quickly found an appropriate family to meet Lily's needs, derived in part from her mixed heritage. The adoption hearing was delayed somewhat to allow Lily's father to seek leave to oppose the application. Lily was thirteen months old at placement and one year eight months old when adopted. She remained in the same foster home throughout her period in care.

Family and parenting context

Lily's mother had experienced persistent physical neglect and sexual violence and exploitation in her childhood. By the time she was offered effective local authority protection and care she had developed significant emotional and behavioural problems. As a young adult, in order to support independent living, she was placed in the home of a professional carer. She was provided with additional support from adult social care services. Her carer played an active role in protection and permanence planning decision-making processes, prior to and during proceedings.

Contestation in summary

Careful and compassionate work by the social worker and others had enabled her mother to reach a decision that she was unable to care for Lily and she consented to Lily's adoption shortly after the four month LAC review. The file contained a moving letter to her daughter explaining how hard she had tried to be a good mum. She was actively involved in selecting the prospective adoptive parents. In Lily's case the contest came unexpectedly at the adoption order application stage. All attempts to involve Lily's putative father had come to nothing prior to the placement hearing. On notification of the order he had announced his intention not to seek leave to have it revoked. His subsequent application for leave to oppose the adoption order came as a complete surprise.

Case complexity

Lily's case was straightforward up to the point when her father confirmed, belatedly, his paternity and sought to be assessed with his new partner as her permanent carers. By then, the court decided, it was much too late as Lily was thriving in her prospective adoptive home.

Terry (Case 2)

Terry was first identified as being at potential risk by his father's probation officer, on notification of his mother's pregnancy. Terry's father had served a prison sentence for violence. A pre-birth assessment also raised the question of sexual coercion of Terry's mother by his father. However, attempts by the local authority to support Terry's mother to separate from his father failed. In particular, his mother refused to accept refuge with her baby. This led to the decision to remove Terry to care from hospital a few days after his birth. Terry is a White British boy.

Adoption journey

In Terry's case there was some delay to care and placement proceedings, as experts took time agreeing about the nature and extent of the risk posed by his father. However, the main reason was a lack of active 'twin track' or 'parallel planning'¹¹ once Terry was taken into care, for which the local authority apologised subsequently in court. Nonetheless, Terry was placed for adoption at thirteen months and the order was made when he was one year and nine months old. He had been placed for the duration of his time in care in one foster home and he was developing appropriately when he moved to his adoptive home, where he settled quickly.

Family and parenting context

Terry's mother had not been protected by her own parents during childhood. She had been sexually exploited, from a young age, by members of the family of the man who was confirmed as Terry's father, following a DNA test. The Local Authority attempted to draw on maternal grandparents to support Terry's mother, but she remained subject to

¹¹ In this report 'twin track' or 'parallel planning' refers to the process by which two or more care plans are actively pursued, to enable a permanent placement to be secured as early as possible. See *The Children Act 1989 Guidance and Regulations, Volume 2: Care Planning, Placement and Case Review*, Para. 2.4.

coercion from her now husband. After proceedings had concluded it became clear that this control had included her continued sexual exploitation and prostitution. The debate between the experts had focused, for the most part, on the direct risk to Terry of the sexual relationships his mother had become entrapped in.

Contestation in summary

Terry's father disputed the local authority estimation of the risk his sexually exploitative behaviour would pose to Terry and bargained about contact up to the point when the placement order was made. Both parents then sought leave to oppose the adoption order application and have the placement order revoked. They were supported in this by a lay advocate operating from an organisation based in Spain.

Case complexity

This case was made complex by the capacity of Terry's father to intimidate or seduce into his support family members and professionals alike. The local authority was concerned that Terry's mother was not able to demonstrate that she could make the separation from her husband deemed necessary for any chance of Terry's return to her care. Nonetheless, the local authority appeared defeated too, in their planning and intervention, by the intimidating behaviour of Terry's father. The expert witnesses instructed by the court to determine the risk posed by him were split in their views about the culpability of Terry's mother in the unusual inter-generational sexual relationships in the family, and the role of child pornography played in these, that were uncovered by the assessment.

Jamie (Case 3)

At the time of his birth, care proceedings were on-going in respect of Jamie's five older siblings, on account of neglect. Jamie was accommodated by the local authority and placed in foster care from birth under CA1989, s.20. He is a White British boy.

Adoption journey timeline

While the local authority was slow to issue care proceedings in regard to Jamie's older siblings, swift action was taken to issue care proceedings for Jamie at birth. This was on the basis of an extensive history of serious child neglect. Progress through those proceedings was complicated because the court needed to consider the differing local authority permanence plans for each of the six children. However, a placement order was granted when Jamie was eleven months old and he was swiftly placed for adoption.

Family and parenting context

Jamie's parents had received long-standing practical family support from the local authority which aimed to aid them in improving home conditions, school attendance and general care of the children. They were unable to respond and appeared ambivalent about parenting their large family. In the final court judgement, the judge commented that the reasons for the parents' complete inability to effect change remained a mystery. Local authority assessment appeared to raise, but insufficiently answer, questions about parental mental health and patterns of substance misuse.

Contestation in summary

The parents contested the application for a placement order on Jamie, but not the applications for care orders for their older children. They sought to make the case that they would be able to care adequately for Jamie, because all their other children would be in kinship or foster care and they would have a chance to 'start again' with a baby. Their case was rejected on the grounds that they had simply failed to evidence any change over a number of years and that their older children were displaying significant emotional and behavioural problems. Judicial continuity was a key factor in dealing decisively with parental contestation, as were the actions of the Children's Guardian to narrow the issues brought to the final hearing. She was able to settle a dispute between the local authority and parents, about the frequency of direct contact with the older children.

Case complexity

This was a relatively straightforward case in regard to Jamie, although it does demonstrate the difficulties in progressing legal proceedings for a large sibling group, where legal orders for all are to be settled at a final single hearing. In this case, and in the face of significant concerns regarding the risk-taking behaviour of Jamie's older sister, the final hearing was delayed such that the court could be satisfied that her final care plan and residential placement would safeguard her from harm.

Mark (Case 4)

Concerns were first raised pre-birth by the mid-wife, about Mark's mother's vulnerability and her extreme anxiety about her capacity to manage the pregnancy. Mark and his mother were accommodated by the local authority and placed in a foster home at seven weeks of age under CA1989, s20, when informal family support arrangements broke down. Mark is of mixed heritage.

Adoption journey

Care and placement proceedings took ten months in Mark's case. This was the result of the active approach to 'triple-track' planning put in place by the local authority. The immediate collapse of a further attempt, advised by the Children's Guardian, to assess the parenting capacity of Mark's father avoided delay in this process. Mark was one year five months old at placement and two years one month on adoption. He had, however, experienced five different care-taking arrangements in his first eight months as changing combinations of parenting were tested prior to the final decision by the local authority to confirm the adoption plan. This included three placement moves. He was reported to have settled well in his adoptive home following his noted anxiety in feeling secure in his last foster home.

Family and parenting context

Mark was the only child of very young and vulnerable parents. His mother had experienced abandonment as a young child. Her early orphanage care abroad was followed by unstable and violent family life in England when she joined her mother, who had arrived several years earlier. Mark's father was brought up in a physically and sexually violent home prior to his removal to care. The parenting relationship was

seriously undermined by the impact of these traumatic early experiences, which were largely unresolved.

Contestation in summary

Both parents contested Mark's removal to care and adoption, sometimes separately and sometimes together. They were supported in this by an advocate associated with their church. The appeal of the placement order by Mark's mother was dealt with, without a hearing. Neither parent filed a statement or attended the hearing set aside for their separate applications to oppose the adoption order.

Case complexity

The risk to Mark was identified early, and carefully planned action taken from the outset. This case was only made complex by the differing professional perspectives of the local authority and the Children's Guardian on the potential for parent rehabilitation, in the face of inconclusive findings by independent social work and other expert witnesses on the risk posed by his father.

Amy (Case 5)

Amy was removed from hospital at birth under CA1989, s46 police protection powers because of fears for her physical safety if she went home. She is a White British girl.

Adoption journey

In Amy's case the journey to adoption was delayed by the late completion of the local authority assessment and the decision that her two brothers should be joined in proceedings to enable their existing placements with relatives to be formalised through Special Guardianship. The inconsistent engagement in court directed assessments by the mother extended the delay. Amy was eighteen months old at adoption placement and two years one month old when the adoption order was made. She had lived in one stable foster home following final admission to care.

Family and parenting context

Amy was the third child of her mother and a new partner. She had two half-brothers who had been looked after for some years by paternal and maternal grandparents respectively. Amy's father had a history of violence which persisted into the new relationship. Her mother had experienced violence in a succession of relationships and was dependent on alcohol. She was extremely intimidated by Amy's father. The couple remained together during the proceedings. The local authority interpreted this as a failure of Amy's mother to make the necessary commitment to protect herself and her children against the violence of successive partners.

Contestation in summary

In this case neither parent contested the care application but both opposed the placement order application. Amy's father sought leave alone to contest the adoption order application, but leave was not granted. Amy's mother withdrew from contact arrangements and her late application to oppose the placement order application

contradicted the statement made by Amy's father and left the court confused about her intentions.

Case complexity

Amy's case was made complex by the placement circumstances of the older half-siblings, which had not been effectively resolved by previous protection and care planning. An intermittent commitment to service engagement demonstrated by both parents was matched by the absence of a proactive stance by social workers in direct work and assessment. The protection and care planning had been intermittent over a period of several years and it was not apparent that an effective helping relationship had been formed by social workers, especially with Amy's mother. In combination, this impeded effective case handling, prior to and through proceedings.

Lee (Case 6)

Lee was the youngest of three children, all of whom were taken into care following Lee's (delayed) presentation at hospital with serious injuries. He was seven weeks old. There had been a social work assessment three years earlier, when bruising to Lee's older brother and general neglect had been identified. This assessment had failed to uncover the details of the history of violence by Lee's father. As a result local authority and other assessment work was undertaken within proceedings. Lee is a White British boy.

Adoption journey

In Lee's case the adoption placement was delayed partly by the sustained nature of the parents' contest of the care, placement and adoption proceedings and partly by the difficulty the local authority had in finding an appropriate placement for the siblings. The local authority appeared to be in reactive mode at each stage. Lee was two years eight months at placement and then adopted three months later. He had two brief foster placements on admission to care before moving to a stable placement. He settled well in his placement at the outset. His older brother Keith and sister Katie waited longer still for their placement together in a separate family. Keith had been highly disturbed by the three year period he had waited in care for his new home as his parents and social workers fought over the plans for his future.

