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Family Justice Children's Proceedings – Review of Public and Private Law Case Files in England & Wales

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This research was undertaken by the Ministry of Justice to provide evidence for the Family Justice Review, and inform family justice policy developments. It involved analysis of a sample of 376 public and 402 private family cases closed in 2009 (a case is defined as starting on the date of first application and closing on the date of final order). The aim was to gain a better understanding of the profile of public and private law cases involving children and how they progress through the family justice system.

Key points

Public Law

- Public law cases relate to local authority intervention to protect children where there are child welfare issues. The majority of public law cases (85%) involved an application for a care order, some of which also involved an application for other types of order (37% of cases with a care order). A final care order was made in 51% of cases with applications for care orders (where a final order was known).
- The average length of cases involving an application for a care order was 54 weeks. The overall average for public law cases was 49 weeks.
- Almost two thirds of the children involved in public law cases (64%) were aged four or under at the start of the case.
- Some factors appeared to be associated with longer average case length: a greater number of parties, hearings, and expert reports.
- Expert reports were a common feature of public law cases. They were ordered in 87% of such cases. Where ordered, the average number of reports requested was just under four. It appears that reports that focus on the parent are more prevalent than reports that focus on the impact on the child.

Private Law

- Private law cases relate to parental disputes concerning the upbringing of children. The most common applications in private law cases were for contact orders (58% of private law cases) and residence orders (56% of cases). Other applications were common; e.g. for a prohibited steps order (28% of cases).
- The average length of a private law case in the study was 46 weeks. Cases that resulted in a final order of a contact order lasted on average 51 weeks while cases with final residence orders were on average 35 weeks in length.
- In 62% of private law cases, both applicants and respondents were legally represented throughout the case. In 5% of cases, neither applicants nor respondents were represented at any stage. Also, 32% of cases had at least one party without legal representation throughout.
- A substantial number of private law cases involving children that reach the courts involve CAFCASS reports (58%), expert reports (37%), or allegations of domestic abuse or concerns about abduction or harm to children (53%).

Research aims

The aim of this research was to gather basic profile data on public and private law¹ cases involving children, gain a better understanding of how they progress through the family justice system from initial application to final order(s), and explore factors which may be associated with case length. In particular, the research aimed to gather data which was not available for analysis from administrative data systems or through National Statistics,² and as such collected information on the following issues:

- reasons for application (public law only)
- parties involved in cases
- legal aid (private law only)
- legal representation (private law only)
- attempts at mediation (private law only)
- number of hearings
- expert reports
- case length & associated factors³
- case outcomes.

As such, this study supplements National Statistics and builds on previous case file research.⁴

Approach

The study involved a review of a sample of all types of closed public and private law family case files from Family Proceedings Courts (FPCs), county courts and High Courts where an order was made in 2009 in England and Wales. Two separate random samples of 430 public law cases from 21 courts and 468 private law cases from 20 courts were issued using a clustered two-stage sampling strategy stratifying by court type. The sampling strategy

allowed both courts and cases to be randomly selected, and each case within the two separate public and private law samples to have an equal probability of being selected. The sampling frame used was derived from the case management system 'Familyman'.⁵

Not all cases from FPCs were on Familyman in 2009, but it was not possible to reliably estimate the proportion of cases dealt with nationally in the different tiers of court in order to devise a nationally representative sample through over-sampling from FPCs.⁶ Rather the sample was designed to reflect the cases on Familyman at that point in time.

This means that cases from FPCs were under-represented and cases from county courts were over-represented in our sample. These limitations should be borne in mind when interpreting results.⁷

Fieldwork was carried out from November 2010 to February 2011, with data collectors from MoJ collecting information on the selected cases from the case files held by the courts. As with any research that uses data collected from case files, the quality of results is dependent on the availability of the case files and the completeness and accessibility of the data recorded within them. Where there was the potential for reduced reliability due to case file data or data collection error, this is indicated. The potential for data collection error was reduced by the data collector training and by data checking.

Not all files were available for collection⁸ so the achieved sample sizes were:

- 376 public law cases (87% of issued cases)
- 402 private law cases (86% of issued cases)

Some of the unavailable files were clustered in certain courts, which reduces the representativeness of the sample.

¹ Public law cases relate to local authority intervention to protect children where there are child welfare issues. Private law cases relate to parental disputes concerning the upbringing of children. This study included the whole range of public and private law cases, rather than focus on just care cases or just contact and residence orders as previous studies referenced at footnote 4 have done.

