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RESOURCE PACK

# Evidence Matters in Family Justice: Wales second edition

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Dartington

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and Nicole Erlen (2012)

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This resource pack is based on material published by Research in Practice in 2012, which was generated through several years' collaborative work with local authorities and other agencies. In 2004 a group of agencies had come together to pool and develop learning around social workers' use of research in the family court.

A set of tools and guidance was then piloted with 11 agencies and published as a practical handbook in 2008 (Eccles and Erlen). A revised and updated version was published in England in 2012 (Lewis and Erlen). A first edition for Wales was commissioned by the Care Council for Wales in 2013.

This 2018 edition for Wales takes account of learning that emerged from use of those earlier resources and reflects the significant legal and policy changes that continue to reshape social work and family justice. The law stated in this resource pack is as it stands in April 2018.

### Who is this resource for?

This resource pack is intended primarily for:

1. **Social workers**
2. **Social work supervisors and managers** (who are encouraged to use these resources in supervision, case discussion and team training sessions).
3. **Workforce development managers and social work educators** (to support initial social work training, work placements, post-qualification training, court skills training, continuous professional development and mentoring and supervision).

The resource will also be of value to other key stakeholders in family court practice: **local authority legal advisers** (to generate debate and build shared understanding between social workers and their legal teams about the appropriate use of research); **Cafcass Cymru family court advisers** (known as 'Welsh family proceedings officers' in legislation); **solicitors, barristers and their professional organisations; Family Justice Council; Family Justice Boards** and **Family Justice Network** and **expert witnesses**.

The resources will stimulate better cross-professional understanding of social work expertise and how it can most effectively be used in the court and will be of particular interest to interdisciplinary training committees of local Family Justice Boards.

## What's in the resource pack?

**This handbook:** which covers (i) the evolving policy and legal landscape in the family justice system in Wales and (ii) an overview of the parameters of social work expertise.

Three **Practice Briefings** to help frontline social workers, their managers and agencies develop and consolidate their practice in the use of research evidence in the family court:

1. **Practice Briefing 1 *Evidence and Standard of Proof in the Family Court*** looks at the types of evidence that can be brought before a court and the weight they will be given, and the roles of the social worker and the expert witness. It is recognised that there may be variations in approach among different courts in Wales; this Briefing aims to identify universal principles of good practice.
2. **Practice Briefing 2 *Evidence-Informed Practice and Research*** will help you reflect on what we mean by research, familiarise yourself with the concepts of evidence-informed practice, and consider what this looks like in practice.
3. **Practice Briefings 3 *Analysis and Assessment*** includes summary points to contribute to the development of these crucial areas of social work practice in pre-proceedings and the family court.



## Tools

Exercises and checklists to help you apply material from this pack in supervision, training and individual professional development.



## Focus on practice

Examples, ideas and inspiration.



## Dig deeper

Signposting to further information on related websites, useful publications or other organisations. You can find many such resources at: <https://socialcare.wales/learning-and-development/family-justice>



## Films online

Cross-examination film clips on the Research in Practice website illustrate some Do's and Don'ts of using research in court. They feature a judge, family barrister and local authority social worker acting out issues that might arise when using research in written and oral evidence given in court: [www.rip.org.uk/resources/video-resources](http://www.rip.org.uk/resources/video-resources)

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# Introduction

## Background to the 2018 edition

Among the wide-ranging reforms and hotly contested debates about family justice over recent years, one point of growing consensus is that better use of data and empirical research has an important role to play in improving decision-making in the family courts.

This resource explores one aspect of this – the role of social workers and the organisations in which they work in the development of evidence-informed practice in pre-proceedings and in the family court so that they:

- > Make the best possible decisions in their work with families, leading up to and including work for care proceedings.
- > Use research in assessments and care planning to make well-informed decisions.
- > Increase their confidence and competence, and thereby increase confidence in social work expertise across the family justice system as a whole.

A consistent and interlinked set of issues and concerns form the backdrop to the 2018 edition and earlier versions of this resource:

- > Concerns about the duration of care proceedings which led to legislative reform in 2014.

- > The steep and sustained rise in the number of care applications since 2007.
- > Mixed experiences of how social work expertise was regarded in court, and how well social workers present cases and conclusions.
- > Continuing concern about the quality of analysis in assessments and care planning.
- > Concern within some local authority legal departments and among social work managers about the use of research in court reports and oral evidence – some social workers have found its use is strongly discouraged.
- > Mixed responses in court when social workers do use research in this way.
- > Concerns about an over-reliance on expert reports in care proceedings. The 2014 legislative reform has led to greater reliance by courts on evidence from local authority and Cafcass Cymru social workers.
- > Debate about the right balance to be achieved in decision-making between adoption and other options for permanence.

## Research in the family court – a qualified consensus

Research in Practice's work over many years highlights a range of arguments for and against using research in the family court. Overall, there is a consensus in the sector (reflected in approaches to social work training; post-qualifying improvement standards; service inspection and improvement) that use of theory and research is an essential element in social work practice and decision-making.

The use of research in the family court is one part of a wider picture in which research informs practice, policy development and practice leadership in order to build the quality of practice overall. Nevertheless, there are challenges as well as opportunities here, which were summarised well in the findings of the Family Justice Observatory scoping study:

- > Stakeholders<sup>1</sup> described a clear role for research evidence and agreed that better use of administrative data<sup>2</sup> was essential to inform policy development and system design. Key issues identified were local and regional variability, and changes over time resulting from major policy and legislative developments.
- > Stakeholders felt the potential of administrative data to provide intelligence on outcomes for children could be much better utilised. Frontline practitioners consistently stated that better use of national data would enable more confident decision-making about children's futures. For example, they referred to the impact of different family court decisions on children's wellbeing, the stability and quality of care for children, and children's life chances over time.
- > Grounding in child development and welfare research was acknowledged to be uneven between professional groups and across organisations. The majority of practitioners were clear that their thinking was influenced by background child welfare knowledge, but acknowledged that submissions to the court were highly variable in the extent to which they provided clear analyses of children's needs or well-argued care plans.
- > There was a good deal of debate among stakeholders about the introduction of particular research studies or bodies of research in argument in the family court. Social workers feared cross-examination if they made direct reference to research, whereas lawyers, barristers and

<sup>1</sup>A wide range of stakeholders in England and Wales participated in the scoping study, including lawyers, barristers, judges, social workers and organisations representing parties to cases.

<sup>2</sup>Administrative data is information about organisational activity or persons that is collected routinely by agencies (eg, local authorities, Cafcass Cymru or the courts) or government. Its analysis by researchers can be a quick and effective way of understanding how the family justice system is working.

judges felt that this kind of ‘extra-legal’ knowledge was best introduced by an expert instructed on the basis of specific expertise.

- > Practitioners consistently described a number of barriers, which help explain the limited and uncertain use of research evidence: limited time to engage with research evidence; published research often locked behind pay-walls; difficulty navigating through the plethora of research available; a lack of confidence or ability to assess the quality and relevance of research evidence; and fear of its misuse or misinterpretation in adversarial proceedings. (Broadhurst et al, 2018: 6-7)

These points of challenge certainly have validity – applying findings from research in individual case decision-making is a complex task, and neither a ‘cut and paste’ nor a ‘cherry picking’ approach to the use of research will induce confidence in social workers’ professional abilities and expertise.

Nevertheless, the revised Public Law Outline, the *Children and Families Act 2014* and the *Social Services and Well-being (Wales) Act 2014* all envisage both the local authority social worker and the Cafcass Cymru guardian in care proceedings as experts advising the court, and theory and research (whether implicitly mobilised or explicitly cited) are key aspects of professional expertise. The aim of this resource is to enable practitioners, teams and case managers to develop their confidence, knowledge and skills to move forward this agenda

for child and family social work in the family court.

## Generating, applying and embedding research – The Family Justice Observatory

[www.nuffieldfjo.org.uk](http://www.nuffieldfjo.org.uk)

The Nuffield Foundation has taken a lead in considering how best to address the limited availability and use of research findings and administrative data in family justice decision-making (as identified in the Family Justice Review 2011). In 2015 Nuffield published a scoping paper *Towards a family justice observatory to improve the generation and application of research* (Rodgers et al, 2015). This identified ‘four “levels” of influence or mechanisms’ by which medical, scientific and social scientific research might play a role in supporting an effective family justice system:

- > Wider policy and legislation governing family law, policy and practice.
- > Professional guidelines, training, and development to assist practitioners to interpret and operate within the policy and legal frameworks.
- > The forensic process in determining facts and arguments relevant to a case.
- > The analysis of options to inform decisions made by social workers, judges and others.

