Family Justice Knowledge Hub

Research Bulletin

What is the aim of Knowledge Hub?

A number of recommendations in the Family Justice Review related to the need to better disseminate relevant research and good practice throughout the Family Justice System. The Government Response to the review accepted these recommendations. It committed to work with the Family Justice Board to facilitate the provision of social research evidence to family justice practitioners and wider stakeholders.

The Family Justice Research and Analysis team in Ministry of Justice (MoJ) Analytical Services are supporting this through developing the Family Justice Knowledge Hub. One aspect of this is to collate and disseminate the latest research news, whether conducted on behalf of government departments, local authorities, research bodies or other organisations. Recipients of this bulletin are welcome to forward to others to help facilitate the dissemination of knowledge across the Family Justice System.

What can you expect from the Research Bulletin?

The Research Bulletin aims to provide a summary of the findings of recent research relevant to family justice, and an update on the progress of noteworthy ongoing and forthcoming projects. Where available links to fuller information are provided.

This bulletin includes recently published public law studies and ongoing studies both in private and public law in England and Wales. We have also introduced an international section to cater for a wider audience. By incorporating research and evidence from beyond the UK we hope to strengthen our knowledge of good practice abroad and generate a more international discussion on family justice issues.

What is included in the Bulletin?

There are no fixed criteria for what material is included in the bulletin; rather the content comes from a range of sources which include:

- literature searches of various journals and newsletters,
- contributions received by the Virtual Group (a remote group of contacts who provide ongoing input, feedback and suggestions for the bulletin) which is made up of academics, family justice professionals and other stakeholders,
- ongoing discussion and collaboration with MoJ Family Justice policy and analytical colleagues across government;
- and materials and signposts given out at Family Justice conferences and events.

MoJ Analytical Services assess all suggestions of research projects to be included in the bulletin and consider aspects such as how robust the methodology is, whether the research was conducted ethically, and how accessibly the findings have been communicated. For those reports included in the bulletin, MoJ AS provides a summary of the research which draws out the aims, methodology and main findings and where possible, include a web link to allow readers to access the full report. The summary provided of each report is approved by the author and the bulletin is subject to independent peer review.

How can you get in touch?

We would appreciate your feedback on this bulletin. Additionally, if you would like to suggest any research for inclusion in future bulletins or to add a recipient on to the mailing list please get in touch at **knowledgehub@justice.gsi.gov.uk**

Please note this bulletin is designed to provide an overview of research and practice within the wider landscape of family justice. While MoJ Analytical Services will apply discretion in assessing the relevance of material included, inclusion in the Research Bulletin does not mean the research is endorsed by the MoJ. The information included is not intended as an official view of the MoJ or a reflection of MoJ policy. Note that where research included here has been through an independent peer review process this is indicated in the Bulletin.

Public Family Law Pre-proceedings

Jelicic, H., Hart, D., La Valle, I. with Fauth, R., Gill. C and Shaw, C. NCB (National Children's Bureau) Research Centre (2013) The Role of Independent Reviewing Officers (IROs) in England: Findings from a National Survey

Funder(s): Nuffield Foundation Trust
Report: NCB
Peer Review Status: peer-reviewed

Local authorities are required to appoint Independent Reviewing Officers (IROs) to have independent oversight of the way that looked after children are being cared for. Their primary focus is to quality assure the care planning process for each child, and to ensure that the child's current wishes and feelings are given full consideration. New guidance has been in operation since April 2011 to strengthen the existing arrangements, but some have called for more radical reform. The aim of this study, funded by the Nuffield Foundation, is to develop an evidence base about the implementation, effectiveness and costs of the IRO role, in order to inform policy and practice. The study has been designed in two phases; the first quantitative phase has now been completed and phase 2 is ongoing.

Phase 1 of this study involved:

- A national online survey analysing the responses of 295 IROs, 65 IRO managers and 60 Directors of Children's Services. Analysis of administrative data from Ofsted and Cafcass on IROs' access to independent advice was also incorporated into the analysis.

Key findings from Phase 1 of this research include:

- IROs are not yet fulfilling the potential for their role as envisaged by statutory guidance, and often struggle in the ongoing scrutiny of the implementation of the child's care plan.
- The majority of IROs were usually able to complete the tasks necessary to prepare for a review. However, between a fifth and a quarter were not able to follow up case reviews adequately by consulting with everybody involved (professionals, carers and children).
- IROs' involvement between case reviews was variable: only half (49%) were always or often able to monitor the cases more generally, and 58% of the IROs surveyed said they rarely or never received relevant court papers about children they were supervising.
- While just under half (41%) of IROs felt their role contributed significantly to improving services for children in care, nearly a third felt that their work was not valued by senior managers and that they operated in unsupportive working environments.
- The research emphasises that the reasons for these shortcomings are complex, but the survey found that heavy caseloads and having to fulfil non-IRO duties are contributing factors.
- In two-thirds of local authorities IROs were burdened with caseloads exceeding the recommended limit, and nearly half (46%) of IROs have other duties outside their IRO remit.

Phase 2 of this study, which is currently in the analysis stages, involved qualitative research in four local authorities, including:

- Interviews with key stakeholders and looked after children;
- Focus groups with IROs and social workers, and analysis of a sample of care plans;
- An analysis of the costs associated with the IRO service.

The interim survey report can be found here: http://wwwncb.org.uk/media/1024503/iros_survey findings_final_08_aug_13.pdf
The final full report, including findings from phase 2qualitative research, is expected in early 2014

McLaughlin, H., Newton, K. and Potter, A. (2013) Evaluation of the Greater Manchester Gatekeeping and Allocation Pilot: Care Proceedings Final Research Report

Research Report: Manchester Metropolitan University
Commissioned by HHJ Iain Hamilton, Designated Family Judge for Greater Manchester
Peer Review Status: not peer-reviewed. (Report approved for dissemination by the President's Office.)