Family and parenting context

Lee's father had a history of serious physical and sexual violence, including to previous partners and children. His mother was diagnosed as depressed and 'emotionally detached' from her children. Lee had suffered multiple bruising on admission to hospital and a skeletal survey uncovered metaphyseal fractures to his legs and feet. Keith was able to tell his foster carer that his father was violent but the earlier assessment had not picked this up. The testimony of a previous partner, whose own children had been removed to care for protection from this man, was highly significant to the finding of fact in this case. Lee's father was apparently intimidating of social workers also and his contact with the local authority was overseen directly by a senior manager following the placement hearing. Both parents were subsequently imprisoned for the assault on Lee, prior to the adoption order application.

Contestation in summary

The case was contested at each stage of the process by both parents in one combination or another. Leave to appeal the finding of fact that led to the placement order was sought by Lee's father and considered and dismissed in the High Court by the President of the Family Division of the High Court. His mother then sought leave to oppose the adoption and this application was dismissed. In the meantime, the children's father sought unsuccessfully to have the application for adoption suspended by the European Court of Human Rights.

Case complexity

This case is an example of the small number of those where discrepant accounts¹² are given of physical injuries to children significant enough to have suggested a risk of serious maiming or death, where other children are also removed. The changing stories of Lee's parents through proceedings confirmed local authority and judicial concerns. They also suggested, together with the testimony of the previous partner, that the local authority advice to Lee's mother to get separate legal representation was appropriate.

Becky (Case 7)

Becky was one of the seven infants taken into care at or shortly after birth. Becky is a child of mixed heritage.

Adoption Journey

In Becky's case the journey to adoption was initially delayed by resource constraints within the local authority, which meant that cases queued for the parenting assessment service. This delay in pre-proceedings assessment was then compounded by extensive delay in the court process, due to indecisive judicial case management in the face of Becky's father's requests for duplicate assessments. Becky was eight months old when care proceedings were issued, three and a half on adoptive placement and four years old by the time the adoption order was made. She had lived in one stable foster home following admission to care, and this became approved as her adoptive placement.

Family and parenting context

Becky was the sixth child of her mother and the second child of her father. All her siblings had been removed from home on a compulsory basis, with her full sibling adopted some twelve months previously. Her father had a history of violence that had resulted in custodial sentences and her mother faced enduring mental health problems and alcohol dependency. Neither parent demonstrated any change in capacity during both pre-birth and pre-proceedings assessment.

Contestation in summary

In this case both parents initially opposed the local authority care application. However, Becky's father alone contested the placement order, having claimed separation from

¹² See Dale P, Green R, Fellows R. (2002) *What Really Happened? Child Protection Case Management of Infants with Serious Injuries and Discrepant Parental Explanations*. NSPCC Policy Practice Research Series: London.

the mother during proceedings and presenting himself as a sole carer. He then sought leave to contest the adoption order application, but failed to attend court.

Complexity

This case was relatively straightforward given the history of the case and that pre-proceedings assessment was negative on both parents. However, it appeared that the judge had some difficulty in matching the father's performance in court with professional assessments which meant that he conceded further duplicate assessments of the father.

3.3 The older children

Sarah (Case 8)

Sarah was removed from her mother's care using CA1989, s46 police protection powers at the age of twelve months, whereupon her mother consented to voluntary accommodation under s20. From shortly after her birth professionals raised escalating concerns about drug use and sex work. Sarah is a child of mixed heritage.

Adoption journey

In Sarah's case the journey to adoption was significantly delayed both prior to and through legal proceedings on account of poor local authority practice and because her mother went missing for a period of ten months. Following Sarah's birth, despite very significant concerns about her young mother's ability to provide safe care, a child protection plan was not drawn up. Progress to application for an interim care order was also delayed, despite the fact that her mother attended only a single contact before going missing. Contact was finally made with Sarah's mother following her arrest, whereupon she attended the final hearing where care and placement orders were made. The child remained in a single foster care placement until placed with her adoptive parents at the age of three years and three months. She was finally adopted just before her fourth birthday.

Family and parenting context

Sarah was the first child, born to a young teenage mother who herself had been in care since the age of thirteen, on account of drugs and alcohol misuse in her family and sexual exploitation. No knowledge of Sarah's father could be ascertained. Sarah's grandfather featured in this case as a key, but unhelpful figure in her network on account of very serious problems of alcohol addiction.

Contestation in summary

Sarah's mother evidenced significant change in circumstances, confirmed through professional testimony. She successfully engaged in drug rehabilitation, supported by a new boyfriend who was not a drug or alcohol user and completed her probation order. Her change in circumstances was accepted by the court and she was granted leave to contest the adoption application. However, the judge ruled that change came too late for Sarah, who was now settled in her adoptive placement. It is significant that Sarah's

mother effected a significant change in her circumstances after the death of her own father and upon meeting a new supportive partner who did not misuse drugs or alcohol.

Case Complexity

Local authority processes presented as both stuck and stalled because Sarah's mother went missing. The case progressed only when the mother reappeared and notification of proceedings could be served. The mother's absence also appeared to prevent timely identification of kin – a relative was considered as a potential carer after the placement order was made, further delaying family finding.

Robin (Case 9)

Robin was adopted with his younger half sibling Louisa. Robin was his mother's fifth child, with his older siblings all subject to legal proceedings. Robin is of mixed heritage.

Adoption journey timeline

Robin spent a considerable period following his birth in his mother's care, with repeated attempts being made to shore up child protection plans in the face of deteriorating and unsafe care. He was accommodated at the age of sixteen months following a further incident of violence and his mother voluntarily ceased all contact. Robin then spent a period of four years and more in a temporary foster placement, following exceptionally poor local authority practice and a lack of effective oversight by the Independent Reviewing Officer (IRO). The local authority appeared unable to deal with the logistics of organizing an international kinship assessment and this stalled permanence planning. Moreover, the treatment of the grandmother in question appeared to breach procedure and gave rise to significant contestation. During this lengthy period in foster care, Robin was joined by his newly born sibling Louisa. Care proceedings were issued in respect of both children, when Robin was four years old. While a kinship assessment was expediently directed by the court, and Robin's grandmother assessed as very suitable, the judge ruled (supported by the Children's Guardian) that the sibling relationship was paramount and as the grandmother was unable to care for both for religious reasons, adoption was agreed. Robin was finally placed for adoption at five years of age with his sibling, very shortly after the placement order was made. He was finally adopted when he was six.

Family and parenting context

Robin's mother had a long-history of very serious drug addiction (heroin and crack) and sex work. Four of her previous children had been removed on a compulsory basis. Despite making some improvements during this pregnancy and in the immediate weeks after Robin's birth, she quickly relapsed back into drug use and resumed her relationship with Robin's father. This relationship was characterized by drug use and violence. She gave birth to two subsequent children during the course of this case, Louisa – an infant requiring intensive care from birth with her mother's drug use implicated in her health difficulties and a further sibling still born at home.

Robin's father wished to care for his son, but was unable to make significant progress with his drug use and continued to be violent towards Robin's mother.

Contestation in summary

This case was subject to bitter contestation, with Robin's father's family feeling that they had been cheated of an opportunity to care for Robin because of the delay in the kinship assessment. Moreover, as a Muslim family they did not recognize or approve of adoption. On this account they also felt unable to care for the two siblings together, as Louisa had a different father. Robin's father also contested the proceedings in his own right, presenting himself as a possible sole carer, but his case was rejected as he appeared dishonest in court.

Case complexity

The history of this case ought to have prompted more decisive action throughout. Cross border and cultural issues are raised in this case, with the local authority appearing paralysed in the face of unusual assessment demands.

Helen (Case 10)

Helen was three years and three months old when she was admitted to care. She experienced three changes of placement, but with the third placement providing stable interim care prior to her adoption. Helen is White British.

Adoption journey timeline

Helen's progress to adoption was delayed on account of late identification of harm. Despite a significant history of concern regarding her siblings, referrals raised following her birth did not trigger the appropriate child protection response until some two years later. Helen and her siblings were accommodated by the local authority finally under CA1989, s.20, and care proceedings then issued. These proceedings were delayed due to an unusual professional conduct issue, which required the substitution of an independent social worker appointed to the case. Psychological assessments directed by the court were negative on both parents and placement orders were made when Helen was five years and two months old. Her siblings were nine years and two months and ten years and nine months old respectively when the orders were granted. Helen and her siblings were placed together in their adoptive home fourteen months later. Helen was seven years and six months old when she was adopted.

Family and parenting context

Helen's parents had a volatile relationship characterized by serious physical and sexual assault. Her mother had also served a prison sentence for supply of drugs and was ambivalent about the care of her children. Both parents had mental health problems. Helen's mother had spent periods in care as a child and her first husband was murdered. Helen's father had a history of self-harm and several suicide attempts. Repeated attempts were made to engage the parents but at this point in their relationship, they appeared unable to address the presenting concerns. However, the full extent of the parents' psychological difficulties was only revealed through expert assessment during care proceedings. It is noteworthy that Helen's mother did evidence positive change, when she finally extricated herself from this harmful relationship and engaged with drug services.

Contestation in summary

Both parents contested the interim care order. Helen's father then sought further assessment as a sole carer during the course of proceedings, but when this was refused he withdrew from all contact with the children and the legal proceedings. This caused the children significant distress. Helen's mother evidenced positive change of circumstances and was successfully caring for her new baby as a lone mother. She sought leave to revoke the placement order, but was counselled out of this by the judge, who informed her that her three children were doing very well and about to be placed for adoption.

Case complexity

Both the assessment as to the suitability of adoption and the search for a placement for this sibling group created delay. In addition, the level of adoption support requested in regard to the first couple identified could not be granted, so further family finding had to be undertaken. An unusual professional conduct issue added further case-specific complexity, serving to protract judicial proceedings.

Aaron (Case 11)

Aaron was removed from home under CA1989, s46 police protection powers, with his younger half-brother, following a physical beating by his mother and associated allegations of neglect. Aaron is a Black African boy.

Adoption journey

In Aaron's case the journey to adoption was delayed by the process of independent assessment and intervention during proceedings, accepted by the court as necessary to test the local authority conviction that his mother's psychosis rather than her culture explained the harmful parenting. Finding a suitable placement that kept the brothers together delayed matching. Aaron was eight years four months old at adoption placement and nine years and five months when the adoption order was made. His brother was three years and three months at placement and four years and four months at adoption. They had lived together in one stable foster home following final admission to care.

Family and parenting context

The boys had lived a transient home life with their mother. Aaron had had no contact with his father for a year. His half-brother's father was identified but was not traceable throughout the proceedings. Aaron's mother had a history of depression and self-harm. She conceded that both she and a recent, temporary partner used physical chastisement to control the boys. Confirmed by Aaron, the examples of the punishments were unusual and disturbing. She had been ambivalent about the birth of Aaron's younger brother but demonstrated a strong commitment to reclaiming Aaron and sought to recruit him to this plan during contact and subsequently in letters held on the local authority adoption file.