The paper drew the important distinction between:



- > Research to support decisions in individual cases, which might be drawn from a wide range of disciplines, and
- > Analysis that improves the performance of the system as a whole, which could draw on administrative data collected and collated as part of case management, as well as the findings from research studies. (Rodgers et al, 2015: 3)

Following an extensive scoping study carried out in 2017 (and described in Broadhurst et al, 2018) trustees have decided to establish the Nuffield Family Justice Observatory for a five-year incubation phase:

*The aim of the Observatory is to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Its remit will include public and private law issues, and the broad family justice ecosystem, as well as the courts.* (Broadhurst et al, 2018: 6)

The Observatory aims to address issues of 'supply' by:

- > Generating robust, user-oriented research through synthesis of existing material and from new research studies. The first, 'flagship' study will focus on infants in the family justice system and commence in 2018.
- > Creating a Data Platform and Analytics Service to provide improved access to analyses of Cafcass and Cafcass Cymru data, and linking them with other relevant datasets. This will enable the provision of more routine analyses –

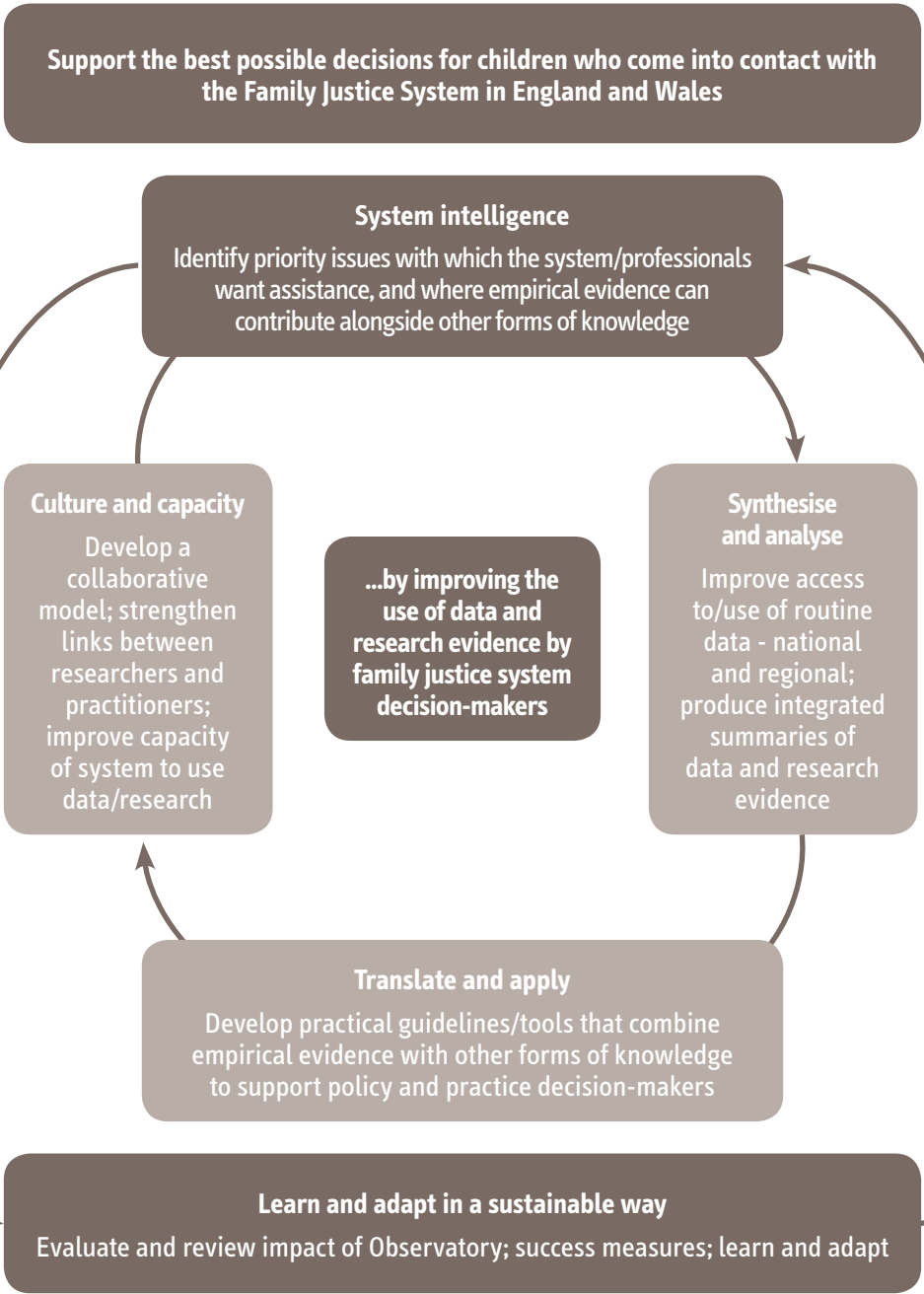
covering England and Wales for the first time – to understand better the pathways of children and families through services, and the short and medium-term outcomes beyond family court involvement.

And to support the 'demand' side by:

- > Building the research literacy and competence of all those involved in the family justice system (including lawyers, barristers and judges).
- > Developing clarity on the relationships between the primary authorities of statute and case law and the (social) scientific evidence.

In light of these developments, our update of this resource for social workers in Wales is timely. The whole-system approach of the Family Justice Observatory emphasises that social workers' confidence and competence will only flourish where evidence-informed practice is endorsed and embedded at all levels across agencies. This can be facilitated by:

- > Identifying, describing and sharing good practice
- > Providing effective training and guidance for social workers
- > Developing models of supervision that include discussion about research use and shared quality assurance of assessments, in particular the quality of analysis
- > Building strong interdisciplinary working and training opportunities across the local family justice system.



The Nuffield Family Justice Observatory: A preliminary model

## The legislative landscape in Wales – the Social Services and Well-being (Wales) Act 2014

Since the first Wales edition of *Evidence Matters* (2013) addressed the use of research in the family court<sup>3</sup>, the *Children and Families Act 2014* and the *Social Services and Well-being (Wales) Act 2014* have resulted in significant changes in law and practice.

Although most of the *Children Act 1989* applies across England and Wales, the provisions for children in need and looked after children (Part III, comprising sections 17-30 of the Act) were replaced in Wales by the *Social Services and Well-being (Wales) Act 2014*, with effect from April 2016. This means that assessments of the care and support needs of children and their families in Wales follow new regulations and guidance issued by the Welsh Government (2015a-c) under the 2014 Act. These are all available on the Social Care Wales website.<sup>4</sup>

Parts I-II and IV-V of the *Children Act 1989*, which include the welfare principle, private law, court intervention, and child protection – all remain in force in Wales.

The duty to promote the wellbeing (defined in s.2) of those who need care and support is fundamental to the *Social Services and Well-being (Wales) Act*. The development of national wellbeing outcomes, to be measured within a National Outcomes Framework, signals the intention to focus on improving outcomes for individuals including children and young people looked after and accommodated.<sup>5</sup>

As this and other overarching duties and principles of the Act are further embedded in practice, social work practice themes emerge. Duties and principles under the Act include: active offer (ie, providing services in Welsh and to the same standard as English language services), wellbeing, voice and control (ie, giving individuals a voice and control over reaching outcomes that help them achieve wellbeing), prevention and early intervention, and co-production.

The requirement to promote the wellbeing of birth parents (and other prospective family or ‘connected persons’) and assess their care and support needs in their own entitlement is perceived as a means of ensuring better care for children and young people.

<sup>3</sup> Family courts across England and Wales are the responsibility of the Ministry of Justice and are administered by HM Courts and Tribunal Service ([www.gov.uk/government/organisations/hm-courts-and-tribunals-service](http://www.gov.uk/government/organisations/hm-courts-and-tribunals-service)). Responsibility for local authority children’s services in Wales, adoption agencies and Cafcass Cymru is devolved to Wales, which means the Welsh Government issues policy for these services (the equivalent policy in England is issued by the Department for Education). In Wales, the Welsh Local Government Association and the Association of Directors of Social Services Cymru (ADSS Cymru) are influential in policy development.

<sup>4</sup> <https://socialcare.wales/hub/sswbact>

<sup>5</sup> See: <http://gov.wales/topics/health/socialcare/well-being/?lang=en>

The legal duty to report a child or an adult 'at risk' (s.130 and s.128 respectively) and the professional codes of practice for social workers set the highest standards possible:

- > *Code of Professional Practice for Social Care* (Social Care Wales, 2017a)
- > *The Social Worker: Practice guidance for social workers registered with Social Care Wales* (Social Care Wales, 2017b)
- > *Openness and honesty when things go wrong: The professional duty of candour. Explanatory guidance for social care professionals registered with Social Care Wales* (Social Care Wales, 2017c).

The Independent Reviewing Officer's (IRO) previous duties and powers are placed on a statutory basis by the Act (previously regulatory) and additional and strengthened powers and duties have been enshrined (s.99-102 of the Act; Regulations 53-54 of the *Care Planning, Placement and Case Review (Wales) Regulations 2015*).