The Greater Manchester Gatekeeping and Allocation Pilot was introduced in April 2012. This involved a nominated District Judge and legal adviser meeting each day to consider files in all newly issued proceedings from the preceding day to determine allocation to the Family Proceedings Court (FPC), County Court or the High Court. An important feature of the Pilot is that all care proceedings work in Greater Manchester has been centralised since April 2011 and all magistrates, legal advisers and judges dealing with care proceedings are located in the one court centre. The objectives of the study were to evaluate:

- balance in allocating levels of work in different tiers of the judiciary;
- consistency in use of gatekeeping and allocation documentation by the local authority;
- consistency in decision of allocating work;
- reducing appeals on initial determination;
- whether the pilot contributes to reducing overall delay;
- to identify and understand stakeholder perspectives of the Pilot.

The evaluation involved qualitative and quantitative elements:

- This consisted of a contextual analysis of the literature, interviews with 6 Judges and 10 Family Proceedings Court Legal Advisers who were the gatekeepers, surveys of 39 local authority solicitors, 19 child and parent solicitors and 26 Cafcass Family Court Advisers (FCA).
- The evaluation also included an examination of all Forms PLO4 (Revised) and PLO8 from one month of the Pilot. These forms provide the reasons for allocation, the timetable for child/ren and the allocation decision and are considered a public law record.
- This was supplemented with quantitative data from Her Majesty's Courts and Tribunals Service on previous allocation decisions and length of time for court hearings in Greater Manchester before and during the pilot.

Key findings include:

- The Pilot led to improvements in the allocation of care proceedings work to different tiers of the judiciary and improved consistency in allocation decision making.
- There was increased confidence in the gate keeping and allocation process and the Designated Family Judge's Guidance has made the process more transparent and consistent.
- Closer attention given to the allocation process by a judge and legal adviser has resulted in more robust allocation decisions that are less likely to be challenged by the local authority, child or parent's solicitor. The perception of stakeholders is that the gatekeeping and allocation processes are likely to reduce unnecessary delay in care proceedings.
- Of particular benefit to the implementation of the Pilot and to addressing problems and issues as they arose has been the development of a Consultation Group of key stakeholders. Monitoring of the Pilot by this Group identified issues including an increase in the volume of work and the need to bring more legal advisers on board as gatekeepers.
- Judges and legal advisers viewed the Form PLO4 (Revised) as poorly completed, often failing to address the allocation criteria appropriately, if at all. Local authority solicitors disliked the Form because it duplicates information that should be in a well drafted Form C110. The researchers identified inconsistencies and variation between local authorities in the completion of the forms and in the 'success rate' in identifying the appropriate level of court. The use of the new documentation issued by the President for the revised PLO Pilot from 1st July 2013 may resolve this issue. The researchers recommend that the national evaluation of the revised PLO Pilot reviews the recording of the full allocation decision.
- The Pilot has seen a significant shift of cases away from the Family Proceedings Court to higher courts. It was rare for cases to be transferred to lower courts on the grounds of maintaining judicial continuity. It is important to note that the views of the magistracy have not been canvassed in this evaluation and there is a need to investigate the impact of the changes in allocation processes on the magistracy.
  http://www.rihsc.mmu.ac.uk/docs/MMU Evaluation of the Gtr Mcr Gatekeeping and Allocation Pilot 07082013.pdf

Broadhurst, K., Doherty, P., Yeend, E., Holt, K., and Kelly, N. (2013) Cafcass Coventry and Warwickshire Pre-Proceedings Pilot Final Research Report

Funder(s): Cafcass with Warwickshire County Council and Coventry City Council

Report: Lancaster University and Bradford University

Peer Review Status: peer-reviewed

This report documents the findings from the second and final stage of the evaluation of the Coventry and Warwickshire Pre-Proceedings pilot. The pilot introduced the Family Court Advisor (FCA) into preproceedings practice where Cafcass, carried out additional work in public law (care) cases before the application to court was made by the local authority. During this period, the FCA sought to review relevant reports, visit/observe parents and children, attend the formal pre-proceedings meeting and engage in case discussions with the social worker and the family to achieve more effective planning. This research aimed to examine whether earlier involvement of the FCA could impact positively upon both diversion of cases from care proceedings and the duration of care proceedings. The evaluation in Coventry and Warwickshire commenced in May 2011 and concluded in May 2013. A separate third pilot site (Liverpool) is on-going and interim findings will be reported later this year.

The evaluation in Coventry and Warwickshire involved:

- A review of 26 Cafcass plus cases (where the FCA is involved during pre-proceedings) and 30 comparator cases ('business as usual').
- Comparison of data on diversion rates, care duration and permanency outcomes for both samples (26 Cafcass plus and 30 comparator cases).
- Prospective tracking of cases based on file analysis along with supplementary interviews with a range of stakeholders (social workers, FCAs, local authority lawyers and private practice lawyers across the 2 stages of the evaluation).
- The sample of cases that have progressed to court is small, because diversion rates (the number of cases that enter pre-proceedings, but which do not progress to care proceedings) are approximately 40% in this study. Thus, findings are indicative only.