Contestation in summary

Aaron's mother contested both the care and placement application and sought leave to oppose the adoption application. She had by that stage moved to another area and given birth to a third child, who had also been removed to care. The plan in this case was to return the child home. The court granted leave and Aaron's mother contested actively the adoption of the boys.

Case complexity

Professional disputes emerged from the outset, about the significance of Aaron's mother's African heritage in accounting for her abusive and neglectful parenting style and her capacity to change. Positions became entrenched at first and this exacerbated the contest in court. Resolution was achieved when the Children's Guardian and an independent expert, who had aligned herself with the mother's position on local authority intransigence, conceded that the harmful parenting was pathological in nature and not apparently susceptible to change. Considerable ambivalence was shown by various relatives about their future role in caring for the boys.

Joshua (Case 12)

Joshua was almost five when he was finally taken into care, despite the neglect indicated by his gross developmental delay. Joshua is a White British boy.

Adoption Journey

Joshua's journey to adoption was hugely delayed on account of wholly inadequate local authority assessment. Joshua was the subject of a number of referrals to the local authority during the first three years of his life. The local authority finally undertook an assessment under child protection procedures when he was over three years old. Despite a strong recommendation from the social worker, that the case be considered for legal planning, an application was not made for a further twelve months. Work then proceeded under an interim supervision order before Joshua was finally taken into care on an interim care order, shortly before his fifth birthday. At this point Joshua evidenced multiple signs of neglect and his development was very seriously impaired. A placement order was made eight months later and Joshua moved to his adoptive home when he was nearly six and a half years old. He was adopted just before his tenth birthday.

Family and parenting context

Joshua's parenting was exceptionally poor, resulting in very serious problems of developmental delay. Psychological assessment focused on whether or not his mother could be diagnosed with 'learning difficulties', rather than on the impact her traumatic childhood experiences had on her harmful parenting of Joshua. Joshua's father was assessed as high risk for child maltreatment. Joshua's rate of developmental catch-up, once removed to foster care, was described as remarkable. Nonetheless, this did not enable him to retrieve an optimal developmental trajectory.

Contestation in summary

Both parents contested the local authority application at the interim care hearing, claiming that they were not appropriately notified that the local authority was seeking a care order, and removal of Joshua from home. They did not contest the placement

application. However, they then sought leave to revoke the placement order, with contestation appearing to be triggered by notification that an adoptive placement had been found. Leave was not granted. They then presented themselves in person to the Court of Appeal, where their case was rejected. It is interesting to note that in this case, Joshua's older brother, aged sixteen, sought legal representation in his own right and expressed his disagreement about adoption plans at the final hearing, but did not actively contest the placement order. His parents and brother were granted twice a year face to face contact.

Case complexity

It appeared that the local authority struggled with decision making in this case because they became preoccupied with an inappropriate and unhelpful attempt to determine whether Joshua's gross developmental delay was the result of genetic and other organic factors or the quality of parenting he received. They were further distracted by their need to get diagnostic clarity about his mother's mental capacity. Yet at no stage was any specialist assessment undertaken, until they were directed as part of care proceedings.

4. Analysis and results

4.1 The adoption journey

The main findings were that:

- For the purposes of retrospective policy and practice analysis, ***adoption journey timelines should be estimated from the child's date of birth*** rather than from the date of the care admission. This enables a child-centred perspective to be taken on the child's experience and developmental trajectory.
- There was ***wide variation in the timeliness of the local authority decision to apply for a care order***. In many cases children were removed from harmful and risky circumstances in a prompt and pre-emptive way. In other cases they were left at home for years, in the face of recorded concerns and unchanging parenting and significant developmental harm, before the local authority got a decisive grip on decision making.
- ***The accommodation of children, under s20 CA89, was used routinely as a staging post en route to the care and placement applications.***
- The child's journey to adoption placement was more likely than not to be delayed following admission to care. ***Children waited between thirteen and forty nine months to be placed***, following care admission. Only half the children were placed within the current government target period of 21 months.
- Care and placement proceedings were especially prolonged. ***The average time taken for care proceedings to conclude was fifty two weeks***. In only one case did the court conclude the care and placement proceedings within the proposed new statutory limit of twenty six weeks.
- The agency decision making process was extremely variable across cases in relation to expected timescales. ***The average time between the Panel recommendation of adoption and the adoption placement was just over the current twelve month national standard***. Children waited between one and nineteen months to be placed once the placement order had been made.

4.1.1 Adoption journey timelines

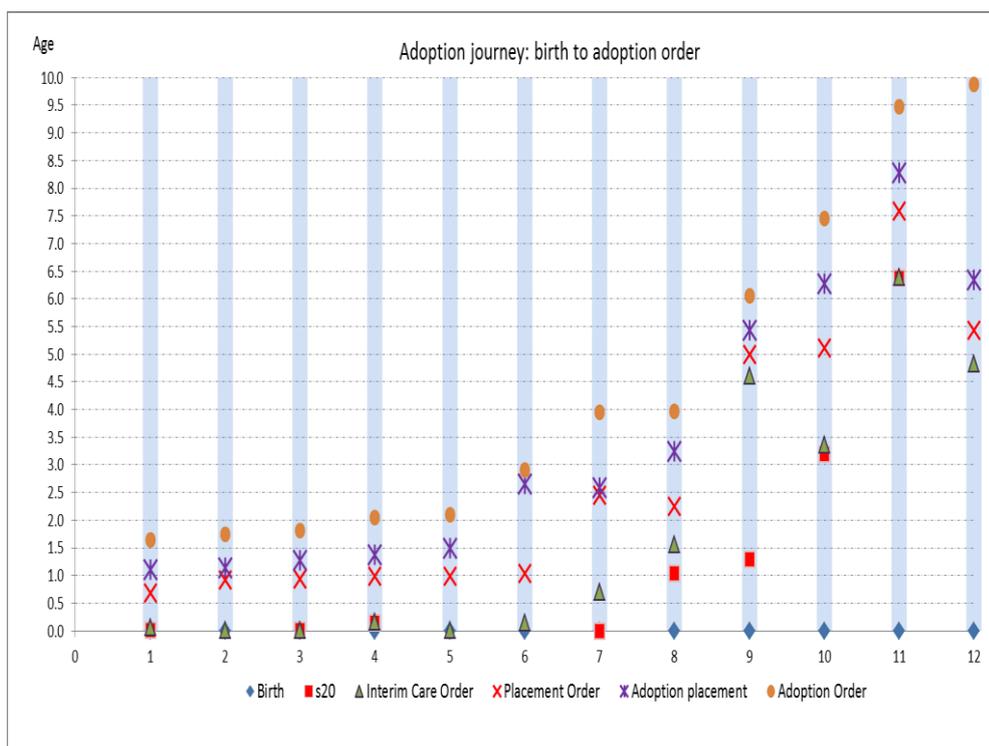
The concept of an ‘adoption journey’ is now widely used to describe the progress of the child through various decision stages in the local authority and court, which culminate in the making of an adoption order. The ‘adoption journey’ concept enables a child-centred analysis to be developed. This enables:

- the impact to be estimated of current patterns of practice in statutory intervention in permanence planning. In particular, developmental trajectories can be tracked through the process of recovery and adaptation required of the child when parenting is transferred from the birth to the adoptive home;
- the child’s experience to be imagined at each stage of this process.

The case vignettes demonstrate the importance of describing the timeline from birth. Doing so allows these journeys to be analysed by reference to the fuller history of the statutory response to the problems that characterise families whose children are subsequently adopted.

The adoption journey timeline for each of the twelve index children in the study is shown below. The timelines describe the length of each stage of the journey. They chart progress from birth to care admission, through care proceedings to the placement order decision, from placement order to the placement and then to the date of the adoption order. The timelines allow also for the measurement of local authority and court performance in the study cases against statutory requirements and procedural expectations for case progress, understood in the light of current policy objectives for tackling delay.

Chart 1 Adoption journey timelines



The adoption journey timelines confirm much of what is known about patterns of decision making in cases where adoption becomes the permanence plan. In particular, the findings are consistent with recent statistical reports informing adoption policy development¹³. These reports demonstrate the extent and variation, across local authorities, of the delay in decision making and implementation at each stage of the contemporary adoption process.

4.1.2 Timeliness in decision making in taking children into care

The vignettes and timelines confirm wide variation in the timing of the local authority decision to apply for a care order, when considered in retrospect and in relation to the child's birth.

In many cases children were removed from harmful circumstances in a prompt and pre-emptive way. For seven of the children care admission was at birth or shortly after, usually following assessments of risk on notification of the pregnancy. In other cases they were left at home for years, in the face of recorded concerns and unchanging parenting and significant developmental harm, before the local authority got a decisive grip on decision making. There were no cases where previously safe and capable parenting deteriorated in an unexpected and unpredictable way. In each case the harm and/or risk to the child was, or could have been more effectively, described from the outset and responded to appropriately.

CA1989, s20 accommodation was more often than not used as a staging post in the 'adoption journey', en route to the care application and order. The eight cases in which parents agreed that children should be accommodated first included both those where protection and care planning was planned and pre-emptive and those where it was significantly delayed and indecisive. In only two cases where children were admitted in this way was the initial care application delayed subsequently. However, in both cases this delay continued even when a plan for adoption had been proposed by the 'LAC' review.

Negotiations with parents about s20 accommodation could lead to fragile agreements. In four of these cases CA1989, s46 police protection powers were relied upon by the local authority to secure the care admission although the risk and harm was unforeseen in only one of these.

4.1.3 Timescales and placement

Children were rarely placed in their adoptive home within expected timescales:

- The average time taken for an index child to be placed in the adoptive home following care admission was twenty four months.

¹³ Department for Education Adoption Scorecards May 2012
<http://www.education.gov.uk/rsgateway/DB/STA/t001067/index.shtml>

- Only half of the index children were placed within the interim Adoption Scorecard threshold of twenty one months¹⁴. This figure rises a little if Becky's date of foster placement in her *de facto* concurrency placement is included.
- Children waited between thirteen and forty nine months to be placed.

Care and placement proceedings were especially prolonged:

- The average time taken for care proceedings to conclude was fifty two weeks.
- Proceedings ranged in duration from twenty weeks to eighty four weeks.
- In only one case did the court conclude the care and placement proceedings within the proposed new statutory limit of twenty six weeks.¹⁵

The agency decision making process was extremely variable across cases in relation to expected timescales:

- The average time between Panel recommendation of adoption and the making of the placement order was eighteen weeks. Exceptional circumstances in three cases explained this surprising finding. Excluding these cases from the calculation reduces the average to nine weeks.
- The average time between the Panel recommendation of adoption and the adoption placement was just over the current twelve month national standard¹⁶.
- The average obscures a very wide range of outcome at the level of the individual case. This stage of the adoption journey ranged in duration from four to twenty three months. Once again half of the children were placed within the twelve month target period.
- The average time between the date of the placement order and the matching decision by the Panel and placement was seven months. This average is consistent with the interim Adoption Scorecard threshold. However, only 60% of the children were placed in this period. Once again this figure rises further if Becky, who had a *de facto* concurrency placement, is included.
- Children waited between one and nineteen months to be placed once the placement order had been made.