The primacy afforded to enabling children to remain with their birth parent(s) or for them to be placed within their wider birth family is reinforced by the 'placement hierarchy' (s.81 of the *Social Services and Well-being (Wales) Act 2014*; Regulations 10-15 of the *Care Planning, Placement and Case Review (Wales) Regulations 2015*) and considered further in the Code of

Practice in relation to Part 6 (looked after and accommodated children) of the Act (Welsh Government, 2015c).

Most local authorities report a significant increase in their 'connected person' fostering cohort. Whilst this is viewed positively, in some instances there is an impact on the capacity to recruit and assess generic foster carers leading to a further placement deficit. Whilst the vast majority of connected persons' arrangements provide excellent care, challenges can exist – at times necessitating a parallel requirement to assess 'capacity to change' alongside 'suitability to foster'.

There is an increased use of the special guardianship order, a private law provision originally envisaged as a permanence option that might formalise existing relationships. The Birmingham Safeguarding Children Board serious case review of the death of Keegan Downer (Wate, 2017) illustrates the challenges inherent in appraising permanence options and reinforces the importance of a robust assessment of options. Following a consultation in 2017, amendments to *The Special Guardianship (Wales) Regulations 2005* and a new code of practice for local authorities were introduced in summer 2018.<sup>6</sup>

It is envisaged that shared safeguarding learning will be facilitated by the development of regional safeguarding boards, the National Independent

<sup>6</sup> See: [www.legislation.gov.uk/wsi/2018/573/made](http://www.legislation.gov.uk/wsi/2018/573/made) and <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?lId=22021&Opt=0>

Safeguarding Board and the Adult Practice and Child Practice Review frameworks.

The Welsh Government's programme for reform, developed in the context of the Act, is designed to reflect a partnership approach involving the Association of Directors of Social Services Cymru (ADSS Cymru), Welsh Local Government Association (WLGA), Association for Fostering and Adoption Cymru (AFA Cymru) and Fostering Network. It considers and addresses the effectiveness and sustainability of fostering services in Wales and has four work streams:

- > Consultation on the updating of the *Special Guardianship (Wales) Regulations 2005* and Code of Practice
- > Review of the legislative framework for adoption and fostering services
- > Development of the Independent Reviewing Officer Practice Standards, and
- > The National Fostering Framework.

The need for the best thinking possible in child and family social work remains a consistent theme – from the 'recurrent inadequacy of analysis and reasoning' identified in *Re B-S* [2013] EWCA Civ 1146<sup>7</sup> through to the criticism of the lack of analysis in the assessment of foster carers in Croydon Safeguarding Children Board's serious case review (Griffin, 2017),

*Cheshire East Borough Council v N & Ors* [2017] EWFC 20<sup>8</sup>, and Sir Ernest Ryder's comments that placement decisions 'must be justified by evidence not assumptions' in *S-F (A Child)* [2017] EWCA Civ 964<sup>9</sup>.

<sup>7</sup>[www.familylawweek.co.uk/site.aspx?i=ed117048](http://www.familylawweek.co.uk/site.aspx?i=ed117048)

<sup>8</sup>[www.bailii.org/ew/cases/EWFC/HCI/2017/20.html](http://www.bailii.org/ew/cases/EWFC/HCI/2017/20.html)

<sup>9</sup>[www.familylawweek.co.uk/site.aspx?i=ed178832](http://www.familylawweek.co.uk/site.aspx?i=ed178832)



## 2.

# Reform in family justice - an evolving system

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## 2. Reform in family justice - an evolving system

The wide-ranging review of the family justice system, commissioned in 2010 by the Westminster and Wales governments and chaired by David Norgrove, concluded that family justice was ‘a system that is not a system, characterised by mutual distrust and a lack of leadership’ (Family Justice Review, 2011: 3). Its programme of change was the impetus for the revised Public Law Outline and the relevant sections of the *Children and Families Act 2014*.

A number of issues were identified in the Family Justice Review as contributing to the duration of court proceedings, some of which are proving remarkably intransigent:

- > The complexity of cases and the fact that things change during the course of proceedings.
- > The significant increase in referrals and applications that followed the death of baby Peter Connelly in 2007, a trend that continues to this day, putting pressure on all parts of the system and especially social work resources.
- > The variable quality of assessments, case planning and court preparation by social workers.
- > The extensive use of additional expert assessments.
- > A lack of active case management by courts in many areas.

The final report of the Family Justice Review talked about ‘a slow building crisis’ in the family justice system. In 2018, despite significant improvement activity over intervening years, the word ‘crisis’ continues to be applied. In September 2016 the President of the Family Division, Sir James Munby, warned that rising caseloads in the courts meant a ‘looming crisis ... for which there is no clear strategy’ (Munby, 2016) and in late 2017, with applications for care proceedings at record levels, Family Rights Group launched a sector-led Care Crisis Review.



## Implementing Family Justice Reform

The Family Justice Review (2011) has played a prominent role in reform of the family justice system, leading to changes in the revised Public Law Outline (2014) and the *Children and Families Act (2014)* and the *Social Services Well-being (Wales) Act 2014*

### The Review called for ...

**The child's voice:** ... more emphasis on hearing children's views in care proceedings and on providing them with age-appropriate information.

**Family Justice Service:** ... a new Family Justice Service providing leadership, better management and improved performance, with a new system of performance reporting.

### What's happened ...

This function is being taken forward by the Family Justice Young People's Board (FJYPB),<sup>10</sup> which undertakes reviews of courts and contact centres to support a more child-centred service. It has carried out four reviews in Wales so far. The FJYPB has also produced a useful glossary for children.<sup>11</sup>

The Family Justice Board<sup>12</sup> was established in 2012 with David Norgrove as its first Chair. The Board's 15 members include three from Wales (representing the Welsh Government, Cafcass Cymru and the Association of Directors of Social Services Cymru).

The Welsh Government has set up the Family Justice Network in Wales<sup>13</sup> to complement, support and inform the work of the Board. It advises on the specific Welsh context and

<sup>10</sup> See: [www.cafcass.gov.uk/family-justice-young-peoples-board](http://www.cafcass.gov.uk/family-justice-young-peoples-board)

<sup>11</sup> Available at: [www.cafcass.gov.uk/family-justice-young-peoples-board/glossary](http://www.cafcass.gov.uk/family-justice-young-peoples-board/glossary)

<sup>12</sup> See: [www.gov.uk/government/groups/family-justice-board](http://www.gov.uk/government/groups/family-justice-board)

<sup>13</sup> See: <http://gov.wales/topics/health/publications/socialcare/guidance1/network>

### The Review called for ...

### What's happened ...

**Judicial leadership and culture:** ... development of a more robust role for judges, supported by judicial continuity and specialism.

ensures the Board takes into account Welsh perspectives on non-devolved issues in relation to the family justice system in Wales.

The Board's overall aim is to drive significant improvements in the performance of the family justice system. It operates through Local Family Justice Boards (LFJBs) and has links with the FJYPB and the Family Justice Council (FJC)<sup>14</sup>, which provides it with independent expert advice.

**The courts:** ... a single Family Court with a single point of entry, with all levels of the family judiciary (including magistrates) sitting in the family court and work allocated according to complexity.

This has been taken forward by the case management functions in the Revised PLO and the *Children and Families Act 2014*.

The single Family Court has been in operation since 22 April 2014. It was introduced by the *Crime and Courts Act 2013*.

**Workforce development:**

- > a workforce strategy and an agreed set of core skills and knowledge for family justice
- > a new interdisciplinary induction course

The Family Justice Network asked Social Care Wales (formerly the Care Council for Wales) to develop a social work workforce strategy to improve skills and knowledge, promote positive inter-professional

<sup>14</sup> See: [www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc](http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc)

### The Review called for ...

- > piloting feedback for judges and magistrates on the outcomes for children and families whose cases they have adjudicated
- > Social Care Wales to issue guidance to help employers and educators teach social workers about legal process and procedure, what the court expects them to present and how to present it.

### Improving case management:

- > a statutory 26-week time limit for the completion of care and supervision cases, with flexibility for judges to extend this in exceptional cases where in the interests of the child
- > court scrutiny of care plans (which had 'progressively extended' since 1989) to be reduced and courts to refocus on the core issues of whether the child is to live with parents, other family or friends, or be removed to the care of the local authority (other aspects and detail should be left to local authorities)
- > legislation to allow interim care orders to be granted for longer, up to a maximum of six months.

### What's happened ...

relationships and develop multidisciplinary training. (See Section 3 of this handbook: 'The parameters of social work expertise').

All these provisions were contained in the *Children and Families Act 2014*.

**The Review called for ...**

**Local authority practice:** ... courts and Independent Reviewing Officers (IROs) to develop more effective links, and guardians and IROs to strengthen their working relationship.

**Representation of children:** ... the 'tandem model' – under which Cafcass allocate a guardian to represent the child, and the guardian instructs a solicitor – to be retained as an 'important safeguard'.