In considering findings, it is important to note the small sample size of cases that progressed to care proceedings in this pilot exercise. Key findings include:

- A larger number of cases were diverted away from public law proceedings and settled outside of court within the Cafcass Plus cases when compared to the comparator cases.
- Diversion in the pilot was largely achieved through positive work with extended family networks to establish kinship care arrangements, without recourse to care proceedings.
- As well as diverting many cases from court, in a number of those cases which did proceed to court, cases did so with more coherent assessments and plans. This enabled a number of cases to be completed more quickly in court and reduced delay for children.
- The average duration (in weeks) for care proceedings was significantly reduced during the pilot period in this court area; however, only a small percentage of cases in both the comparator and Cafcass PLUS cases completed within the target of 26 weeks. Overall the duration of care proceedings was shorter in the Cafcass Plus sample.
- The work of the local authority and the FCA during pre-proceedings was in some cases undermined once care proceedings were issued, due to lack of decisive case handling in the courts.
- Detailed case review revealed the range of systemic, child and family case characteristics that combine to create delay. A number of child and family characteristics, such as difficulties of permanency planning for larger sibling groups may be hard to resolve. However, there is evidence that systemic barriers, such as variability in social work assessment and inconsistent delivery of actions that the local authority agreed to undertake during pre-proceedings could be further addressed to reduce the duration of care proceedings.
- Stakeholders concluded that inclusion of the FCA in all pre-proceedings cases is unrealistic. However, under the revised Public Law Outline (2013), the FCA will be required to provide a timely steer to the court at the outset of proceedings and it may be that discretionary involvement of the FCA in some cases will assist that shift in emphasis.
- The pilot provided an opportunity for joint learning and knowledge exchange between all participating agencies. The pilot raised the profile of questions about the pre-court social work more broadly across the participating sites, contributing to a momentum for change. The local Family Justice Board in Coventry and Warwickshire will need to consider findings from this pilot, in respect of any future role for the FCA in pre-proceedings. A number of local authorities are operating differentiated use of the FCA in pre-proceedings and further analysis is needed of the outcomes of the various models.

The report can be accessed here: http://www.cafcass.gov.uk/media/167143/coventry_and_warwickshire_pre-proceedings_pilot_final_report_july_4_2013.pdf

The interim report for a third pilot site (Liverpool) is expected later this year.

PRIVATE FAMILY LAW
Enforcement

Trinder, L., Hunt, J., McLeod, A., Pearce, J., Woodward, H. (2013) Enforcing Contact Orders: Cases, Courts and Consequences

Funder(s): Nuffield Foundation Trust
Report: University of Exeter
Peer Review Status: report not yet peer-reviewed/ research specification peer reviewed

There are long-standing concerns that the family courts fail to enforce their own court orders in child contact cases following parental separation. Part of the problem has

been that the available sanctions – fines, imprisonment or change of the child's residence – may be impractical or harm the child. Enforcement has long been seen as a significant challenge for the family courts and policy-makers but there is currently little research evidence about the types of cases involved or the court's responses to applications to inform the debate. This study was designed to build a profile of private law cases where enforcement of a court order is sought (i.e. an application is made to the High Court/a county court to enforce an order previously made in family proceedings). The research also examines how and why the court responds to applications and explores the actual and perceived effectiveness of current powers available to the courts to address enforcement cases. The study has been designed in two phases; the first phase (case file analysis) has now been completed but will be further supplemented by a second phase (focus groups).

Phase 1 of this study, which is now completed, involved a case file analysis of a national sample of 215 enforcement applications accessed via the Cafcass electronic case files system. The total sample of 215 cases included:

- 205 enforcement applications made in England in March and April 2012 (excluding applications by grandparents) and;
- A further 10 cases from all those between November 2011 to October 2012 where the case outcome was recorded as unpaid work. Courts may order a parent to undertake 40-200 hours of unpaid work for wilful non-compliance with a contact order. This was done as there were few cases in the initial 205 where the court imposed enforcement sanctions.

Key findings from Phase 1 include:

- Most (86%) applicants were non-resident fathers; applications for enforcement could be triggered by lack of punctuality or some missed sessions, but were mostly due to contact breaking down completely (70% of cases).
- The research team identified and defined four main types of case:

(a) Conflicted (116 cases, 55% of the total) – chronic conflict and/or competition. Everyday challenges become insurmountable problems.

(b) Risk/safety (66 cases, 31% of the total) – domestic violence, child physical abuse and neglect, alcohol and drug abuse or mental health issues (excl. emotional abuse).

(c) Refusing (21 cases, 10% of the total) – an apparently appropriate and reasoned rejection of all, or some, contact by an older child (10 plus).

(d) Implacably hostile/alienating (9 cases, 4% of the total) – sustained and apparently unreasonable resistance to contact by the resident parent, possibly with alienating behaviours.

- The implacably hostile group was the smallest in the sample of 215 cases. Much more common were cases where parental conflict meant the parents were unable to make the order work in practice and cases where there were significant safety concerns regarding contact alleged by one or both parents.
- On the whole the court's approach largely matched or suited the case type. Cases that were classified as 'conflict' were mostly dealt with by a settlement or co-parenting approach where the court sought to address the parental conflict with a more detailed order and often referral to parent education. Similarly, the punitive approach was largely restricted to what the research team classified as implacably hostile cases.
- Cases were processed fairly quickly; most enforcement cases got into court on average four weeks from application to the first hearing.
- Courts generally respond appropriately; the research team independently rated each case on two criteria; robustness and safety. On robustness they rated the court's approach as 'about right' in the great majority (96%) of cases. On safety the team rated most (81%) cases as having no safety concerns or concerns were addressed adequately. In 16% the response was rated as marginal and in 4% as not addressing safety issues adequately.