Delayed decision making resulted in children spending relatively lengthy periods in temporary foster homes.

The vignettes outline in brief the child's care experience in each case. For the most part temporary care did provide stability and reparative care for children, so far as this could be estimated from the file evidence on the medical status and developmental trajectory of

¹⁴ See above, n.13

¹⁵ See Draft Legislation on Family Justice www.official-documents.gov.uk/document/cm84/8437/8437.pdf

¹⁶ See Department for Education <http://www.education.gov.uk/childrenandyoungpeople/families/adoption/g0072314/guidance>

the children. In only one case were children moved from a foster home because of the questionable quality of the care provided. Where sibling groups were separated it was because of a child-centred decision.

In the infant cases temporary care provided a secure base for optimal development pending permanent placement. There was some evidence in file documentation of disrupted routines caused by parental involvement in care-taking and contact but no arrangements were offered by the local authority or ordered by the court that set in train the kind of disturbance to child well-being and attachment relationships reported in other studies.¹⁷

In the case of the older children there was a complex range of responses to separation from long-standing birth family relationships and extended temporary stays in foster homes. Highly disturbed and upsetting behaviour was displayed by several of the index children and their (older) siblings. This was triggered by contact encounters which left them even more uncertain about their care plan and emotionally conflicted. There were shocking examples of parental rejection that left them feeling further abandoned. Nonetheless, the older children did also express relief when decisions were finally made. In all cases they had aligned themselves with the adoption plan and looked forward to joining their new family prior to placement.

¹⁷ For a summary see: Schofield, G. and Simmonds, J. (2011) Contact for infants subject to care proceedings, *Family Law*, 41, June 2011, pp.617-622.

4.2 The process of contestation

The *main findings* were that:

- Any pattern of **contestation by parents was hard to predict** in most cases, **and describe** for the sample as a whole.
- Parents were enabled to oppose applications and orders at all stages of the adoption process, even where these were unexpected and appeared unreasonable in the light of the circumstances. **On this evidence the legal and procedural framework for decision making in adoption is robust with regard to parents' rights.** This is despite judicial discontinuity.
- Although parents often continued to dispute the accuracy of social work statements in evidence, and the appropriateness and reasonableness of local authority plans and court decisions, **only one parent sought to claim that his case had not been heard in accordance with due process.** This claim was considered and dismissed on appeal.
- One case involved a **transnational family where the legitimacy of the actions of the state in the legal severance of birth parents' rights was questioned, as well as the adoption decision itself.**
- The research indicates that, while **adoption decision making processes were sufficiently robust to enable decisions to be taken legitimately,** attention still needs to be given to the **enhancement of standards of professional practice in the local authority and court.** Practice variability affected the timeliness of decision making. It also allowed questions to be raised about the extent to which children and parents were being provided with the best possible professional service at each stage of the adoption process, consistent with their respective needs and rights.
- Poor or unreliable **standards of practice appeared on occasion to be associated with expressions of grievance by parents about aspects of case handling by the local authority.** It is not possible to say whether there is any association between the standard of practice provided to the child and family and the nature and extent of contestation by parents in adoption.

4.2.1 Patterns of active contestation

In considering the following findings, it is important to recall the distinctive and unusual nature of the study case cohort. The study considered only those contested adoption cases where birth parent opposition was active, as indicated by a legal challenge by one or both parents in respect of one or more application or order during the adoption process, understood as a whole. Across adoption cases as a whole in England in recent years it is rare to find active parent opposition once the placement order has been made.

Chart 2 The pattern of active contestation

Case	Parent	Care application: contested	Placement application: contested	Placement Order: leave sought to revoke	Adoption application: leave sought to oppose
1: Lily	Mother: Father:	Yes No	No No	No No	No Yes
2: Terry	Mother: Father:	No No	Yes (separately) Yes	No No	Yes Yes
3: Jamie	Mother: Father:	No No	Yes Yes	No No	No No
4: Mark	Mother: Father:	Yes (separately) Yes	Yes Yes	Yes No	Yes Yes
5: Amy	Mother: Father:	No No	Yes Yes	No No	No Yes
6: Lee	Mother: Father:	Yes (separately) Yes	No No	Yes Yes	Yes Yes
7: Becky	Mother: Father:	Yes (separately) Yes	No Yes	No Yes	No No
8: Sarah	Mother: Father:	No No	No No	No No	Yes No
9: Robin	Mother: Father:	No Yes	No Yes	No No	No No
10: Helen	Mother: Father:	Yes Yes	No No	Yes No	No No
11: Aaron	Mother: Father:	Yes No	Yes No	No No	Yes No
12: Joshua	Mother: Father:	Yes Yes	No No	Yes Yes	No No

This chart shows those points in the process when the case was contested. Consistent with the sampling method, ten of the twelve cases involved active opposition after the placement order had been made. In five of these cases the court granted leave for the

parents' case to be heard (Lily, Terry, Mark, Sarah, Aaron). In only three of these cases did parents actually appear and contest.

In addition, the chart demonstrates the variability in patterns of parental response at each stage of the judicial decision making process. Any pattern of contestation by parents was hard to predict in most cases, and describe for the sample as a whole. Rarely was opposition sustained in a consistent way by parents throughout the process. In some cases parents chose to be separately represented.

4.2.2 Procedural robustness

The legal and procedural framework facilitated interventions by parents to oppose applications and orders at all stages of the adoption process, even where these interventions were unexpected. Cases were rapidly allocated to the appropriate level of the 'family court', with only one case managed at first in the magistrates' court before transfer. Lack of judicial continuity was observed in almost every case. This supports the current view of the government¹⁸ and the judiciary¹⁹, that overall case management in the family justice system needs radical reform. It did not, however, affect parents' rights to a hearing.

No evidence was found on file of any failure by courts to consider the mental capacity of parents. In no case did the legal representative of a parent press the case that the Official Solicitor was required. In every case and at all stages of the process, where courts were faced with parent representations, procedures allowed for sufficient flexibility in practice to enable these to be heard.

The research supports the view that the legal and procedural framework for decision making in adoption is robust with regard to parents' rights.

4.2.3 Due process

Parents often continued to dispute the accuracy of local authority evidence, and question the appropriateness and reasonableness of local authority plans and court decisions. However, only one parent (Lee's father) sought to claim that his case had not been heard in accordance with due process. This claim was considered and dismissed by the President of the Family Division of the High Court, on appeal. In the case of Robin, a key factor in contestation was that his father and paternal transnational family network were Muslim and did not recognise the legal severance of birth parents' rights as legitimate actions of the state. Thus the family opposed not only the particular circumstances of Robin's adoption, but also adoption per se. In all cases legal representations by parents were considered fully. This was even where they appeared to be demonstrably unrealistic, when seen in the light of the circumstances of the case, the evidence already available to the court and the pressing needs of the child for a resolution of the matter in hand. So far as the evidence available on the court file was able to show, local authority

¹⁸ Ministry of Justice/Department for Education (2011) *The Government Response to the Family Justice Review: A system with children and families at its heart*

¹⁹ Mr Justice Ryder (2012) *Judicial proposals for the modernisation of family justice*, Judiciary of England and Wales

child protection and placement procedures designed to ensure accountability to parents and other family members were almost invariably observed in a routine way. Robin's case stands out as the exception.

However, the quality and effectiveness of direct practice and case handling in the local authority and the court was not wholly consistent with expectations in each case. Variability affected the timeliness of decision making, as has been shown. It also allowed questions to be raised about the extent to which children and parents were being provided with the best possible professional service at each stage of the adoption process, consistent with their respective needs and rights. The research indicates that, while the robustness of adoption decision making processes enabled decisions to be taken legitimately, attention still needs to be given to the enhancement of standards of practice.

4.2.4 Professional practice, contestation and delay

Poor or unreliable standards of practice appeared on occasion to be associated with expressions of grievance by parents about aspects of case handling by the local authority. It is not possible to say whether there is any association between the standard of practice provided to the child and family and the nature and extent of contestation by parents in adoption. The qualitative review that follows in the remainder of this report suggests lines of enquiry in this respect. However, a larger comparison study will be needed to explore this relationship. Any such study would need to show what impact the best standards of direct professional practice with the family could have in reducing parents' distress and/or, anger, where their child is taken into care and placed for adoption. Such a study would also need to show the extent to which, if at all, any diminution of active opposition to applications and plans would enable contested adoption cases to be heard, and children placed, with less delay.

4.3 The Local Authority Care Application and the Adoption Placement Plan

The study evaluated the use of evidence and case handling by the local authority in the initial application for a care order and in the decision to approve adoption as the preferred permanent placement.

The *main findings* are:

- Care applications could be **categorised as ‘unexpected and emergency’, ‘planned and pre-emptive’ and ‘delayed’**. In two cases the physical safety of children was the over-riding concern at the point of application, and the local authority took swift action to remove children on the basis of injuries already reported. In the other ten cases it was a constellation of developmentally harmful parenting practices, or the risk of them that led to action. In five of these cases concerns were raised pre-birth.
- When local authorities applied to the court for interim care orders, **sufficient evidence was filed, such that in no case did local authority action appear unreasonable in the circumstances**. Nonetheless, the standard of social work practice prior to application varied widely. Delayed court applications, and lack of effective intervention pre-proceedings, seriously compromised child development and well-being.
- In most cases **local authority case handling was consistent with statutory regulations and guidance, once children had been taken into care**. This applies equally to care and permanence planning for ‘looked after children’ and Adoption and Children Act 2002 regulations and guidance for Panel approval and court authorisation of adoption placement.
- Social work practice in **making sense of child development and child experience and in communicating plans to children in care** usually fell short of required professional standards.
- Options for alternative **permanent placements with relatives or friends were considered by the local authority in a procedurally appropriate way** in all but one case. However, **steps taken to enable parents to maintain care of children at home were rarely planned and sustained in a proactive way**, once the case was in proceedings.