**Alternatives to conventional court proceedings:** ... wider recognition of the benefits of Family Group Conferences and their use considered before proceedings.

**Improved quality of social work analysis:** ... *'Social workers are experts. In just the same way, Cafcass officers are experts. What [had] gone wrong with the system is that we have at least two experts in every care case - a social worker and a guardian - and yet we have grown*

**What's happened ...**

The IRO's previous duties and powers have been placed on a statutory basis by the *Social Services and Well-being (Wales) Act 2014* (previously regulatory) along with additional and strengthened powers and duties (s.99-102 of the Act; Regulations 53-54 *Care Planning, Placement and Case Review (Wales) Regulations 2015*).

Despite removal of legal aid funding eligibility from much of the family court system, a child subject to a care application is still entitled to funding for legal representation, as are the child's parents.

This is emphasised in the care planning Code of Practice.

This is strengthened through the requirements set out in the revised PLO Practice Direction 12A and the requirements for the evidence that will be filed on issue, including the Social Work Chronology and Social Work Statement.

### The Review called for ...

*up with the culture of believing that they are not really experts and we therefore need more experts with a capital E. Much of the time we do not.'* (Sir James Munby, giving evidence to the Public Bill Committee, 5 March 2013, cited in Kotilaine, 2014)

### What's happened ...

The Cafcass Cymru guardian will be required to produce a Case Analysis when directed by the court on key issues (a threshold analysis; a case management analysis; a parenting capacity analysis; a child impact analysis; and an early permanence analysis).

The workforce strategy developed by Social Care Wales and the Consolidation Programme (for Newly Qualified Social Workers) within the Continuing Professional Education and Learning (CPEL) framework emphasise the critical importance of developing skills on the application of analysis in assessment and the application of professional judgment in complex situations. The Consolidation Programme provides the foundation for working within the family justice system (see Section 3 of this handbook).

## Timeliness of proceedings

Delay and cost were the main focus of concern in 2011-12. At that time the average duration of care cases in England and Wales was 54 weeks from application to final order (Cafcass, 2012). A year is a long time in the life of any child and particularly so for a baby. A child at the centre of care proceedings has to live with uncertainty throughout, and the longer proceedings last the more likely the child is to experience placement change. Delay in achieving permanence is seriously detrimental to children's outcomes, as recognised by section 1(2) of the *Children Act 1989*:

*In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.*

Case duration was addressed in the *Children and Families Act 2014*, which introduced the 26-week time limit on care proceedings (now found in section 32 of the *Children Act 1989*, as amended). Legislative reforms and the revised Public Law Outline (PLO)<sup>15</sup> have achieved significant reductions in case duration since 2014. Cafcass Cymru (2017) report that in 2016-17, the average duration in Wales fell to 24.5 weeks (compared to 27 weeks across England and Wales as a whole).

These overall averages mask marked variability between courts and individual local authorities, however. Research into the impact of the revised PLO on court processes and outcomes (Masson et al, 2017) compares two samples of care cases from before and after its introduction in six court areas in England and Wales (a total of 373 care proceedings cases, relating to 616 children). An interim report on this study (which will complete in 2018) identified three key factors in reducing delay and demands on resources:

*The PLO has been successful in reducing substantially the length of care proceedings, but not quite in ensuring that cases are completed in 26 weeks. Average completion times, monitored and reported by HMCTS [HM Courts and Tribunal Service], do not identify key factors for timely completion – **judicial continuity, concluding cases at the IRH and minimising the use of experts in proceedings** [our emphasis], all matters which were identified as varying substantially between the Court Areas in this study. Despite training and standardization there is very marked variability in the practice in different courts, which results in greater demands on the resources of all parts of the family justice system, the courts, local authorities, Cafcass and the Legal Aid Agency. (Masson et al, 2017)*

<sup>15</sup>The revised PLO was piloted from July 2013 and introduced fully in April 2014

## Volume of proceedings and the Care Crisis Review

By early 2018 applications for care proceedings in England and Wales were at record levels and the number of children looked after in the care system at its highest level since 1985. The sector-led Care Crisis Review, funded by the Nuffield Foundation and facilitated by the Family Rights Group, focuses on this issue. It aims are to:

- > Examine the reasons for the rise in care proceedings and number of children in care
- > Retain a focus on achieving the best outcomes for children and families
- > Take account of the current national economic, financial, legal and policy context that impacts on families and on local authority and court practice
- > Identify practical ideas and solutions that may help safely stem the increase in the number of care cases coming before the family courts and the number of children in the care system.<sup>16</sup>

At a roundtable discussion in Wales in January 2018, Nigel Richardson, Chair of the inquiry, posed the following question:

*Do we understand the nature of our response to child welfare concerns which is leading to a pattern of more children being cared for by the State, despite the fact that law and policy is clear that their family is the preferred place for children to grow up in?*

The Transparency Project's report of that Cardiff meeting makes some salient points.<sup>17</sup> One is a long view of the data, which shows that the number of children in care in England and Wales has doubled over the last 20 years. Despite peaks (such as that which followed the death of Peter Connelly), the long-term trend 'in Wales at least, has been a steady increase since the Children Act 1989 (with its non-intervention principles) was implemented in 1991'. Two major issues emerged in the Wales context.

1. The perception among local authorities that they would be criticised in court for using voluntary accommodation to look after a child before issuing proceedings (under section 20 of the *Children Act 1989*, a provision replicated in section 76 of the *Social Services and Well-being (Wales) Act 2014*). This has arisen since the case of *Re N* [2015] EWCA Civ 1112<sup>18</sup> was published in November 2015, in which the President of the Family Division

<sup>16</sup> The Review published its findings in June 2018: [www.frg.org.uk/involving-families/reforming-law-and-practice/care-crisis-review](http://www.frg.org.uk/involving-families/reforming-law-and-practice/care-crisis-review)

<sup>17</sup> See: [www.transparencyproject.org.uk/the-sector-led-review-into-the-rise-in-care-applications-and-number-of-children-in-care-wales](http://www.transparencyproject.org.uk/the-sector-led-review-into-the-rise-in-care-applications-and-number-of-children-in-care-wales) The Transparency Project is a charity which explains and discusses family law and the family court in England and Wales, and works to improve the range and accessibility of information available to the public.

<sup>18</sup> [www.bailii.org/ew/cases/EWCA/Civ/2015/1112.html](http://www.bailii.org/ew/cases/EWCA/Civ/2015/1112.html)

criticised how section 20 had been used in that case (Doughty, 2016).

2. Differing views as to the extent of support kinship (family and friends) carers were being offered. Research across England and Wales indicates that support tends to be linked to legal status rather than need, with looked after children, and their carers, being most likely to receive support, since this is a statutory requirement.

### DIG DEEPER

**Research into how to safely reduce the need for children to enter care is one of the initial areas of focus for the What Works Centre for Children's Social Care. While the Centre is an initiative for England funded by the Department for Education, its Research Partner is led by the Children's Social Care Research and Development Centre (CASCADE) at Cardiff University. Go to: <http://sites.cardiff.ac.uk/cascade/what-works-centre/how-to-safely-reduce-the-need-for-children-to-enter-care/>**

## The Revised Public Law Outline

The Public Law Outline (PLO) was first rolled out nationally in 2008 (Judiciary and MoJ, 2008) and set a four-stage structure for the active case management of care proceedings. As part of the Family Justice Reform programme, this was revised into a three-stage structure in 2013 (see table opposite). Documents that are to be filed with the care application (Practice Direction 12A) are:

- > Social Work Chronology
- > Social Work Statement and Genogram
- > Current assessments to which the Statement refers and on which the local authority relies
- > Care Plan
- > An Index of 'Checklist Documents' held by the local authority: previous court orders and joint agency materials are to be filed; decision-making records are not to be filed unless directed by the court and are not expected to be more than two years old.



## The Public Law Outline, Family Procedure Rules 2010 Practice Direction 12A

Key points (for full details see link at footnote)<sup>19</sup>

### stage 1

#### Issue and allocation

- > Local authority files application and Annex documents with the court and sends copies to Cafcass Cymru
- > Court issues application.

#### By Day 2

- > Court allocates case to the right level of judge
- > Local authority serves parties
- > Court gives standard directions including appointing a Cafcass Cymru guardian.

### stage 2

Case management hearing – Not before day 12 and not later than day 18

- > If necessary, identify if any experts needed and agree draft questions
- > Court gives detailed directions including drawing up the timetable for the child and whether any extension beyond 26 weeks is needed
- > Lists an Issues Resolution Hearing (or if required a Further Case Management Hearing).

### stage 3

#### Issues Resolution Hearing

- > Court narrows the issues to those that can be resolved at this stage and any that remain to be determined at a Final Hearing
- > Court makes final case management directions.