Phase 2 of this ongoing study will involve:

- Three focus groups with district and circuit judges, which will explore how judges approach enforcement cases, as well as their perceptions of the strengths and limitations of current and proposed powers.

http://www.nuffieldfoundation.org/enforcing contact-orders-cases-courts-and-consequences

PRIVATE FAMILY LAW
Divorce and finance

Bryson, C., Skipp, A., Allbeson, J., Poole, E., Ireland, E., & Marsh, V. (2013) Kids aren't Free: A Study of the Child Maintenance Arrangements of Single Parents on Benefit in 2012

Funder(s): Nuffield Foundation

Report: Gingerbread, NatCen Social Research, Bryson Purdon Social Research

Peer Review Status: not peer-reviewed (policy and academic input via advisory group)

Child maintenance is regular financial support for a child, paid by a non-resident parent to a parent with care; it is a legal responsibility. In 2008, the requirement for single parents claiming out-of-work benefits to set up maintenance arrangements using the Child Support Agency (CSA) was lifted. In 2010, a further policy change meant that single parents on benefit could keep any maintenance given to them without it affecting the state benefits they received. This study provides an up-to-date picture of the maintenance situations of single parents receiving benefit since these two policy changes.

The study involved:

- a telephone survey of 760 single parents on benefit;
- 40 qualitative interviews designed to provide a more in-depth picture of parents' experiences of different types of maintenance arrangements and;
- using data from a previous study (the 2007 DWP Survey of Relationship Breakdown), a comparison of the proportion of single parents on benefit receiving maintenance before and after the policy changes (in 2007 and 2012), as well as the amounts received.

Key findings include:

- Prior to the 2008 changes, around a quarter (24%) of single parents who received out-of-work benefits also received maintenance. By 2012, this had increased to one third (36%). However, the research found only four in ten (40%) of those with CSA arrangements (excluding those nil assessed) and three quarters (73%) of those with private arrangements report that they receive their maintenance on every, or almost every, occasion.
- Pre-2008, the maximum amount that parents receiving maintenance could be better off (after a reduction in their benefits) was £10 per week. By 2012, the average amount of maintenance received by single parents on benefit was £23 per week.
- In 2012, for one in five (19%) of these parents receiving maintenance, their maintenance lifted them out of poverty.
- Despite the obligation to use the CSA being lifted in 2008, having a CSA arrangement was still almost twice as common as having a private maintenance arrangement (37% compared to 20%). And 43% of single parents on benefit had no maintenance arrangement at all.
- Private arrangements appear to be difficult to sustain over time. Although four in ten (40%) single parents on benefit had or had tried to have a private arrangement at some point, half had since moved to having a CSA arrangement or no arrangement at all.

http://www.gingerbread.org.uk/content/686/Research-reports

Bryson, C., Ellman, I.M., McKay, S. and Miles, J. (2013) Child maintenance: how much the state should require fathers to pay when families separate

Funder(s): Nuffield Foundation
Report: NatCen Social Research
Peer Review Status: not peer-reviewed

Using data from the 2012 British Social Attitudes survey, this paper reports on the British public's views on child maintenance obligations when families separate. Previous British Social Attitudes surveys have shown that, in general, the public is overwhelmingly in favour of child maintenance

arrangements if parents separate. The 2010 survey found that 88% of the public thought that a father "should always be made to make maintenance arrangements to support the child" (answering in relation to a child in primary school who stays with their mother when the unmarried parents split up). This new research aims to obtain a more nuanced understanding of the public's views on whether non-resident parents should be legally required to pay child maintenance and, if so, how much they should pay. The research particularly focuses on the public's views of how the law should take account of either parent's income when deciding how much maintenance the non-resident parent should pay and whether these views were affected by whether the non-resident parent has contact with his child.

The study design:

- Researchers presented respondents with a series of scenarios describing families in different financial and family circumstances, and asked them to state the amount of child maintenance they believed the law should require the father to pay. This allowed the research team to measure how people adjust maintenance levels in response to changes in parents' incomes and families' situations.
- In addition, respondents were asked how much they agreed or disagreed with a set of statements about child maintenance.
- The British Social Attitudes survey has been running since 1983 and seeks to learn the views of a large cross-section of the British population. In 2012, the overall response rate was 53%, giving 3,248 interviews. For further details please see the section on 'Technical Details' here: **www.bsa-29.natcen.ac.uk.**

Key findings include:

- The majority of the British public believes the government should set and enforce child maintenance payments, and should require higher payments than are currently set by the CSA guidelines.
- 60% of people say that it is better that the law should set a minimum amount for child maintenance, rather than leaving it to parents to decide; compared to 17% who disagree.
- A fifth (20%) of the public agrees that the law should never force non-resident parents who are not living with their children to pay child maintenance, compared with 59% who disagree.
- Taking the example of two parents on middle incomes, the public would set maintenance levels around one third higher than the statutory formula does.
- Parents who have lived apart from their children (who would themselves have been required to pay child maintenance) are a little less likely than others to favour government involvement. That said more of them support the government setting (45%) and enforcing child maintenance payments (46%) than oppose the government's role (28% and 27% respectively).

  http://www.bsa-30.natcen.ac.uk/media/36317/bsa30_child_maintenance.pdf

George, R. (2013) Relocation Disputes in England and Wales First Findings from the 2012 Study

Funder(s): British Academy
Report: George, R., Oxford University
Peer Review Status: peer-reviewed

Relocation cases are disputes between separated parents which arise when one parent proposes to take their child to live in a new geographic location and the other parent objects. In England and Wales, the legal debate has focused primarily on proposed international moves, but this research also looks at proposed moves within the UK, known as domestic relocation cases. The paper reports the first phase of findings of a 12-month study of relocation disputes in the first instance courts of England and Wales. The paper looks separately at international and at domestic relocation disputes, examining case outcomes and the patterns of characteristics which tend to work to the advantage of one or other parent. The next stage of analysis will return to the judgments and look qualitatively at judicial reasoning, following on from this the project will look at parental experiences. Parents in 30 relocation cases have been interviewed about their experiences, and those interviews will be analysed and the conclusions added to the overall project.