4.3.1 The circumstances of the care application

The local authorities made care applications in respect of children in three different sets of circumstances:

- *Unexpected and emergency applications (Aaron and Lee):* In these two cases the fact of a significant physical injury was the over-riding concern at the point of application. Neither case was currently open to the local authority. The local authority took swift action to remove children on the basis of injuries reported. This included taking siblings into care too, in both cases. Additional evidence to support the local authority case that parents would continue to pose a threat to the children had to be gathered subsequently, once the matter was in proceedings. These two cases resulted in fierce, if not always consistent, contestation by parents;
- *Planned and pre-emptive applications (Becky, Lily, Jamie, Mark, Terry, Amy):* In these six cases the intention to seek a care order was notified pre-birth. The application was based on an assessment of the harm likely to be caused to the children if they were not taken into care. In these cases parents tended to contest the legitimacy of social work judgements about their future parenting capacity;
- *Delayed applications (Robin, Helen, Joshua, Sarah):* In these four cases the local authority was hesitant and indecisive in applying for a care order. This was despite accumulating evidence of significant and persistent neglect, emotional abuse and risk of physical harm to children and a demonstrable lack of engagement and change by parents. In these cases contestation was especially ambivalent and unpredictable.

4.3.2 The use of evidence and case handling in the application for a care order

When local authorities applied to the court for care orders sufficient evidence was filed, such that in *no case* did local authority action appear unreasonable.

In the *two cases requiring emergency protection* it was the plain fact of the physical injuries and the circumstances in which they came to light, and were accounted for by parents, that formed the basis of the initial care application.

In *Aaron's* case his own account of the beatings he and his brother received were not contradicted by his mother. Instead, it was the different interpretations placed on these 'punishments', and the use of them by her and her partner, that led to the care and placement applications. Whilst Aaron's mother claimed that the standard of care given to the boys was acceptable in her ethnic and cultural community, the local authority argued that it indicated a level of dissociation from the children's emotional experience and needs that was pathological and unchanging.

In *Lee's* case it was the cause rather than the significance of the injuries that became the matter of dispute. The local authority had to rely on the initial hospital diagnosis of the likely non-accidental cause of the fractures and bruises. The denial of responsibility by his parents, and the discrepancy between the medical evidence and because the parents' account was deemed improbable, contributed to the decision to remove all the children without further assessment.

Evidence sufficient to support the local authority application was presented *subsequently*, in both cases, once the safety of the children had been secured by the interim care order. From the outset, these two cases were marked by the single-mindedness of the local authority in resisting any suggestion that the five children in these families, already harmed or not, should be returned home. This unequivocal and risk averse approach to the care application was consistent with the proven or indicated facts of *parental violence and hostility* in each case. It contributed to the entrenchment from the outset of fixed positions in the proceedings by the local authority and parents alike. Such entrenchment may be unavoidable.

In the *six cases involving infants who were removed pre-emptively, following a pre-birth risk assessment*, routine procedures were followed for child protection and care application.

So far as the files allowed this to be confirmed, parents were formally notified of meetings and decisions, in the appropriate way. However, parent participation in agreeing to and implementing protection plans varied widely, in and across the cases. So too did the approach taken by the local authority in supporting this participation. Standards of social work practice varied widely, despite the early planning of the care application in each case. Lack of effective engagement was indicated by the need of the local authority to resort to emergency legal provisions as the route into court.

In *Becky's* case an older sibling had been through proceedings and the evidence was derived from an earlier assessment that was thoroughly revised.

The other five cases exemplified practice that ranged from the sound to the minimally adequate. Sound practice was associated with an integrated approach to protection and care planning from the outset and informed explicitly by the permanence planning perspective now required by statutory guidance.

In *Lily's* case early notification of a first pregnancy to a vulnerable young woman by adult services key workers precipitated a strategic approach to parallel planning pre-birth, with a primary focus on the possibility of the mother's carer offering a permanent home to either the mother and child or the child alone. The involvement from the outset of the specialist advice of an adoption team social worker helped inform early permanence planning here.

In two other cases pre-birth assessments allowed for such an approach but implementation was much less confident and purposeful. For example, in *Terry's* case, and that of *Mark*, no arrangements were made to pursue actively the options for a placement with relatives prior to the final care admission. Instead of an integrated approach to social work thinking, 'child protection' considerations alone dominated and time was lost later in catching up with 'care planning'.

In *Amy's* case it was the complaints of relatives themselves, who had been left to support her two older siblings on an ad hoc basis that triggered very belated permanence planning for them too.

In *Jamie's* case decisive action was taken to progress the adoption plan because he was born during care proceedings in respect of his five older siblings. Parental failure had already been established in these proceedings and this evidence was sufficient to support the care application in his case.

In the planned and pre-emptive applications child safety was secured without delay and the key issues for resolution were identified at the outset of proceedings. This decisive action enabled the local authority case to be tested fully in court by parent and child representatives alike. Where parents felt local authority action had been disproportionate given the risk presented, and/or unreasonable in the expectations of their response to the assessment, they were able to use the opportunity provided by care proceedings to provide contrary evidence. For example, where children had been removed previously, parents claimed that they 'could do better' this time (*Jamie*) or that the local authority was failing to recognise progress made towards rehabilitation (*Becky*).

In the *four cases where application was delayed*, the evidence on file indicated a far earlier recourse to the court would have been warranted. Evidence of developmental harm to the child due to chronic problems with parenting was readily demonstrated on application. So too was parental failure to respond to requirements of child protection plans and make changes to their care of the child.

Indecision by the local authority in getting these cases to court in a timely way was the result of lack of clarity about the nature and extent of risk and the absence of the permanence perspective in protection planning that would have required them to progress care planning through a court application.

In *Robin's* case the failure was extraordinary. The care application came three years after his accommodation under CA1989, s20, when he was already over four years old and his mother had ceased all contact. *Sarah* also waited too long for a child-centred approach to be taken, at first at home and then again in s20 accommodation.

Helen and her siblings were exposed to high levels of recurrent violence before any action was taken. This included rape witnessed by the children. All three children experienced problems in settling in foster care as a consequence, re-running knife episodes and presenting significant behavioural disturbance.

Joshua was grossly developmentally delayed by the time he finally came into care at almost five years old. An early social work assessment was detailed but the recommendation of an urgent legal planning meeting and a care application went unheeded. Instead, it was some two years later that an interim supervision order was made. By the time *Joshua* was taken into care he was described as being 'unable to walk, not toilet trained, minimal speech, tongue and mouth lacerations and chronic digestive problems'.

When children were at home 'children in need' and 'child protection' procedures provided the framework for practice. So far as the court file allowed this to be confirmed, these

procedures were followed as a matter of routine. Nonetheless, practice was often formulaic and narrowly-focused, as well as reactive.

Key aspects of this restrictive repertoire of social work practice in the pre-proceedings stage in these cases could be identified:

- *Poor risk assessment:* assessments served to accumulate, more or less adequately, a weight of *facts* about child harm, the contributing behaviour of parents and parental non-compliance with protection plan requirements. This is consistent with the basic evidential demands of the court. However, the *interpretations* of the nature and origins of harmful family relationships and the *estimations* of their likely future impact on child development were invariably thin, or absent.
- *Weak child engagement:* the research method did not allow for direct evaluation of the quality of social work relationships with children and parents. Nonetheless, the partial and disengaged nature of the social work accounts of the subjective experience and well-being of the children left too long at home were indicative. Evidence of the extent of child harm and distress usually emerged retrospectively, once the child was safe in the foster home. It was often left to the children themselves (by now old enough in most cases to share their experiences and express their views), and their foster carers, to supply the insights missing from the social work accounts. The detailed observations and reports of foster carers illuminated the absence of this kind of evidence in the social work assessments. The experience and voice of the older children was often peripheral to planning from the outset.
- *Failure of communication of professional expertise:* the standard of pre-proceedings practice meant that social work accounts did not convey the authority required in their presentation of evidence and their recommendations to the court. Further research is required to establish whether social workers are being advised by local authority lawyers to be cautious in their analysis of the facts of the evidence presented to court. In the meantime, this study suggests that the weight of accumulated facts filed in delayed care applications leave questions unanswered, for most part, about the social work practice model employed during the pre-proceedings stage.

In addition, it was not always easy to see how the interventions *parents* were asked to commit themselves to were intended to facilitate any changes required of them, if care proceedings were to be avoided.

Parental failures to attend assessments and services as prescribed in child protection plans were invariably carefully chronicled, as were examples of their unreasonable behaviour more generally in response to social work advice. However, there was a striking absence in statements and reports of any description of the direct methods used

by social workers themselves to motivate parent attendance for specialist assessments and services and to help them sustain change. Parental hostility or outright rejection of social work intervention explains this only in part. Social work intervention tended to concentrate, in any case, on the monitoring of parental compliance with plans and the collection of evidence of their failures in this respect.

Moreover, the mismatch between the chronic nature of the problems causing agency concern in these cases and the family centre attendances, parenting classes and the home-based 'family support' interventions offered in response was disconcerting. It appeared to be the case that weak risk assessment had led, in these cases, to referrals for assessment and service that were largely routine, when a much more intensive approach was called for. There was no indication on the file that such referrals were informed by the available evidence-base, indicating what might work best given the nature of the need and the risk in each case. In general, research findings were not cited in social work statements, assessment reports or accounts of their intervention. Chronic problems of drug use and violence required specialised interventions that were not offered.

In general, across all categories of care application, the lack of a demonstrably robust, authoritative and engaged approach to risk assessment and intervention meant that parents could argue their own needs had not been fully understood and appropriately met by the pre-proceedings actions of the local authority. This was whether or not the work was undertaken following formal notification of an intention to make a care application.

In particular, the file evidence suggested the traumatic impact on parents of their own history of abuse and neglect had not been recognised or respected by the social worker in any consistent way. For several of the mothers in these cases their adult relationships merely continued the abusive pattern. Many of the fathers, in turn, had not been properly cared for as children. In each of the cases it was apparent that parents were unable or unwilling ultimately to make and sustain the commitment necessary to enable the child's needs to be met, or at least to do so in accordance with the timetable for the child.

However, *parental ambivalence* was also indicated in some cases. Some parents, mothers especially, did offer opportunities to social work to enable them to facilitate effective engagement, once the permanent loss of their child looked likely. These opportunities were not always grasped.

- *Amy's* mother failed persistently, over several years, to attend assessment appointments or maintain involvement in services provided to support her in caring for *Amy's* older siblings. She was described as emotionally 'disengaged' as well as physically absent. However, when she came to the office to say how scared she was of her new partner, and to ask for support, she was told to report to 'the relevant authorities' if any violence occurred;
- *Terry's* mother would not accept the offer of a refuge placement during pregnancy and beyond to enable her to make a supported start to family life without her violent and controlling husband. She was described as indecisive and irresponsible. When *Terry's* mother sought to confide in the social worker her continued fear of her husband this information was subsequently shared with him.

Protection plans were not always designed to recognise the significance of parent ambivalence, and/ or social workers sufficiently attuned to the possibilities this might provide to overcome barriers and motivate change.