<sup>19</sup> [www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a)

## An effective pre-proceedings process

Statutory guidance (Department for Education, 2014) sets out the pre-proceedings process, aimed at diverting cases from the court where possible. Where the court has to be used, the guidance aims to ensure better preparation and a more streamlined approach. Although there is currently no Welsh Government statutory guidance on court proceedings and the PLO, local authorities in Wales are expected to follow the same pre-proceedings process (The Practice Direction applies in all courts, although the Department for Education's guidance applies only in England).

The guidance outlines three steps before an application is issued, except in cases requiring more urgent action:

- > The local authority has to seek legal advice to ascertain whether there is a case for making an application, through a legal gateway or planning meeting.
- > A 'Letter Before Proceedings' has to be sent to parents setting out the issues of concern and what needs to change.

- > The letter must invite parents to a pre-proceedings meeting to see if a plan can be agreed without using the court.

The local authority is also required to show that it has considered family or friends as possible carers, and the value of Family Group Conferences is emphasised.

An inspection of work at pre-proceedings in six local authorities in Wales (CSSIW, 2016) found that under the revised PLO:

1. Work that had been carried out in the pre-proceedings process was outcome-focused and preventative interventions were proving successful.
2. Where a service was using a specific model or approach to assessing risks and concerns, consistency and transparency of decision-making was improved.
3. Despite a lack of suitable literature on the pre-proceedings process across Wales and limited availability of clear information in a range of languages and formats, families did benefit from the good communication skills of social workers.
4. Pre-proceedings letters were generally of good quality and written in accessible language.

However, there was no consistent written notification that the PLO process was being stopped.

**5.** Although children do not have their own representation at the pre-proceedings stage (unlike their parents, who are entitled to legal representation) there were examples of creative and good-quality direct work that represented children's views and enabled them to speak about their concerns. (CSSIW, 2016)

The report also describes a number of good practice examples from different parts of Wales (see Focus on Practice).



## Focus on practice

### Pre-proceedings: good practice examples

- > A social worker in Conwy used a fun quiz (with prizes) to determine whether children had understood what was going to happen and how their views would be taken into account. This increased children's engagement in the process and helped reduce the stressful nature of the serious matters being communicated.
- > In Swansea cases that met key triggers but did not progress to the pre-proceedings process were subject to audit by children's services. Together with routine analysis of data related to court applications and evaluation of outcomes, this helped assure senior managers that only the 'right cases' were being brought to care proceedings.
- > Wrexham children's services had developed 'live case monitoring' arrangements, which provided an opportunity for senior managers to oversee the progress of cases and intervene to influence partner agency engagement or approve additional resources to produce more timely results.
- > Workers in Swansea children's services had further developed the

Signs of Safety model as they had gained confidence in the approach. Danger statements were translated into wellbeing outcomes for 'step down' services to use to measure progress. Learning was shared across teams with presentations or examples of assessments and plans that had received positive feedback.

- > Torfaen have developed a Vulnerable Children's Panel (legal services and partner agencies contribute to the panel). All cases where concerns have been identified in supervision are considered by the panel and then reviewed systematically. Members have the authority to make decisions and staff have found the challenges valuable as they strengthen decision-making.
- > A senior social worker in Pembrokeshire children's services has developed a set of tools (published as an appendix to the CSSIW's report) which are visual aids for social workers to use in direct work sessions with children and young people to help identify issues around their lives and provide a better understanding of the child or young person's perspective.

(All examples are taken from CSSIW, 2016)



## Focus on practice The Letter Before Proceedings

Judges in Wales expect pre-proceedings letters to be expressed in very straightforward and easily accessible terms and to contain a limited number of clear areas of concern so that parents and their advisers know what needs to change.

### DIG DEEPER

The 2014 DfE statutory guidance for England *Court orders and pre-proceedings* was supplemented by good practice guidance available on an open access website: <http://coppguidance.rip.org.uk/>. (While the DfE guidance does not have the status of statutory guidance in Wales, there are many useful, transferable messages and resources for practitioners in Wales.)

Statutory guidance on care proceedings was issued by the Welsh Assembly Government in 2008 and supplemented in 2014<sup>20</sup> but this awaits updating to reflect the *Social Services and Well-being (Wales) Act 2014*. All guidance on care planning for children in need of care and support and looked after children is now contained in the Codes of Practice to Parts 3, 4 and 6 of the Act.<sup>21</sup>

### DIG DEEPER

#### Letter Before Proceedings and Pre-Proceedings Meeting

Research in Practice's open access website includes practical tips for writing the letter, and other learning resources, including videos of social workers discussing effective Pre-Proceedings Meetings and working with parents. Go to:

<http://coppguidance.rip.org.uk/pre-proceedings/letter-before-proceedings/>

### DIG DEEPER

#### Pre-proceedings practice

An extensive study published in 2013 (Masson et al) made a number of recommendations for improvement in pre-proceedings practice activity. Many remain relevant to practice improvement in 2018:

[www.bristol.ac.uk/media-library/sites/law/migrated/documents/partnershipbylaw.pdf](http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/partnershipbylaw.pdf)

<sup>20</sup> Go to: <http://gov.wales/topics/health/publications/socialcare/guidance/orders>

<sup>21</sup> Go to: <http://gov.wales/topics/health/socialcare/act/code-of-practice>



## Focus on practice

### An evaluation of the Barnardo's and Newport City Council Reflect Scheme

The primary aim of the Reflect project is to prevent women who have experienced the removal of a child from experiencing a repeat pregnancy in the short term, whilst successive child removal remains the most likely outcome.

Public Health Wales have funded CASCADE to conduct qualitative interviews with women engaged with the Reflect project as well as a case file analysis with a focus on the avoidance of repeat pregnancy.

The research also seeks to learn more about the women who are vulnerable to experiencing multiple losses of children to the care system, the nature of emotional and practical support the women receive over the course of their engagement with the service, and indicators of positive progression.

For more information go to: <http://sites.cardiff.ac.uk/cascade/research/research-projects/reflect>

## The use of expert reports in care proceedings

The appropriate use of expert reports in cases before the family court was a persistent and long-standing issue in the years preceding the Family Justice Review. Concern at the delay caused by the overuse of experts, and the impact of that delay on children, was the driver for many of the review's proposals.

There is no doubt that care proceedings cases are complex. Three key studies of cases before

the 2014 reforms – Brophy's (2006) research review, the Care Profiling Study (Masson et al, 2008) and Jessiman et al's (2009) evaluation of 53 early PLO cases – highlight some common features of care cases:

- > **Multiple allegations** of child maltreatment and parenting shortcomings (none of the PLO evaluation cases involved only a single issue).
- > **Long-standing involvement** of social care (almost all cases in Masson et al's research were known to social

care, with 45 per cent having been known for five years or more).

- > **Lack of 'parental cooperation'** (this was so in 60 to 75 per cent of cases).
- > **Parents known to have been abused as children** (around 60 per cent of cases).
- > **Domestic violence** (around half of cases).
- > **Children already living elsewhere** (around half of cases).
- > **Criminal activity** (around half of cases).
- > **Physical injury** (35 to 40 per cent of cases, with the cause often unclear or contested).
- > **Substance misuse problems** (over a third of cases).
- > **Parental mental health problems** (30 to 60 per cent of cases).
- > **Chaotic lifestyles** (around a third of cases).
- > **Siblings subject to a care order or living elsewhere** (around 30 per cent of cases).
- > **Use of emergency protection orders** (around a quarter of cases).
- > **A parental learning disability** (15 to 25 per cent of cases).

The Parents' Representation Study (Pearce et al, 2011) described the emphasis placed on experts' views of parenting capacity and children's needs, concluding that they had 'replaced both social work and legal judgments on welfare issues'. The study highlighted a lack of serious consideration as to whether expert reports were necessary to provide the court with new knowledge, as opposed to simply ensuring that parents were given every opportunity to put their case forward.

Other studies cast doubt on the quality of expert assessments. Research involving a sample of 57 very young children who were the subject of a core assessment, section 47 enquiry or who became looked after, found specialist parenting assessments were a major cause of delay (Ward et al, 2012). In all cases the recommendations of the expert were followed. This included the two-thirds of cases in which experts advised that the children should remain with their birth parents; yet in over half of those cases the child was eventually removed.

A negative dynamic had become entrenched. If expert reports were going to be ordered during court

proceedings – and experts’ views accorded more weight than those of local authority social workers – there was a disincentive for local authorities to carry out rigorous assessments and use multidisciplinary experts in their pre-court preparation.

In January 2013 an amendment to the Family Procedure Rules 2010 implemented a new approach, placing the court under a duty to restrict expert evidence to that which, in the opinion of the court, is ‘necessary’ to assist the court to resolve the proceedings. (The previous test was that the evidence of an expert witness was ‘reasonably required’.) This was codified in legislation in s.13 of the *Children and Families Act 2014*. Section 13 sets out the following as matters to which the court is to have regard when deciding whether expert evidence is necessary to assist the court to resolve the proceedings justly.