The study design for phase 1 (quantitative only):

- A quantitative analysis of data from 118 court cases and 187 questionnaires; which break down into:
  - The Court Cases sample: 118 first instance court decisions in relocation cases; 96 proposed international moves and 22 proposed moves within the UK and;
  - The Research Questionnaires (RQ) sample: 187 responses from family lawyers to a research questionnaire about relocation disputes.

Key findings include:

- Cases in the dataset came from all over England and Wales, but there was a clear dominance of cases coming from London and the South East. Cases were heard by judges at all levels, with the bulk of international cases being tried by Circuit Judges and most domestic cases going before District Judges.
- In both domestic and international cases, applicants were more likely than respondents to be legally represented, and those who had legal representation usually had both a solicitor and a barrister.
- The vast majority of applications were brought by mothers (around 95%). In terms of care arrangements, a small minority of cases (around 5%) involved equal shared care arrangements, while a larger minority (7% in the CC sample, 38% in the RQ sample) involved 65/35 shared care arrangements.
- Some 70% of applicants in the international sample were foreign nationals seeking to leave the United Kingdom, most (though not all) proposing to return to their original home country. In terms of destinations for the international cases, the biggest category involved proposed moves to other EU countries (around 40%), with 'North America' and 'Australia/New Zealand' each accounting for around a quarter of cases.
- The overall success rate for litigated international relocation cases in the CC and RQ samples combined (N=141) was 67%. The data suggests:
    - courts in London and on the South East Circuit are more likely to refuse relocation applications than courts elsewhere in England and Wales (around 62%, compared with 85%);
    - applications where the respondent parent does not have overnight staying contact with the child are more likely to be allowed than cases which do involve staying contact and;
    - the shorter the proposed move, the more likely it is that the relocation will be allowed.
- The overall success rate for litigated domestic relocation cases in the combined sample (N=37) was 70%. The domestic data also suggest that courts in London and on the SE1 circuit may be more inclined to allow internal relocation applications than courts elsewhere – the reverse of the pattern seen in the international data.
- Rather than proposed destinations, the focus in the domestic data is on distances of the proposed move. The data show that shorter moves (two hours or less travel time) are less likely to be allowed than longer moves (61%, compared with 79%). It is unclear why that should be the case, given that on-going contact will be easier to maintain after a shorter move.

The full report is available on the Social Science Research Network: **http://ssrn.com/abstract=2306097**

Harding, M.and Newnham, A. (2013) How do County Courts share care of children between parents? Interim Findings

Funder(s): Nuffield Foundation Trust
Report: University of Portsmouth
Peer Review Status: peer-reviewed

This study, funded by the Nuffield Foundation, explores shared parenting and contact orders for children whose parents separate. In particular, researchers will look at the relationship between the formal labels given to court orders and the actual allocation of children's time between parents and perceptions of how those orders are applied. The research examines how courts promote shared parenting in disputes between separated parents. The term 'shared parenting' generally refers to a child spending an equal amount of time with each parent in the event of separation or divorce. In terms of the current legal status within England and Wales, the recent shared parenting amendment aims 'to reinforce the importance of children having an ongoing relationship with both parents after family separation, where that is safe, and in the child's best interests'. The study has been designed in two phases; the first phase (case file analysis) has now been completed but will be further supplemented by a second phase (interviews with stakeholders). Tentative findings from phase one are captured below and researchers expect to report their full findings in 2014.

The study design:

- Phase 1 of this study, which is now completed, involved analysis of data from over 200 case files, including applications for section 8 orders and final orders (made between Feb-August 2011) across five county courts (anonymised as Ambledune, Borgate, Cladford, Dunam and Esseborne). 193 cases make up the final valid sample.
- Phase 2 of this ongoing study, which is not yet completed, will involve 60 interviews with stakeholders, including judges, barristers, solicitors and Cafcass on their perceptions of how those orders are applied.

Tentative findings based on phase 1 - which do need to be treated with caution, due to the early stage in analysis include:

- The majority of cases involved a dispute between parents during initial relationship breakdown or relating to post separation care of children (88%). However 12% of the cases involved a dispute between a parent and a non-parent, usually a kinship carer. The non-parent cases were characterised by heavy involvement by the local authority children's services.
- The biggest category of applications were stand-alone applications for contact orders by fathers (69) with very few such applications by mothers (6)
- There were similar numbers of applications for a sole residence order by mothers (38) and fathers (39) although the reasons given for the applications varied and require further analysis. There were 15 applications for sole residence orders by kinship carers.
- Only 11 cases began with an application for a 'shared residence' order.
- The following menu of section 8 orders are available to the County Courts when dealing with a private child law dispute:
    1. Sole Residence (an order outlining with which parent the child should live)
    2. Shared residence (an order outlining that the child should live with both parents and usually also outlining how much time should be spent with each)
    3. Contact order (an order providing for contact with a non-resident parent)
    4. Sole residence and Contact (An order outlining that the child shall live with one parent and another order outlining what contact the child should have with the other parent).
    5. No order as to contact or residence. This may be the case where the parties have come to a private agreement as to how post dispute parenting will function.
- The numbers of final orders made by the courts were as follows:

Sole residence	22
Shared residence	17
Contact only	79
Sole Residence and Contact	60
No order as to contact or residence	15

- Although initial applications for shared residence and final orders for shared residence were relatively rare, the issue of whether or not the court should make a shared residence order was raised in 33 individual cases.