4.3.3 The use of evidence and case handling in the decision by the agency to approve adoption as the preferred permanent placement

The Panel process

In all cases *statutory procedures were followed*, such that the adoption placement decision was approved by Panel and endorsed by the agency decision maker in an appropriate way.

In most cases adoption was identified as the likely placement by the time of the second 'LAC' review, as required by guidance and regulations. It became the preferred option rapidly in each case, as the alternatives of a placement with family or friends, or a return home to parents, were ruled out. Social workers prepared reports in accordance with Panel requirements and medical reports were completed in a timely way. Agency decision makers almost invariably confirmed their endorsement within a few days of receiving the Panel recommendation.

The *value added by the Panel* could only be assessed by reference to the quality and robustness of the documents submitted to the courts to support the placement application. No evaluation was undertaken of Panel proceedings or the thoroughness of the case scrutiny.

The findings were mixed:

- By definition, the final statement and care plan and the placement application submitted by the local authority, supported by oral evidence from the social worker, met the evidential requirements for the care and placement order;
- However, placement applications, made on the approved form, were sometimes filed in ways that suggested their preparation had been hurried and that they had not been properly quality assured, or even proof-read;
- Statements and care plans updated and extended previously filed documentation, rather than revising and re-analysing it.

It was clear that the Panel process could not provide quality assurance, beyond that allowed for in the meeting held to approve the adoption plan. However, in *Robin's* extraordinary case it was the Panel, rather than the IRO, which picked up the local authority failure to complete the assessment of the grandmother as a potential carer. *The duty to consider rehabilitation of parents and the return of the child*

The *circumstances of the care admission* dictated the local authority approach to assessment and planning for parental rehabilitation during the interim period, prior to the final placement hearing.

- In the *'planned and pre-emptive applications'*, the interim period of care could be used purposefully to instigate or conclude arrangements for assessing the possibility of rehabilitation commenced pre-birth. For example, it was effective in securing the early consent to the adoption placement plan by *Lily's* mother. Early permanence planning had allowed the option of return home to be tested carefully, along with other placement options, with her close involvement throughout. In other similar cases, pre-proceedings parenting capacity assessments and intervention plans were continued and completed in the interim care period. This often followed representations by parents and/or the Children's Guardian. For example, in *Mark's* case a mother and baby placement was changed twice in order to provide a better opportunity for both parents to demonstrate their capability to provide a safe and stable home;
- In the *'delayed' and 'emergency' cases*, local authority efforts to support and assess parental rehabilitation came second to the concern to keep the child safe and demonstrate that the threshold conditions were met. In these cases it was the court that determined the steps to be taken to test, or further test, parental risk and capacity to change. For example, in *Aaron's* case the court had to direct the culturally sensitive therapeutic assessment, the parenting programme and the supported contact arrangements that allowed his mother the chance to demonstrate her capacity to care safely in future. In *Lee's* case the perceived risks to all three children and the fierce antagonism of their father led to the local authority opposing all attempts to assess and plan a return home.

Irrespective of the circumstances of the application, the court invariably took steps to ensure the parents' case for the return home of their children could be heard fully. In the one case (*Lee*) where the judge refused further evidence, the father was unsuccessful in seeking leave to appeal. In those cases where parents sought subsequently to oppose placement and adoption orders, citing a change of circumstances, leave was refused only once the facts of the matter had been fully considered by a judge.

The duty to consider placement with relatives

Options for *alternative permanent placement with relatives or friends* were considered by the local authority in a procedurally appropriate way in all but one case, that of *Robin*. It was very difficult to understand how things had gone so badly wrong for him. There was no evidence that the local authority would seek actively to avoid the requirement to assess relatives or friends as potential alternative carers. In some cases, but not all, 'viability' and subsequent assessments were instigated promptly, once the permanent removal of the child was mooted.

For example:

- *Lily's* mother's professional carer was enabled to put herself forward for assessment as the permanent carer almost immediately in the pre-birth assessment stage. She could then seek leave to pursue an application for an order once proceedings were commenced and the local authority had declined her offer of a permanent home to Lily;
- In *Aaron's* case the decisive protection and care planning enabled a number of relatives and friends to be identified and assessed;
- In the cases of *Mark* and *Terry*, grandparents were considered as potential carers as soon as the care application was deemed necessary. These options were ruled out because of the opposition of the parents as well as the judgement of the local authority. In *Mark's* case both parents referred to the neglectful and abusive care they had received in their own childhoods as reasons for excluding grandparental care as an option. In *Terry's* case his father ensured the consideration of the option of a placement with the maternal grandparents was pre-empted because of historic antagonism.

In general it was usually the ambivalence and conflict within extended family networks, in the study cases, that confirmed social work expectations that adoption would be the only realistic placement option. A pattern of ambiguous, unexpected and often late applications characterised the approach of relatives and friends. File reports indicated a complex process through which extended family members made decisions finally, about where their loyalties and capabilities lay in relation to the permanent care of the child in question. The pervasiveness of unresolved grievance and continued conflict in the extended family in the case sample strongly influenced placement assessment and decision making. The children in most of these cases were born into networks of relationships that were unreliable or over-stretched sources of support to parents.

Once again, it was the *standard of social work practice* that appeared to be most salient in considering the reasonableness of local authority action, so far as the experience of children and parents was concerned.

Practice often fell short in the following ways:

Unconfident communication with children: most of the children were too young to be consulted. However, where they were able to express a view, lack of confidence by the social worker in communicating intentions and seeking opinions was marked. Children either had to speak out strongly themselves in order to be heard, as did *Helen* and her brothers once in foster care, or cope alone with their confusion and distress. Both *Aaron* and *Lee's* older brothers were deeply disturbed by the position they were left in when a parent told them at contact they would be coming home and the social worker then failed to confirm this was not the plan. Reports of their behaviour subsequently, in the foster home and school, were alarming and upsetting to read. Moves by the local authority simply to reduce parent contact did nothing to settle the minds of these children about how long they would be staying in temporary care and what would be happening to them in

future. In some cases it was apparent the social workers were under the impression that it was inappropriate for children to have care plans explained to them.

Equivocal support to parents: by the time most of the cases came to court, or shortly after, local authority attention was firmly focused on getting authorisation for permanent removal and considering whether there were any realistic alternatives to adoption. In none of these cases did the local authority intend to use the interim care order as a source of authorisation of assessments and interventions that would test further parental capacity for rehabilitation and the return home of the child. Social work attention became focused almost solely on progressing the case towards placement. This allowed parents to file statements arguing that they were being unfairly treated by the local authority, through proceedings. In particular, complaints were made about the lack of opportunity to care directly for children and be supported in this in the foster home and during contact, which was usually arranged elsewhere. Parents claimed contact with children was being used merely to gather further evidence against them and that they had not been given an appropriate further opportunity to demonstrate their capacity to care. The local authority argued that child welfare required contact arrangements which were carefully managed, not least because a further record of parental conduct would be provided to support their case for care and adoption. Some parents forced the issue and the court gave directions. Others disengaged altogether, once their children had been removed. In both cases the local authority could then show parents had been unreasonable, whatever the cause of their conduct.

Reactive approaches to the assessment of relatives: for the most part, and despite the challenges posed by family conflict, the search for relatives might have been more proactively initiated and sustained. A systematic approach to the analysis of the wider family network dynamics was only seen where a permanence perspective was employed by the local authority from the outset. This might have reduced the need for independent, court directed assessments in some cases. Family Group Conferences (FGCs), independently chaired, were not used as part of a routine strategy to test options for placement other than adoption. In some cases it was the parents who refused to agree to a FGC, or family involvement of any kind, in their attempt to manage carefully the social work contact with relatives, whom they had themselves assessed as inappropriate carers of their children. This meant that the identification and assessment of the 'viability' of relatives as potential permanent carers tended to be reactive and episodic rather than strategic, in focus. The identification and assessment of relatives and friends was facilitated best where a permanence perspective was employed from the outset, in child protection and care planning, by the local authority.

In general, local authority practice was not designed to offer an integrated, multi-agency service to assess and support parents at an early point under child protection procedures, or for rehabilitation through proceedings. Assembling evidence for an application involved the gathering of information and opinion from other professionals, mostly about parental compliance. This information-gathering approach, while consistent with procedural requirements, left a number of questions unanswered about parental mental health, severity of substance misuse and prognosis. It provided part of the evidence relied on for the local authority care application. However, this evidence was rarely tested prior to application by any form of assessment of harm and risk independent of social work case management, whether in-house or external. In only one case (Becky) had the local authority made arrangements for the commissioning, as a matter of routine, of assessments from a specialist team.

4.4 Court decision making processes in care, placement and adoption proceedings

The study sought to evaluate the quality of the evidence put to the court, and how well it presented a balanced argument about the birth parents' ability to care for the child. Evidence is provided in care and placement proceedings by the local authority, acting as applicant, and by any experts instructed by the court prior to the resolution of issues and the final order. The advice of the Children's Guardian is central to deliberations at all stages. The rationale and impact of the instruction of experts and the value added by lawyers representing the different parties was considered in relation to concerns about issue resolution and delay

The evaluation of the impact of the Guardian role is presented later in the report.

The *main findings* were:

- As a matter of routine, the court ordered assessments additional to those filed by the local authority as applicant. This was irrespective of whether or not applications were made by parents. ***This ensured parents' rights to contest were at no point compromised, in any of the study cases.***
- ***Interim care orders were granted readily on initial application and renewed in accordance with due process.***
- ***The adequacy of the local authority evidence that parents lacked the capacity or commitment to change was the main focus of debate.*** Parents questioned the extent to which the local authority judgement of them was accurate and fair.
- ***Experts were instructed in every case***, often in large number and usually in a sequential way as the proceedings unfolded. Their contribution was seen by the court and the parties to be crucial to the judicial determination of both the facts of the case, especially the capacity of parents, and the appropriate care plan.
- There was no evidence in these cases that parents were unable to benefit from their own legal representation. ***In all cases, parents' legal representatives enabled them to respond to local authority concerns and to present their own case in contest from the outset.***

4.4.1 The quality and nature of the evidence available to the court

As a matter of routine, the court ordered assessments additional to those filed by the local authority as applicant. These assessments were intended to fill gaps in the local authority evidence and to ensure that an appropriate expert opinion had been provided in each case. This was irrespective of whether or not applications were made by parents. Lack of judicial continuity, sequential and delayed reporting by the local authority and experts alike and repeated adjournments of hearings contributed to delay. Nonetheless, this ensured parents' rights to contest were at no point compromised, in any of the study cases. This confirms previous research findings on parent representation in care proceedings more generally.²⁰

²⁰ Pearce, JF, Masson, JM & Bader, KF. (2011) *Just Following Instructions? The representation of parents in care proceedings*, School of Law, University of Bristol
<http://www.bristol.ac.uk/law/research/researchpublications/2011/justfollowinginstructions.pdf>

Evidence produced by the local authority as applicant

In several cases parents contested the facts in social work statements and the unremittingly negative interpretations placed on them. However, in only *Lee's* case were the facts of the harm caused the sole basis of contention, in themselves. In this case the dispute was only finally settled by the High Court rejection of leave to appeal by *Lee's* father and the ECHR finding that there was no cause to become involved. Instead, the main focus throughout was on the adequacy of the evidence in support of the local authority contention that parents lacked the capacity or commitment to change sufficiently for children to be returned home.