- (a) Any impact which giving permission would be likely to have on the welfare of the children concerned.
- (b) The issues to which the expert evidence would relate.
- (c) The questions which the court would require the expert to answer.

(d) What other expert evidence is available (whether obtained before or after the start of proceedings).

(e) Whether evidence could be given by another person on the matters on which the expert would give evidence.

(f) The impact which giving permission would be likely to have on the timetable for, and duration and conduct of, the proceedings.

(g) The cost of the expert evidence.

(h) Any matters prescribed by Family Procedure Rules.

The legislation makes it clear that for these purposes, ‘expert evidence’ does not mean evidence given by a local authority or Cafcass social worker.

## DIG DEEPER

**See Practice Briefing 1 for guidance from court judgments on when an expert is necessary.**

Masson et al’s (2017) interim report on their large study into how the PLO is working looks at a sample of 203 cases (involving 326 children) issued between July 2014 and February 2015. It found the use of experts was still extensive, albeit with wide variation between levels of use in different courts:



- > Local authorities commissioned expert assessments before proceedings began where there were issues beyond the expertise of local authority assessment – for example, medical assessments of children’s health or injuries; psychiatric or psychological assessments for parents (the most common reason); and assessments of parents’ litigation capacity (if this was in doubt). Also, 25 per cent of cases involved DNA tests to establish or confirm paternity and 41 per cent involved testing a parent for substance misuse.
- > Sometimes, where local authority staff resources were over-stretched, social work assessments were commissioned externally.
- > In over half of the cases, local authority social workers undertook all pre-proceedings assessments and experts were not used at this stage.
- > The courts appointed experts in 60 per cent of cases. However, there was considerable variation between areas (five English and one Welsh), from less than 40 per cent to more than 80 per cent of cases. In most cases, only one expert was appointed; three of the six areas appointed two or more experts in almost half of cases.
- > In almost a quarter of cases, all professional evidence of the child’s needs and the parents’ capacity to meet them came from the social worker and children’s guardian. In another 20 per cent of cases, the local authority obtained expert evidence before the application, but no external experts were used in proceedings.
- > There was no statistical relationship between the use of experts and the orders made in proceedings. This does not mean individual experts did not provide assessments which changed case outcomes, but that appointing an expert should be viewed only in terms of providing necessary information, not increasing the chance of a particular outcome.
- > Cases with no experts in proceedings completed, on average, more than six weeks earlier than those with experts.

## Transparency and the family court

Most family court hearings are held in private. Journalists are allowed to attend but must seek the court's permission if they wish to publish anything. Under section 97 of the *Children Act 1989*, a child must not be identified in public during ongoing Children Act proceedings. The former President of the Family Division, Sir James Munby, expressed his determination that the family court should not be accused by the media and pressure groups of dispensing 'secret' justice.<sup>22</sup>

Since February 2014, some judgments given by circuit judges and High Court judges in family courts are published on a freely accessible website by BAILII, the British and Irish Legal Information Agency (see: [www.transparencyproject.org.uk/bailii-judgments](http://www.transparencyproject.org.uk/bailii-judgments)). Practice guidance issued by the President to judges requires them to send a written judgment or transcript to BAILII when proceedings end with a care or placement order.<sup>23</sup>

Local authority and Cafcass Cymru social workers and expert witnesses can expect to be named in these judgments but children and families are not. Judges have to take particular care in anonymising cases to prevent 'jigsaw' identification (ie, where the information in the judgment might be pieced together with information available elsewhere to identify the child). They should check this with the parties' lawyers, including the local authority lawyer.

Social workers and lawyers should be alert to any potential risks of publication, and consult the child about this (if they are old enough). An application may be made to the judge by any party to publish, or not publish, other types of judgment on BAILII, or the judge may decide that it should be published, in the public interest.

Many High Court judgments can be found on BAILII but family courts vary in practice. Research by Doughty et al (2017) showed that although this guidance has led to a number of judgments being published from courts in north Wales, judges in south Wales tend not to follow it.

<sup>22</sup> Speaking in April 2014, Sir James Munby said: 'A vital aspect of this transformation in the family justice system has to be reform of our still creaking rules about access to and reporting of family cases. Nothing short of radical reform will enable us to rid ourselves of the relentlessly repeated and inevitably damaging charge that we operate a system of private - some say secret - justice.' See: [www.judiciary.gov.uk/wp-content/uploads/2014/05/family-justice-reforms-29042014.pdf](http://www.judiciary.gov.uk/wp-content/uploads/2014/05/family-justice-reforms-29042014.pdf)

<sup>23</sup> The guidance is available at: [www.judiciary.gov.uk/publications/transparency-in-the-family-courts](http://www.judiciary.gov.uk/publications/transparency-in-the-family-courts)

## DIG DEEPER

### Family court judgments

You can read 'routine' family court judgments on BAILII at [www.bailii.org](http://www.bailii.org) by searching its England and Wales family court database or by looking at its Recent Additions list. Research by Brophy et al (2015) suggests that young people are concerned about intrusion on children's privacy and possible risks of identification through cases being publicised in this way. Young people should therefore be advised and consulted about the implications of publication, because they can apply (and the local authority can apply) to stop publication or add further reporting restrictions.

The Transparency Project gives three direct categories to link to:

1. Family Division (High Court) Judgments: [www.bailii.org/ew/cases/EWHC/Fam](http://www.bailii.org/ew/cases/EWHC/Fam)
2. Family Court Judgments (High Court Judges): [www.bailii.org/ew/cases/EWFC/HCI](http://www.bailii.org/ew/cases/EWFC/HCI)
3. Family Court Judgments (Other Judges): [www.bailii.org/ew/cases/EWFC/OJ](http://www.bailii.org/ew/cases/EWFC/OJ)

## DIG DEEPER

### Case Law Summaries

Research in Practice produces monthly, practitioner-oriented Case Law and Legal Summaries at: [www.rip.org.uk/resources/case-law-summaries](http://www.rip.org.uk/resources/case-law-summaries)

## DIG DEEPER

### The Transparency Project

The Transparency Project is a charity dedicated to improving the quality, range and accessibility of information available to the public on family law and the family court. Its website signposts people to useful resources to help them understand the family justice system. It also carries regular postings and blogs on family court matters. Go to: [www.transparencyproject.org.uk/](http://www.transparencyproject.org.uk/)

## DIG DEEPER

### The impact of the Family Justice Reforms on frontline practice

Over 2015-16 Research in Practice was commissioned by the Department for Education to conduct three 'deep dive' investigations into the impact of the Family Justice Review.

1. Phase One: Qualitative interviews between January and March 2015 with 58 professionals in six local authorities focused on the following themes linked to the reforms:
  - > Meeting the 26-week requirement of the PLO
  - > Changes in pre-proceedings practice
  - > Undertaking assessments and care planning for permanence
  - > Presenting evidence to court

- > **Partnership working and relationships in the family court arena**
- > **Changes to the types of orders applied for and granted.**

**2. Phase Two: In light of the themes arising in Phase One, a follow-up study explored the use of special guardianship orders. Telephone interviews were held with 19 professionals over a three-week period in March 2015 in the same six local authorities as in Phase One.**

**3. Phase Three: Exploring variation - 60 interviews with professionals (Assistant Directors, Heads of Service, lawyers and senior managers) in 21 local authorities across 15 Local Family Justice Boards. Local authorities were selected from each region of England to produce a sample comprising authorities with average care case durations above and below 26 weeks.**

**All three reports were published in May 2015 and are available open access at: [www.rip.org.uk/resources/publications/evidence-scopes](http://www.rip.org.uk/resources/publications/evidence-scopes)**

## Guidance for social workers in recent court judgments

A number of court judgments published since the Family Justice Review have contained details of the courts' expectations of social workers' evidence in care proceedings. These have been termed 'guidance judgments' (Masson, 2014; Doughty, 2016) because their

purpose is to direct local authority and Cafcass social workers, and the lower courts, into improving the social work analysis required by the court to make its decision.

Comments and observations in judgments that do not relate directly to the facts and the law about the decision being made between the parties before the judge in the particular case are legally known as 'obiter dicta' (other words) and therefore not binding precedent on other courts and judges. However, in practice, the guidance judgments are very influential because they indicate the standards of presentation of evidence that judges expect in order to prove the local authority case.

Some of these judgments have explicitly cited the influence of the *Human Rights Act 1998*, because a decision to remove a child under a care order engages family members' rights to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR). The decision must therefore be shown to be a proportionate response by the local authority and the court to the risk posed to the child if they stay with, or are returned to, their parents.

There is nothing new in this proportionality requirement in principle (McFarlane, 2016) but it has recently been highlighted by the courts in the context of court proceedings becoming shorter, and also the increasing

numbers of children being taken into care whose parents are not British nationals and whose home country authorities follow different child protection processes than in the UK (Fenton-Glynn, 2016: 43-52).