  http://www.nuffieldfoundation.org/how-do-county-courts-share-care-children-between-parents

INTERNATIONAL

Private Law

Scotland

Mair, Jane. Wasoff, Fran. Mackay, Kirsteen (2013 All settled? A Study of Legally Binding Separation Agreements and Private Ordering in Scotland? Final Report

Funder(s): The Economic and Social Research Council ES/J004960/1)
Report: Centre for Research on Families and Relationships
Peer Review Status: not peer-reviewed- no specific ESRC process for peer review

In Scotland, couples are able to enter into a written agreement regulating the division of their property and any ongoing support for each other, or for their children, when they separate. These 'minutes of agreement' mean individuals do not have to go to court. They may register their signed agreement in the Books of Council and Session as a result of which it becomes directly enforceable in the same way as a court order. Spouses wishing to divorce still have to obtain a divorce decree from the court, but the court is under no obligation to review the content of the minutes of agreement about property at that point. Usually people only become aware they can reach agreement over their property in this way after consulting solicitors who advise their client what their rights are, based on the provisions of the Family Law (Scotland) Act 1985. This study aimed to determine the extent to which couples use minutes of agreement to regulate property division, what they actually agree, and the extent to which what they agree reflects the provisions of the 1985 Act and the wider policy objectives of the family justice system in Scotland.

The research involved several stages:

- The first stage collected information from a nationally representative sample of 600 minutes of agreement registered in 2010.
- The second stage followed up 30 of these agreements with in-depth telephone interviews with one of the parties involved to explore their experience of reaching agreement and meeting its terms.
- Telephone interviews were also conducted with 13 solicitors who drew up agreements.

Key findings include:

- Almost 5,000 minutes of agreement dealing with the division of property upon separation were entered into by couples in 2010. This indicates that the use of minutes of agreement in this context has doubled since the previous 1992 study.
- Almost all the agreements were entered into following separation (97%). However nine were entered into during a relationship, five were ante-nuptial agreements and a further five were pre-cohabitation agreements. All of these dealt with the division of property should the parties separate.
- Only 73% of minutes of agreement expressly stated both parties had used legal advice, while 5% said one party had declined to take advice (most usually the male party). In interviews, some respondents stated that cost was a key reason they had not taken legal advice, while for some, all they wanted was for a legally qualified individual to put what they had already agreed between themselves into writing and they did not see why it was necessary for them each to speak with their own solicitor.
- Children were mentioned in 46% of agreements and in three quarters of these the residence of the child was agreed. Most (90%) were to live with their mother, while 4% were to live with their father. In 5% of agreements the phrase "shared care" was used but child support usually continued to be paid to the mother. Child support and contact arrangements were discussed in two-thirds of agreements involving children. Contact was usually to be "as agreed between the parties" (80%) and in five minutes of agreement the parties agreed to use family mediation if they fell into dispute over contact.
- A recurrent theme throughout the interviews was women's determination that they (and their children) should be able to stay within the family home. Women spoke of increasing their hours of work, or of returning to work and claiming working tax credits, in order to keep the family home. For men the key asset they to work and claiming working tax credits, in order to keep the family home. For men the key asset they wished to retain was their pension.
- The terms of the agreements had been adhered to in the great majority of cases. Both male and female interviewees generally believed their life was better post agreement. Men reported their financial situation was either the same or better than when they were married but 25% of women reported their income falling below £15,000.

The full report can be found here: http://www.crfr.ac.uk women-separating-risk-poverty-in-old-age-to-retain-family-home/

Australia

Smyth, B., Rodgers. B., Allen, L. and Son, V. (2012). Post-Separation Patterns of Children's Overnight Stays with Each Parent: A Detailed Snapshot

Funder(s): Australian Research Council, with additional support from the Department of Social Services (formerly the Department of Families, Housing, Community Services and Indigenous Affairs) and the Department of Human Services.

Report: Australian Demographic and Social Research Institute, The Australian National University, Peer Review Status: Peer-reviewed

This article provides a detailed snapshot of children's overnight stays with each parent among a national random sample of 408 separated parents registered with the Australian Child Support Agency (CSA). The researchers have developed a typology of parenting time that emphasises the continuity/connections in contact involving overnight stays and the frequency of children's transitions between parents' homes.

Parenting time schedules are examined across a range of residence levels from 1–8 overnight stays per fortnight with fathers. While many separated fathers see their children mainly on weekends, the immense diversity of modern parenting time schedules points to a greater sharing of parental responsibilities and richer range of parenting contexts post-separation than previously evident in Australia.

Research design:

- This study used data from the Child Support Reform Study, a large cross-sequential study designed to collect information about separated parents' experiences of, and attitudes to, the child support system. This was both before and after a new formula was introduced in 2008.
- An initial longitudinal random sample was selected from separated parents registered with the CSA before the change in formula for estimating child support came into effect on 1st July 2008.
- This pre-reform baseline yielded 5,046 separated parents (2,089 mothers and 2,237 fathers). Between 20-24 months later 3,958 of these respondents were re-interviewed and of these respondents, 2,927 were interviewed once again after a further 18-25 months time.
- A second cross-sectional sample of recently separated parents was similarly selected from those on the CSA register that had separated in the second half of 2008 (N=1,000). This second sample was also followed up for re-interview in 2011, 3 years post-reform.
- A third cross-sectional sample of 1,040 recently separated parents (those who had separated in the second half of 2009) was interviewed in 2011.
- Parenting time schedule data were only collected from respondents in the most recent data collections who reported a set pattern of overnight stays in the two weeks prior to interview.