In this respect the 'fitness-for-purpose' of the evidence could not always be relied on. This allowed parents to question the extent to which the local authority judgement of them was accurate and fair.

In the '*delayed applications*' the local authority relied most on evidence of parental non-compliance (e.g. missed appointments, non-engagement with services). The unreliability of parents in committing to and completing the requirements of child protection plans was well-documented. However, the lack of integrated multi-agency assessment and intervention pre-proceedings meant that expert/specialist assessment of mental health, disability and substance misuse issues could not, in any case, be completed in most cases at a timely point. This paucity of essential pre-proceedings assessment work created further delay through the court process as basic assessments were directed. For example, in *Joshua's* case, neither the cause of his severe developmental delay nor the extent of his parents' drug use and mental health problems had been established on application. The origin of the ambivalent and neglectful care provided by their mother to *Helen* and her brothers and the abusive nature of her relationship with their father was not properly explored by the time a further incident of domestic violence precipitated the application. All assessments were suspended on *Sarah* once her mother went missing.

In the '*planned and pre-emptive application*' cases, where pre-proceedings work had established that improvement in parents' capacity or care of children was highly unlikely and risks could be shown to remain very high, courts still proceeded to commission further assessments as a matter of routine. This was often with the agreement of the parties and not simply because a parent application was being upheld. For example, in *Becky's* case all necessary specialist assessment work had been updated pre-proceedings. Unusually this included cognitive functioning and psychological assessments of parents, together with parenting capacity assessments. Nonetheless, the court then directed duplicate assessments. In *Lily's* case the court instructed an independent expert assessment of the mother's capacity despite a clear and realistic plan for adoption based in part on an assessment by adult services of the extent of the mother's learning disability.

Social work assessments were comprehensive in their listing and categorising of accumulating indicators of need, harm and inadequate parenting. Children's developmental 'needs' were represented, alongside the persisting limitations observed in parenting capacity. This approach was consistent with current procedural requirements and practice guidance.

Nonetheless, missing from the picture was an expert and authoritative account of the origins of the risky relationships, why they were not susceptible to change and what the developmental consequences would be through childhood and beyond in this particular case.

Evidence produced by experts under court instruction

In all twelve cases, the court appointed further experts following the initial care application.

Experts were most commonly paediatricians, child psychologists and psychiatrists, and adult psychiatrists and psychologists. Independent social workers featured in only four cases and performed assessments of parents and 'viability' assessments of relatives and friends. In addition, drug and alcohol testing services were used in those cases where this was a central issue. Experts were appointed at the outset of cases and then in sequence, and occasionally with repetition, where the court could not satisfy itself that the parents had the capacity to understand proceedings, where issues were sufficiently narrowed or the case in general could yet be determined. It is not possible to say whether local authorities expected to have experts do assessments they could or would not provide themselves.

In the '*emergency application*' to protect *Lee*, fact finding required the contribution of a range of specialist expert diagnosis and opinion. The independence of these experts from the local authority was crucial in aiding resolution of the case. Nonetheless, the parents sought to have additional witnesses instructed.

In the '*delayed applications*', expert evidence exposed the gaps in pre-proceedings social work assessment. This enabled more informed judgements to be made about parental capacity for change. The reports very often provided basic information on the history of parents and the impact of loss, neglect and trauma on them and their family relationships and parenting behaviour. They revealed the extent of the troubled pasts of the parents in ways not conveyed in social work assessments. They painted a much fuller picture of the developmental harm that had resulted where children had been left at home for too long. This confirmed the view that issues might have been narrowed and case resolution achieved much more effectively had expertise been commissioned directly by the local authority, or had the application been made earlier in order to ensure access to Legal Services Commission (LSC) funding to support an assessment.

In the '*planned and pre-emptive*' cases, the picture is more mixed. In the case of *Lily*, an expert assessment appeared simply to add an element of independence to the case, rather than contribute new knowledge or resolve a dispute. There was clear evidence of unnecessary duplication in *Becky's* case.

Experts were also appointed to respond to questions that emerged during the course of proceedings. For example, in *Helen's* case, and given the difficulties that all the children presented during interim foster placements, an expert was appointed to consider whether adoption as a sibling group was in the children's best interests. This added an invaluable

opinion, based on detailed direct work with the children. It enabled the plan for adoption to progress. Child-focused expert opinion, particularly in response to emotional and behavioural difficulties presented in interim placements, greatly aided case resolution and served to counter-balance parental contestation, where concerns were denied. This was seen in a minority of cases, where children were older on final care admission. Nonetheless, the need for such expertise to be instructed in proceedings raises further questions about the reliability of local authority resources in this respect.

Where *independent social workers* were appointed it was sometimes to undertake parenting assessments where these were not completed in pre-proceedings. In other cases, such as those of *Becky* and *Helen*, they appeared to duplicate work. In the single case of *Robin* an independent social worker was instructed to undertake the assessment of relatives because the local authority appeared to lack the necessary expertise. Had *Robin's* grandmother's request for assessment been undertaken at a much earlier point in his adoption journey, he might have gone to live with his extended family rather than have a long stay in care and then be adopted very late. In one unusual case, investigation of a conduct issue in regard to an independent social worker led to significant delay to proceedings and subsequent placement.

4.4.2 The contribution of the lawyers

Local authority lawyers

The contribution of local authority lawyers to the preparation of statements, care plans and reports was central to effective case presentation and management. In most cases, the local authority documentation was well organised, allowing the case to be put and argued appropriately. At certain points in the process, for example at the placement hearing, it was apparent that the completion of paperwork had been rushed in some cases. The documentation includes historical file records, which accumulated into large bundles as the case progressed through the sometimes numerous hearings. The extent to which it was the social worker and line manager who was instructing the lawyer, rather than the reverse, was not clear.

Legal representation for parents

There was no evidence in these cases that parents were unable to benefit from their own legal representation. In all cases, parents' legal representatives enabled them to respond to local authority concerns and to present their own case in contest from the outset of legal proceedings and throughout.

Pre-proceedings protocols were in a process of significant development and change through the period when the study cases were being managed. In only six cases was intervention commenced in the period following the introduction of the Public Law Outline, in April 2008. Moreover, file records were not consistent in reporting pre-proceedings legal activity in these cases. However, the impression formed supports other research findings undertaken recently in this field that the procedural changes have not yet led to the establishment of consistent and robust arrangements for pre-proceedings representation across local authorities.²¹

²¹ Masson, J, Dickens, J, (2012) *Families on the Edge of Care Proceedings: The Operation and Impact of Pre-Proceedings Processes in Children's Social Care*, End of Award Report, RES-062-23-2226. Swindon: ESRC.

Parents' position statements and responses to the applicants case were mostly very detailed, indicating thorough work on the part of their lawyers to review and challenge local authority assessments. In a number of cases there was clear evidence that parties to the judicial process supported short adjournments to enable parents to access legal representation.

In *Sarah's* case, although her mother had been absent for all of the first few months of care and adoption proceedings, when she re-appeared shortly before the final hearing, all parties readily agreed an adjournment to enable her to benefit from legal advice. Of course, this delayed case resolution and child placement even more. Delay was also caused in several cases by the adjournments necessitated by the late filing of statements by parents.

In *Lily's* case the very late intervention of her father was only belatedly supported by Legal Services Commission funds. The law firm nonetheless held the case pending resolution of the problem and the court made the necessary brief adjournment.

In some cases, sustained contestation from parents' protracted proceedings significantly. Here the evidence was already overwhelmingly in favour of the local authority case, and there was no realistic chance that further instructions or directions would improve the parents' chances. The impression could be formed, that the contest itself was animating parental (usually paternal) opposition. This raised questions, for example in *Joshua's* case, about the role of the legal advisor in 'following instructions' alone,²² rather than counselling parents out of pursuing a hopeless case.

For example, while *Helen's* mother had effected positive change in her circumstances and was caring for a new baby as a lone parent, she was persuaded against seeking to revoke a placement order by the judge. This freed her to engage effectively with plans for post adoption support.

Mark's parents, and those of *Terry*, sought the support of an independent advocate and their statements were filed. These did not help the parents' case, because they could be dismissed by the court as demonstrative of partisan pleading by associates with wider religious and political motives.

The main strength of court decision making processes in care, placement and adoption proceedings lay in their flexibility in response to parent representations, and in general where evidence was uncertain or disputed. Nonetheless, this flexibility was also a main weakness, as it contributed to delay in decision making.

²² See note 20, above.

4.5 Evaluation of the quality assurance role of the Independent Reviewing Officer (IRO) and the court advisory role of the Children’s Guardian

These roles are discussed separately because of their distinctiveness and significance in relation to securing the overall effectiveness and legitimacy of case handling and evidence use in adoption.

4.5.1 The impact of the Independent Reviewing Officer role across all stages of the process

The *main findings* were:

- Case file review does not provide a full picture of professional activity, however, findings suggest that ***the role of the IRO was ineffective in averting drift for children in interim foster placements*** in a number of cases.
- Although LAC reviews were held on time and chaired by the IRO, ***adherence to these procedural requirements appeared insufficient in respect of progressing effective care planning for children;***
- The sample has included a single case where very serious failings in progressing permanence planning were evident. This case stands apart from the larger sample, but nevertheless, raises ***questions about whether the IRO is appropriately positioned to challenge serious failings*** such as this.
- The profile of children’s adoption journey timelines, suggest that ***weakness in the IRO role may relate to both the quality assurance of care planning for children in interim placements pre-proceedings and in duties to progress adoptive placement after the making of a placement order.***
- That ***accounts of children’s wishes and feelings and analysis of children’s developmental trajectories were consistently below required professional standards in regard to care planning***, such that further questions are raised about the quality assurance role of the IRO.

The appointment of an IRO is a legal requirement under Section 118 of the AACA 2002. The function of the IRO, as laid out in statute and guidance, is to quality assure the care

planning process for each child and to ensure the wishes and feelings of the child are given full consideration. Revised guidance for both local authorities and the IRO was issued in March 2010, aiming to strengthen the quality assurance role in care planning and to improve outcomes for looked after children. Given the retrospective focus of this study, in some cases, actions of the IRO in the sample cases would have been governed, for at least part of the case duration, by the earlier, 2004 Guidance.

Review of the study cases found only limited evidence of IRO activity.