## Some guidance judgments

### > Social work assessments

#### **Re B-S [2013] EWCA Civ 1146<sup>24</sup>**

In this Court of Appeal judgment, the President of the Family Division expressed criticism, about a number of recent cases, where senior judges had identified ‘sloppy practice’ in social work analysis and judicial evaluation. He made the following points:

(i) Article 8 of the ECHR requires that the aim of any state intervention in a family should be to reunite the family when circumstances enable this, and that effort should be devoted towards that end.

(ii) Cutting off all contact and the relationship between the child or children and their family is only justified by an overriding necessity of the interests of the child.

(iii) Legislation (the *Adoption and Children Act 2002*) stipulates that consent to a placement order or

adoption order can be dispensed with by the court only if the welfare of the child ‘requires’ this, which means it is necessary.

(iv) The court should adopt the least interventionist approach and must consider all the options before coming to a decision.

(v) The court’s assessment of the parents’ ability to discharge their responsibilities towards the child must take account of the assistance and support which the authorities would offer.

(vi) Before making an adoption order, the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support.

(vii) The court wished to express real concern about the ‘recurrent inadequacy of analysis and reasoning’ put forward in support of adoption by local authorities, guardians and, occasionally, judges.

(viii) There are two ‘essentials’ that must be satisfied before a care plan for adoption can be approved: ‘proper evidence’ and ‘adequately reasoned judgments’.

<sup>24</sup> [www.familylawweek.co.uk/site.aspx?i=ed117048](http://www.familylawweek.co.uk/site.aspx?i=ed117048)

(ix) What is required at every stage is ‘an assessment of the benefits and detriments of each option for placement and in particular the nature and extent of the risk of harm involved in each of the options’.

(x) What is required from the judge is ‘a proper balancing exercise’ or ‘a proportionality analysis’; there is a need for acknowledgment that adoption is a last resort and consideration of what it is that justifies adoption in a particular case.

(xi) The judicial task is to evaluate all the options, undertaking a global, holistic and multi-faceted evaluation of the child’s welfare which takes into account all the negatives and the positives, all the pros and cons of each option.

More recently, however, Lord Justice McFarlane (2017) has clarified that ‘all’ the options relate only to each of the realistic options, rather than every intellectually conceivable option there may be.

*What is required is just the same as that which has always been required: a thorough balancing exercise of each option against each of the other options to find the outcome that the child’s welfare proportionally requires. (McFarlane, 2017)*

#### > Extensions to the 26-week period

##### **Re S (A Child) [2014] EWCC B44 (Fam)**<sup>25</sup>

In a hearing that took place just before the implementation of the 26-week limit on care proceedings in statute, the President said that there were three different contexts in which an extension may be ‘necessary’ in accordance with section 32(5) of the *Children Act 1989*:

- > Where the case can be identified from the outset, or at least very early on, as one that it may not be possible to resolve justly within 26 weeks. Four examples given were:
  - a) very heavy cases involving the most complex medical evidence where a separate fact finding hearing is directed
  - b) cases being heard in courts that take a Family Drug and Alcohol Court approach
  - c) cases with an international element where investigations or assessments have to be carried out abroad
  - d) cases where the parent’s disabilities require recourse to special assessments or measures.
- > Where, despite appropriately robust and vigorous judicial case management, something unexpectedly emerges to change the nature of the proceedings too late in the day to enable the case to be concluded justly within 26 weeks. Examples given were:

<sup>25</sup> [www.familylawweek.co.uk/site.aspx?i=ed129022](http://www.familylawweek.co.uk/site.aspx?i=ed129022)

- a) cases proceeding on allegations of neglect or emotional harm where allegations of sexual abuse subsequently surface
  - b) cases which are unexpectedly derailed because of the death, serious illness or imprisonment of the proposed carer
  - c) cases where a realistic alternative family carer emerges late in the day.
- > Where litigation failure (eg, a late or inadequate assessment) on the part of one or more of the parties makes it impossible to complete the case justly within 26 weeks.

The President repeated that in no case can an extension beyond 26 weeks be authorised unless it is 'necessary' to enable the court to resolve the proceedings 'justly'. Only the imperative demands of justice – fair process – or of the child's welfare will suffice.





# 3. The parameters of social work expertise

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## Key messages

- > The use of research, evidence-informed practice and analytical skills as key elements of social work expertise are well established (ICSSW, 2010; Munro, 2011; FJR, 2011; WAG, 2011; Welsh Government, 2013; NISCHR and AHSC, 2014; *Social Services and Wellbeing (Wales) Act 2014*; *Well-being of Future Generations (Wales) Act 2015*).
- > Social services legislation in Wales places an emphasis on high quality and sustainable social care provision that puts people's wellbeing at the centre of their care and promotes prevention, early intervention and a focus on outcomes for people. Excellent social care research can build the evidence base for this.
- > *Sustainable Social Services: A framework for action* (WAG, 2011) identifies the 'quality of professionals and their professionalism as central to responsive social services'.
- > Practising social workers undertake generic qualifying training and develop their practice

within different specialisms. All practitioners will have expertise in core areas of social work as set out in the National Occupational Standards (NOS) for social work.

- > Social workers have a framework of Continuing Professional Education and Learning (CPEL) that supports them as they practise and progress through their careers.

## The parameters of social work expertise in relation to court work

There has been a lack of clarity and confidence about the parameters of social work expertise among those who work in partnership with social workers in the family court (WAG, 2010; FJR, 2011; Munro, 2011; SWTF, 2009). So how can we demonstrate more precisely those areas of practice in which a social worker is an expert?

In light of the wide-reaching recommendations for the social work workforce made by the Family Justice Review (FJR, 2011), the Care Council for Wales<sup>25</sup> was asked to develop a workforce strategy that would prepare social workers for their role in the

<sup>25</sup> Renamed Social Care Wales in April 2017

family justice system. The thrust of the strategy is that the level of knowledge, skills and experience required of social workers within the family justice system is equivalent to that expected of experienced social workers as defined within the CPEL framework (see page 47 below).

The following table sets out core skills and knowledge that social workers need to work in the courts, based on those identified in the final report

of the FJR and the skills implicit in what Sir James Munby, President of the Family Division, had to say when discussing the introduction of the revised Public Law Outline (Munby, 2013b).

## Family Justice Core Skills and Knowledge

### Core skills

- > The ability to present clear and robust evidence to court, meet the standards for court documentation and be aware of best practice.
- > Robust analytical skills that form the basis of professional judgment.
- > The ability to assess and manage risk.
- > The ability to write succinct and focused reports that distinguish between assessment, analysis, professional evaluation and opinion.
- > Good communication and interpersonal skills, including the ability to communicate effectively with children and young people, give age-appropriate information and support children to make their views known.
- > The ability to work proactively with others and to contribute to – and cooperate in – multi-agency working.
- > Good record keeping skills.

## Core knowledge

- > A sound understanding of child law and its application to social work practice.
- > A good understanding of the family justice service and the structure of the family courts.
- > A good understanding of child development including the impact of abuse, neglect, parental separation, parental contact arrangements and the impact of delay.
- > A sound grasp of the Public Law Outline and the requirements on local authorities and other professionals.
- > A good understanding of child development, including normative and non-normative development and the impact of maltreatment on a child's development.
- > A good understanding of the roles and responsibilities of others in the system.
- > An understanding of children's rights, the key principles of the UN Convention on the Rights of the Child and the 'paramourncy' principle.
- > An understanding of the diversity of family life and the profile of children and families involved in the family justice system.
- > Knowledge about children's safeguarding issues, domestic violence, and an awareness of risk assessments/management.
- > An awareness of the latest research findings and developments in practice, how to operate and manage the child protection process and its interface with court proceedings.

The workforce strategy proposes that the requisite knowledge and skills fall within the learning outcomes of the Experienced Practice in Social Work Programme (of the CPEL framework - see below). However, this should not overshadow the importance of the Consolidation Programme to family court work. With its emphasis on

developing and enhancing skills on the application of analysis in assessment, working collaboratively with service users and other professionals, and the application of professional judgment in complex situations, it is the Consolidation Programme that provides the foundation for working within the family justice system.

## Developing social work as a profession

Social Care Wales (formerly the Care Council for Wales) is the body responsible for the regulation and training of social workers. It forms part of the overall regulatory framework prescribed in the *Regulation and Inspection of Social Care (Wales) Act 2016*.

Social work has been a graduate profession since 2004, with entry through an undergraduate or master's degree based upon:

- > Social Care Wales' Code of Professional Practice for Social Care
- > The National Occupational Standards (NOS) for Social Work
- > The Quality Assurance Agency (QAA) Subject Benchmark Statements for Social Work.

An Assessment Framework sets out the approach to the assessment of social work students but allows qualifying programmes to develop curricula that provide an integrated and coherent experience of learning. Qualifying programmes comprise equal amounts of academic and

practice learning and are delivered through partnerships between a university and a local authority employer.