Key findings:

- The research provides a typology of parenting time based on the contiguity of overnight visits, and the frequency of children's transitions between parents' homes. Four configurations of overnight contiguity were evident in the parenting time schedules examined:

1. A single block of contiguous overnights in a fortnightly period,
2. Multiple blocks of contiguous overnights,
3. A mix of contiguous and non-contiguous overnights; and
4. No contiguous overnights.

- The research also identified five key observations for parents, legal professionals and/or mediators in drafting child-responsive parenting schedules:

1. A single block of contiguous overnights each fortnight necessarily results in more pro-longed absence from at least one parent; but does require fewer transitions for children.2. By contrast, the more fragmented the schedule, the shorter the absence will be from each parent; but the number of transitions will be greater.
3. With a greater number of overnight stays each fortnight, there is greater opportunity for different time splits and more potential for complex arrangements. However in practice, a 50/50 division of parenting time is characterised by fewer transitions; this is reflected in the high proportion of week-about arrangements (around two thirds) for 50/50 care involving only two transitions per fortnight.
4. Complex schedules do not necessarily involve less predictability than simpler schedules. The way that children's overnight stays are structured and the ages of children are also relevant.
5. Arrangements that start early in the week are likely to have a very different feel to arrangements that start on weekends. Some parents and children may prefer to ease out of parenting time, while others may prefer to ease into it, or some a combination of the two.

To sum up some schedules require more transitions for children and are likely to place more demands on them and their parents. This research seeks to highlight the potential importance of the timing and structure of overnight stays to move beyond too single-minded focus on the frequency or amount of parenting time post-separation.

Read More: http://pubs.e-contentmanagement.com/doi/abs/10.5172/jfs.2012.18.2-3.202

Canada

Law Commission of Ontario, Increasing Access to Family Justice through Comprehensive Entry Points and Inclusivity (Toronto: February 2013)

Funder(s): The Law Foundation of Ontario/The Law Society of Upper Canada and York University (Osgoode Hall Law School)

Report: Law Commission of Ontario

Peer Review Status: not peer-reviewed

Despite reforms to the family law system over the past few years, many people still find it difficult to use the system to resolve their family problems. The Law Commission of Ontario (LCO) has made recommendations to improve the "entry points" to the system, when people start to think about how to handle their family disputes. In writing their final report, the LCO has had the benefit of consultations with people who have used the system and people who work in the system, the contributions of the project advisory group, the feedback to the various consultation papers and the interim report and the many other reports by other organizations and academics that have discussed the family law system and made suggestions for reform. They identified the following concerns with the system in particular:

- The overwhelming amount of information and difficulty in understanding it;
- The lack of affordable legal services;
- The need to take Ontario's diverse population into account; and
- The connection between family legal problems and other family problems.

The report is based on an assessment of the current system and the researcher's proposals against benchmarks which the LCO believe an effective entry point to the family law system needs to meet. This includes the provision of accessible information available to people in their everyday lives; existence of a single hub for on-line information; the provision of print information that is available to people who cannot access the internet etc.

In summary the report recommends that:

- major family stakeholders develop a plan for creating these comprehensive centres and networks, taking into account criteria they identify in their report;
- the plan recognizes that these may have to be developed over time but that objectives for their achievement be identified;
- the plan includes a method of evaluation of the centres and networks; and
- the Ontario government facilitate the creation of two pilot projects for two areas of the province, using the benchmarks they have identified for effective entry points to the system.

Download the final report here: http://www.lco-cdo.org/en/family-law-reform-final-report

News update

FAMJUST: A Working Group on Access to Family Law and Justice in Civil and Common Law Europe

A European network of senior and early-stage researchers is being designed for the development of comparative, cross-national knowledge to inform sustainable and effective access to family law and justice in Europe, taking into account the diversity of families, legal regimes, circumstances and actors involved.

FAMJUST is promoted by João Pedroso (coordinator) and Patrícia Branco (Centre for Social Studies, University of Coimbra, Portugal), who conducted the Research Project 'The mutations of access to law and justice in the European Union – The case study of family law in Portugal' (for more information, go to http://www.ces.uc.pt/publicacoes/oficina/ficheiros/342.pdf).
The network also relies on the experience and knowledge of other experts: Aude Lejeune (France), Dagmar Soennecken (Canada), Frederic Schoenaers (Belgium), Luigi Cominelli (Italy), Mavis Maclean (UK), and Teresa Piconto Novales (Spain).

FAMJUST has 3 objectives:

1. To establish a multidisciplinary research network of experts working on the theme across Europe. It will also work actively to find funding sources to support the development of its activities in the future (international meetings and conferences);
2. To increase comparative knowledge about different law reforms and mechanisms for access to family law and justice, to assess the need for specific policy planning, and to share findings with academics, professionals, activists, policy makers and media, at European and national levels, through the creation of a website and joint publications;
3. To develop coordinated and interdisciplinary inter-European research proposals on access to family law and justice in Europe, to be submitted to multiple funding agencies.

The network had its first meeting at the ISA/RCSL (International Sociological Association, Research Committee on Sociology of Law) International Congress 'Sociology of Law and Political Action', taking place in Toulouse, from 3rd to 6th September, 2013. The website will be launched in early 2014.

Shared parenting

A new international working group on Shared Parenting held its Kick-off Workshop at the International Platform on Shared Parenting (twohomes.org) in Bonn, Germany, on 10-11 August 2013. This new organisation aims to bring together the best of evidence-based research and modern best practices on shared parenting.

http://twohomes.org/en_home

Ministry of Justice research studies

Action Research to Evaluate the Revised Public Law Outline

The Children and Families Bill, currently being considered by Parliament, includes legislation to introduce a 26 week time limit for care cases. Subject to Royal Assent, this legislation will be implemented in April 2014. In preparation for this, adjustments have been made to the Public Law Outline (PLO), the key practice direction which provides guidance on the court process required to support the proposed 26 week time limit. The revised PLO has been implemented, on a phased basis, between July and October 2013.