Whilst there was evidence in the files to indicate that statutory reviews were held on time and chaired by IROs, the children's adoption journey timelines do not suggest that following procedure in this way served consistently to progress care plans. In eight out of twelve cases, the child's initial admission to care was under s.20, CA1989 accommodation. Drift in these interim s.20 foster placements was not routinely prevented.

For *Robin* and *Sarah* there were serious failings in care planning pre-proceedings. Sarah's mother attended for a single contact with her daughter once she became looked after, before going on the run from the police. Rather oddly, at Sarah's statutory LAC some four months after her mother's disappearance, a plan for rehabilitation with her mother was confirmed. In Robin's case, despite the fact that his parents had also ceased all contact, he spent a period of four years and more in a temporary foster placement, indicating serious failures in oversight on the part of the IRO. For both children, permanence planning was not progressed, even though parents had voluntarily ceased all contact with infants upon their admission to care.

Evidence of *Joshua's* gross developmental delay reported by the foster carer providing weekend respite care, at his mother's request, did not appear to inform care planning. An application was made in the first instance for an interim supervision order, which was far too hesitant in the face of clear evidence of very serious neglect and developmental harm. For Joshua there was nothing on file to suggest that the indecision by social workers, about the extent and cause of his chronic developmental delay, had attracted the attention of the IRO.

These three cases raise clear concerns about the consistency of quality assurance processes within these three different local authority sites.

Robin's case is, arguably extreme and stands apart from the others in the sample. While the birth of a second sibling, who subsequently joined Robin in the same foster home serves in part to explain the delay that he remained for so long in interim foster care is unprecedented. In addition, the failing on the part of the local authority to undertake an assessment of his paternal grandmother who requested this, further indicates that somehow this child's position had been forgotten. This is just the kind of case, which would have clearly benefited from authoritative action on the part of the IRO, but this was not evident.

In *Sarah's* case, weaknesses in pre-proceedings practice were further compounded following the making of a placement order, where again, responsibility does fall to the IRO to provide quality assurance in regard to

progressing adoptive placement. Adoption plans were delayed because the local authority became distracted by futile re-consideration of an inappropriate placement with relatives, having had its plan for adoption elsewhere ratified by the court. Subsequent delays in family finding appear also to have escaped IRO intervention, or that intervention was not effective.

A file based study falls short in capturing the full detail of professional activity. Minutes of LAC reviews (where they were included in files) evidenced that care planning decisions were confirmed, but it was difficult to identify why plans were not challenged when case trajectories suggested that they ought to be. There was clear evidence of opportunities for the involvement of parents but again the detail was difficult to find. Because minutes were very brief and/or tick box in format, it was equally difficult to ascertain the wishes and feelings of the child.

In *Lily's* and *Terry's* cases alone was there further documentary evidence of proactive engagement of the IRO in overseeing the progress of plans. In these cases, the record of IRO meetings with parents who had not attended reviews, or who wanted to contest decisions, indicated the extent to which the IRO could be brought alongside the social worker in support of the casework process.

The findings from this small-scale study confirm the absolute necessity of effective quality assurance for children in public care, and suggest that further research is needed to examine the extent to which the IRO is positioned to effect challenge. In general, it might have been expected, from the case trajectories in the study sample, that IRO activity would have had a more demonstrable impact on case handling than was observed.

4.5.2 The CAFCASS Children's Guardian contribution to the decision making process

The *main findings* were:

- With specific regard to contestation, the Children's Guardian appeared, in a number of cases, to play **a critical role in reminding the court of its primary focus on the welfare of the child**. This included at the adoption application stage, although this was rare.
- There were **examples of very effective assessment, advice and intervention from the Children's Guardian more broadly**, which clearly aided judicial decision-making.
- Although the study sample is small, **there is evidence that the Children's Guardian can play a key role in ensuring that contestation does not serve to detract from a focus on the welfare of the child**.
- The Children's Guardian can command authority in the court as an independent advocate for the child, but **this contribution is undermined by late appointment or absence** in particular.

The study confirms the critical role that the Children's Guardian plays in assisting the court in determining the best plan for the child, especially where the matter is contested.

Findings also confirm that the CAFCASS service, at least during the period between mid-2006 and mid-2011, was struggling to provide a consistent source of support to the child and the court. While there was variability in individual practice, the best reports filed were extremely well informed, balanced in their analysis and persuasive.

The files evidenced the role of the Children's Guardian through interim and final analyses, which, in many but not all cases, were delivered on time and with sufficient detail to aid the court in care and placement proceedings. There were examples of very effective advice and intervention in the face of contestation, which clearly aided judicial decision-making in regard to such matters as the necessity for additional expert opinion, contact arrangements and final orders.

For example, in the highly contested cases involving *Leanne* and *Mark*, the Guardian provided thorough summaries of the evidence and the issues, as the basis for the final advice on the placement.

In the face of contestation in care and placement proceedings the Children's Guardian appeared, in a number of cases, to play a critical role in reminding the court of its primary focus on the welfare of the child.

For example, when *Helen's* father sought a further parenting assessment, the Guardian reminded the court that Helen and her siblings had described family life as 'terrible' and had said that they did not want to return home. The importance of the Guardian in conveying the child's voice was clear, particularly given weaknesses in local authority practice in this regard. In the case of Helen and her two older siblings, she drew the court's attention to just how long the children had been waiting in an interim foster placement, and that Helen in particular had experienced three foster placements before settling on account of behavioural problems and an eating disorder. In this case, Helen's father caused great distress to the children when he then unexpectedly withdrew from all contact with the children having met a new partner.

In *Jamie's* case the Guardian mediated between his mother and the local authority to settle contact for Jamie's siblings, which enabled the court to move to a final hearing. Although parents continued to contest adoption plans for Jamie, they agreed the local authority plans for his older sibling, which served to reduce the issues outstanding at the final hearing. In a number of cases, it was clear that an effective Children's Guardian can ensure that the court does not get side-lined by peripheral issues or sanction duplicate assessment work.

However, there were also cases in which the potential of this child-centred role was undermined by late appointment, changes of Guardian and temporary cover arrangements where the appointed Guardian was unavailable. Case management was most effective where the Children's Guardian was able to input early in cases once an application had been issued.

Joshua's case indicates the sorts of problems that can arise when the safeguard of the Children's Guardian is not in place at a timely point in the

court process. In this case, the solicitor for the child was appointed at the start of the legal proceedings, but not a Children's Guardian. The absence of the Children's Guardian most likely compounded weaknesses in the IRO oversight in this case, because neither challenged the local authority's hesitant application for an interim supervision order that left the child at home, with only weekend respite to provide some protection.

Similarly, in the case of *Becky*, the court process was unnecessarily protracted (the court case ran to almost two years) as three changes of the Guardian seriously weakened the voice of the child in the face of sustained parental contestation. In both of these cases effective case management and decision-making were hampered through lack of effective independent oversight specifically focused on and critical to the welfare of the child. Becky was lucky in that her interim placement became de facto her adoptive placement, but this was a matter of chance, rather than resulting from an effective process.

At the adoption application stage the court was able to deal appropriately with active opposition by parents without recourse to the appointment of a Guardian in all but one of the seven cases in question.

A Guardian was appointed in Lily's case and advised that the father's request for leave to oppose be dismissed, which it was. The study suggests that, although the salience of the Guardian role is found to be at the earlier stages of the adoption process, it can be helpful to the court to draw on this service throughout the process.

4.5.3 Overall findings in relation to the quality assurance roles of the IRO and Children's Guardian

These findings raise questions about the robustness of the IRO role as it was conceived under the 2004 guidance and confirm potential pitfalls in care planning as highlighted in the 2010 revised guidance. In particular this study confirms 'drift' for looked after children and suggests that the IRO has been unable to avert this. The findings from this study suggest that further detailed analysis of IRO practice under the revised guidance is needed.

Questions would need to probe the following issues:

- Whether the IRO, as currently qualified and positioned within the local authority, is able to take action beyond monitoring, such that analytic input and challenge serves to consistently assure care planning.
- Whether the IRO might fulfil a leadership role in regard to improving practitioner knowledge, understanding and application of child development research and theory.

Although practice was variable in its range and quality, the value of the Children's Guardian in contested cases is clearly evidenced. This is especially the case through the care and placement proceedings.

In regard to the Children's Guardian, the primary task here is to improve further service management and ensure adequate resourcing, such that the contribution of the Children's Guardian is consistent, bringing it up to the high standards of the best. Communicating directly with children must remain central to the work of the Children's Guardians who can command authority in the court as an independent advocate for the child, on the basis of this engagement, and provide an effective steer in contested proceedings.

5. Key Messages

The key messages of the study emerge out of the main findings.

They can be summarised as follows:

- The study confirmed routine local authority and judicial compliance with the required procedural and legal framework for adoption. ***Parents' rights to due process in contesting and opposing care, placement and adoption applications were ensured.*** Decisions were taken by the court in an appropriate way, following the full testing of evidence.
- Local authority practice in the study cases pre-dated current statutory guidance²³, in which ***permanence is required to provide the framework for all social work with children and families. Where it lacked this perspective, social work intervention could not be relied upon to pursue effectively the protection and care planning that might have secured child safety on a permanent basis at home.***
- In addition, ***quality assurance of child protection and care planning was insufficiently robust.***
- Where risk assessment and protection and care planning lacked confidence and decisiveness, ***the right of the child to have a safe and permanent family life secured in a timely way could be compromised.*** Similarly, ***the right of parents to effective intervention to help them make necessary changes could be neglected where permanence principles were not applied equally to the process of rehabilitation.***
- While no clear pattern of contestation emerged in these cases ***parents often argued that the local authority had sought merely to gather evidence to make the case against them,*** rather than intervene purposefully to support the changes required to keep the child safely at home.
- Extensive use of ***independent expert evidence and advice provided a guarantee that harm and risk had been assessed fully and decisions appropriately informed,*** once the case was in proceedings. However, the use of experts also caused duplication and delay. Current proposals for reform will need to ensure such evidence is deployed effectively within the sharper case management regime.

²³ Department for Children, Schools and Families (2010) Children Act Guidance and Regulations Volume 2: Care Planning, Placement and Case Review, London: TSO

- This study suggests that ***the enhancement and quality assurance of the expertise and effectiveness of social work within the inter-agency system should attract policy attention.*** Timely and proportionate decision making is undermined as much by lack of case management continuity and of grip in making a judgement about parents' capacity to change in the local authority as it is in the court.
- The reform process should be underpinned by ***a review of the philosophy, organisation and support of local authority case management in protection and care planning,*** to ensure reliability of compliance with current statutory guidance that a permanence perspective is employed as a matter of routine.
- The reform process should also include ***a review of the availability and effectiveness of post-placement support for birth parents in all forms of permanent placement, including placement at home.***



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