In recognition of the importance of social workers making a smooth transition from student to confident and competent practice, the Care and Social Services Inspectorate for Wales and the Care Council for Wales published guidance on social workers' first three years in practice (CSSIW and CCfW, 2017).<sup>27</sup> The guide outlines a model of practice in which Newly Qualified Social Workers (NQSWS) can build on initial qualifying training and be supported by their employer as they move into professional practice. The first three years end with the Consolidation Programme for NQSW, which is the first part of the framework of Continuing Professional Education and Learning (CPEL).<sup>28</sup> Successful completion of the Consolidation Programme is now a requirement for social workers qualifying after 2016 in order to renew their professional registration.

The CPEL framework (see below) is a series of post-qualifying programmes for social workers across Wales to

<sup>27</sup> <https://socialcare.wales/learning-and-development/social-work-qualifications>

<sup>28</sup> <https://socialcare.wales/learning-and-development/social-work-qualifications>

develop further skills and expertise while they practise and progress through their careers. All programmes are validated by a university and carry academic credits. The development of the framework supports the key priority for the Welsh Government set out in *Sustainable Social Services: A framework for action* (WAG, 2011): to ensure a professional, competent, confident and safe social work workforce.



#### **TOOL 4**

**Tool 4 is intended to help social workers reflect on their own areas of expertise – but other professionals will also find it useful to help clarify their understanding of the parameters of social work expertise.**

### **The Qualification Framework for Social Work in Wales**

The overall framework of qualifications for social work has been developed in discussion with employers, government, educators, social workers and others. It is relevant to the wide range of social work roles and activities and therefore incorporates a significant amount of flexibility in programme content.

- > Social work education at qualifying level provides the foundation for

social workers to work in social services in Wales with its emphasis on a family-centred service and therefore requires knowledge and skills that straddle working with children and adults.

- > The first two years in practice hone generic knowledge and skills while providing experience within specialist areas of practice under careful supervision.
- > The CPEL framework is an incremental model that delineates the knowledge and skills that are expected of social workers at different points in their careers.
- > At Experienced Practitioner level (three years post-qualification) social workers are expected to take on complex work in specialist areas. (See below for detail on the framework.)

### **Setting the standards for social work practice**

Social Care Wales has a duty to safeguard the public by promoting and securing high standards of conduct and practice among social workers and social care workers. In addition to its regulatory role, Social Care Wales also has a pivotal role in workforce planning and developing

the professionalism of practitioners, mainly through qualifications, training and knowledge sharing.

The Social Care Wales (Registration) Rules 2017<sup>29</sup> are formally approved by the Welsh Government and form the legal basis for registration of the social care workforce. Social workers must be registered with Social Care Wales under Part 1 of the Register. The Register puts social workers on a similar footing to other public service professions such as teaching and nursing.

The title of ‘social worker’ has been protected in Wales and other UK countries since 2005. Consequently, it is an offence for a person to use the title of social worker in Wales unless registered by Social Care Wales or a body with the regulatory function for social workers in one of the other UK countries.

## Code of Professional Practice for Social Care

The Code (SCW, 2017a) is the primary document setting out the standards for conduct and practice. It also forms part of the wider package of legislation, practice standards and

employers’ policies and procedures that social care workers must meet. When Social Care Wales is informed that a social worker might not have met the standards set in the Code, it may investigate the matter according to its suite of Registration Rules and Fitness to Practise Rules. Sanctions may include removal from the Register.

The Code has seven sections:

Social care workers must:

1. Respect the views and wishes, and promote the rights and interests, of individuals and carers.
2. Strive to establish and maintain the trust and confidence of individuals and carers.
3. Promote the wellbeing, voice and control of individuals and carers while supporting them to stay safe.
4. Respect the rights of individuals while seeking to ensure that their behaviour does not harm themselves or other people.
5. Act with integrity and uphold public trust and confidence in the social care profession.
6. Be accountable for the quality of

<sup>29</sup> <https://socialcare.wales/resources/social-care-wales-registration-rules-2017>

their work and take responsibility for maintaining and developing knowledge and skills.

7. In addition to sections 1-6, if a social worker is responsible for managing or leading staff, they must embed the Code in their work.

Social Care Wales has also developed practice guidance to describe expected standards of practice (SCW, 2017b).

This aims to:

- > Describe what is expected of social workers
- > Provide a practical tool, aiding social workers in their practice
- > Provide guidance which supports social workers to deliver a high-quality, citizen-centred social work service
- > Provide the basis for the development of more detailed practice guidance to support best practice.

### Standards for employers

The Code of Practice for Employers of Social Care Workers (SCW, 2018) sets out how employers should meet their responsibilities for managing and supporting their staff and ensuring they are enabled to carry out their work competently.

The employers' Code is set out in five sections:

1. Make sure people are suitable to enter the social care workforce and understand their roles and responsibilities.
2. Have policies, systems and practices in place to enable social care workers to meet their Code of Professional Practice for Social Care.
3. Provide and support learning and development opportunities to enable social care workers to develop their knowledge and skills.
4. Have policies and systems to protect people from damaging or dangerous situations, behaviour and practice.
5. Promote the Code of Professional Practice for Social Care and co-operate with Social Care Wales' proceedings.

### Social Work Training Learning Outcomes

#### Qualifying training

The requirements and expected level of knowledge, skills and values of a social work degree student at the point of qualifying.

Throughout the programme students must integrate academic and practice



learning and ensure they incorporate the Code of Professional Practice for Social Care (SCW, 2017a) in their work. Assessment is based on:

- > their approach to professional and academic development
- > practice learning
- > assessed academic work
- > their conduct.

### National Occupational Standards

By the end of the Development and Confirmation of Competence in Social Work Practice level, students should be able to demonstrate competence in the six key roles:

#### Key role 1

#### Maintain professional accountability

SW1

Maintain an up-to-date knowledge and evidence base for social work practice

SW2

Develop social work practice through supervision and reflection

#### Key role 2

#### Practise professional social work

SW3

Manage your role as a professional social worker

SW4

Exercise professional judgment in social work

SW5

Manage ethical issues, dilemmas and conflicts

SW6

Practise social work in multi-disciplinary contexts

SW7

Prepare professional reports and records relating to people

**Key role 3****Promote engagement and participation**

SW8

Prepare for social work involvement

SW9

Engage people in social work practice

SW10

Support people to participate in decision-making processes

SW11

Advocate on behalf of people

**Key role 4****Assess needs, risks and circumstances**

SW12

Assess needs, risks and circumstances in partnership with those involved

SW13

Investigate harm or abuse

**Key role 5****Plan for person centred outcomes**

SW14

Plan in partnership to address short and longer-term issues

SW15

Agree risk-management plans to promote independence and responsibility

SW16

Agree plans where there is risk of harm or abuse

**Key role 6****Take actions to achieve change**

SW17

Apply methods and models of social work intervention to promote change

SW18

Access resources to support person-centred solutions

SW19

Evaluate outcomes of social work practice

SW20

Disengage at the end of social work involvement

**Continuing Professional Education and Learning (CPEL) Framework**

The CPEL framework supports social workers while they practise and progress through their careers and has four programmes:

- > The Consolidation Programme for Newly Qualified Social Workers
- > Experienced Practice in Social Work (EPSW) Programme
- > Senior Practice in Social Work (SPSW) Programme
- > Consultant Social Work (CSW) Programme.

**Consolidation Programme.** Intended for social workers in their first period

of registration after qualifying, the focus is on supporting this transition and building on learning undertaken in the social work degree. It provides opportunities to practise key skills, including those where there will have been limited opportunity or appropriateness in a practice learning setting. Programmes are led by local authority employers and validated by a university. The current focus is in three areas:

- > Applying analysis in assessment to inform interventions.
- > Working collaboratively with service users, carers and other professionals.
- > Intervention and application of professional judgement in increasingly complex situations.

All social workers who qualified after April 2016 need to complete the programme in order to renew their professional registration.

### **Experienced Practice in Social Work.**

This programme is designed to maintain a relentless focus on improving social work knowledge and practice in Welsh contexts by incorporating research and social work theory in the analysis of and critical reflection on specific areas of practice:

- > Year 1: Core teaching and learning in three areas:
  - Children and families or adults
  - Mental health and wellbeing
  - Enabling others.
- > Year 2: A specialist area of enquiry agreed between the social worker and their employer.

### **Senior Practice in Social Work.**

Designed to equip practitioners undertaking social work practice at a complex level and supervising others:

- > Year 1: Core teaching and learning in two areas:
  - Engagement and practice
  - Professional leadership and development.
- > Year 2: Specialist area of research.

**Consultant Social Work.** Focuses on improving social work knowledge and practice in a Wales context by enabling research and other critical findings to be developed and disseminated among the wider workforce. The programme can be completed either through a research dissertation or three modules:

- > Analysis and evaluation of social work practice
- > Professional social work practice and development
- > Dissemination of professional social work knowledge.



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# Evidence Matters in Family Justice

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