The Ministry of Justice commissioned Ipsos MORI to carry out research to explore how the changes to the PLO are being understood and implemented in practice and to identify any additional amendments that could be made to enhance the secondary legislation. In detail the aims of the research are:

1. To explore how the changes to the PLO are perceived to be impacting on pre-proceedings work and to identify any further changes to the PLO requirements that may assist in strengthening processes to prepare for the planned introduction of the 26 week statutory timeframe.
2. To explore in detail how the changes to the PLO are impacting on court proceedings and identify any further changes that may assist in the delivery of cases within the planned 26 weeks. This will include consideration of, but not be limited to, what makes an effective Case Management Hearing.
3. To explore whether the changes to the PLO are impacting on the wider family justice system.

The methodology involves a combination of qualitative workshops and in-depth interviews with key professionals in eight Local Family Justice Board (LFJB) areas. An online survey has also been sent to all LFJB members to seek wider feedback. The fieldwork was undertaken between August and November 2013. A report is due in 2014.

Mediation

Barlow, A., Hunter, R., and Sefton, M. In partnership with TNS BRMB (Ministry of Justice)

Recent reforms to legal aid mean that public funding for court-based resolution of private family law cases has been restricted, and with some exceptions clients no longer receive financial support if they seek legal advice or take their cases to court. Clients who are eligible for public funding will still have access to publicly funded mediation, however. In addition, the current 'expectation' that all privately funded parties attend a Mediation Information and Assessment Meeting (MIAM) will convert to a requirement (with exemptions where mediation is not appropriate) from 2014, as a result of the Children and Families Bill. Given the expected increase in mediation use, this study, funded by the Ministry of Justice, has three key aims: to examine how and whether MIAMs are encouraging publicly and privately funded clients to attend mediation, to better understand the privately funded mediation market, and to assess the proportions of clients using MIAMs and mediation before applying to court to resolve their private family law dispute.

Fieldwork began in August 2013, with a series of qualitative interviews with mediation practitioners, MIAMs and mediation clients, and parties in private family law children and financial court cases. These interviews have focused on the 'client journey' of parties to develop an understanding of what drives clients to and away from mediation – with a report of findings scheduled in the New Year. To assess the effectiveness of the existing MIAMs protocol, a review of HMCTS case-files is to be undertaken across five sites in England and Wales, and finally a survey of mediation providers will be undertaken in to develop an estimate of privately-funded mediation use. A report, triangulating the findings of all three elements, is scheduled for 2014.

Research on Experts in Family Law Cases

- The MoJ Analytical Services has recently commissioned Coventry University, who will be working in collaboration with academics and practitioners, to develop their understanding of the processes for commissioning expert reports in public and private family law cases, how reports affect the progression of cases and gather views on the quality of reports. It is intended that the study will cover both reports commissioned pre and during proceedings.
- Changes to the Family Procedure Rules came into force in January 2013 and new Standards for experts were introduced later in 2013. These developments are expected to prompt new practices for the commissioning of expert reports and positively impact on their quality, timeliness and value. Justice Ryder's proposals for the modernisation of family justice have also indicated that expectation documents will be published which will describe agreements reached with agencies working in family justice to detail what the court can expect from existing or new processes. This research study will assist in understanding how the upcoming reforms are being implemented, identify barriers to the effective implementation of the new Rules and Standards, help identify best practices and what further measures could be taken to encourage their implementation.
- The research will consist of two phases:

a) Phase 1 will consist of a combination of an online survey, qualitative interviews and focus groups with practitioners to better understand the types of cases and circumstances that result in the commissioning of expert reports and the types of expertise mostly sought, how expertise sought relates to the expert commissioned, and explore views on the processes for commissioning expert reports and how these affect the progression of cases. Phase 1 will help us refine the focus of phase 2 by assisting in setting the parameters for choosing the cases for in depth review and providing a clear framework for developing research questions and methodology for the next phase of the study.

b) Phase 2 will consist of in-depth peer reviews of court files with a focus on the requirements of the new Standards, Family Procedure Rules, Practice Direction 25A and Expectation Documents. Key aspects will be matched against expectations, including letters of instruction, expert reports, transcripts of experts' meetings, court evidence and feedback given to experts.

Phase 1 will be completed in early 2014 and Phase 2 in late 2014.

Forthcoming Statistics Publications

Ministry of Justice (MoJ) Court Statistics Quarterly (CSQ)

- The MoJ CSQ bulletin presents national statistics on activity in the county, family, magistrates' and Crown courts of England and Wales. The bulletin includes statistics on both public and private family law cases, including care and supervision cases, adoption, divorce, contact and residence cases, and domestic violence. This includes data on the volume and duration of cases and legal representation in family law cases.
- The more recent edition includes international data on divorce rates (within the appendix data) and was published on 26th September 2013 'Court statistics quarterly April to June 2013'. It can be found on the Ministry of Justice website: **http://www.justice.gov.uk/statistics/courts-and-sentencing/judicial-quarterly**

Acknowledgements

We would like to thank all those whose work we have summarised in this bulletin and to other contributors who have reviewed the bulletin and made suggestions for inclusion. With specific thanks to: Mavis Maclean, Caroline Bryson, Liz Trinder, Ann Potter, Bruce Smyth, Robert George, Anne Barlow, Karen Broadhurst, Maebh Harding, Helena Jelicic , João Pedroso, Julia Brophy and Jane Mair.

MoJ
Designed by Communications Directorate, The Design Team.
March 2014