² MoJ publishes National Statistics on family matters annually in *Judicial & Court Statistics* and quarterly in *Court Statistics Quarterly*.

³ Although National Statistics data on case length has been available (for public law only) since Q2 2010 it is not possible to use this data to analyse associated factors.

⁴ For example, for public law see Masson et al (2008) *Care Profiling Study*, and for private law, see Smart et al (2003), *Residence and Contact Disputes in Court*, and Hunt and Macleod (2008) *Outcomes of Applications to Court for Contact Orders after Parental Separation or Divorce*.

⁵ Familyman is the administrative IT system used by court staff for case management purposes.

⁶ National Statistics are reported on numbers of children involved rather than on a per case basis. Also see Masson (2008) for a discussion of the sorts of difficulties encountered in attempting to establish reliable estimates of the proportion of cases dealt with nationally in the different tiers of court.

⁷ This was particularly an issue with public law cases, and where sample sizes permit we have indicated variations in findings in public law cases from FPCs and county courts.

⁸ Cases may have been missing for a variety of reasons, including being in use/ filed elsewhere, being a misrecorded/ erroneous/ duplicate record on Familyman.

In addition, some case files did not have information for some of the items of interest (due, for example, to different court practices). Again, this item non-response reduces the accuracy of estimates in the analysis. Where data are missing and percentages are based on valid data this is stated. Otherwise percentages are based on all cases.

Given the difficulties with achieving a random representative sample of public and private family law cases, the profile of the achieved samples were compared with National Statistics⁹ of all cases in England and Wales in terms of disposals in 2009. These data are not strictly comparable as National Statistics are reported based on numbers of children involved in disposals rather than outcomes on a per case basis as in this case file review.¹⁰ However, it indicates that our sample profile does not differ markedly from National Statistics in terms of disposals.

A list of the courts sampled, more detail on the sampling, and how the profile of the sample compares to National Statistics in terms of tier of court and disposals is contained in Appendix A.

Results

Public Law

Description of cases

Public law cases relate to local authority intervention to protect children where there are child welfare issues.

As shown in Table 1, the majority of public law cases (85%) involved an application for a care order. In 37% of cases where there was an application for a care order, there was an application for at least one other type of order. Table 1 shows that other common applications were for an emergency protection order (EPO – 11% of cases), a section 8 residence order (8%), a section 8 contact order (8% of cases), and placement for adoption order (5% of cases).¹¹

Table 1 – Applications in public law cases¹²

Order applied for	% of cases	Number of cases
Care	85	320
Emergency Protection (EPO)	11	40
Section 8 residence	8	30
Section 8 contact	8	29
Placement for adoption	5	17
Supervision	4	16
Secure accommodation	4	15
Parental responsibility	4	14
Authority to refuse contact	3	13
Special guardianship	3	12
Contact with child in care	2	8
Recovery	2	8
Other	5	20
Total		376

Base: 376 public law cases where an order was made in 2009. (Cases could have multiple applications, therefore the %s do not sum to 100%.)

When looking just at the cases involving an application for a care order, 8% of these also involved an application for a section 8 contact order, 8% a section 8 residence order, 8% an EPO, and 5% a placement for adoption order.

The most common reasons for care or EPO applications were neglect (53% of valid cases with a care/EPO application), physical abuse (33%) and the behaviour/circumstances of adults (32%). Emotional abuse was a reason in 22% of cases and child sexual abuse was cited in 9% of cases.¹³

In terms of providing background information to the case, 31% of all public law cases had evidence in the case file of siblings having been taken into care previously.

In terms of respondents involved (noting that there could be several in each case), 94% of all public law cases had the mother listed as a respondent, and in 76% of cases the father was listed as a respondent. Step-parents were listed as respondents in 13% of public law cases, grandparents in 10% of cases, and aunts or uncles in 5% of cases.

⁹ MoJ (2010) Judicial and Court Statistics 2009.

¹⁰ Due to these differences it was not possible to weight the sample to National Statistics.

¹¹ Cases could involve multiple applications.

¹² Applications for interim orders are not presented.

¹³ There were 336 cases with a care or EPO application, 46 of these had missing data on this item.

The average (mean) number of adult respondents per case was 2.4. However, adults not listed as respondents could also be involved in cases, bringing the average number of adults involved in a public law case to 2.7; 14% of cases had one adult involved, 47% had two adults involved, 18% had three adults involved and 21% involved four or more adults.

In 58% of cases one child was involved, 20% involved two children, 11% involved three children, and 11% involved four or more children. The average number of children per case was 1.8. Overall, the average number of people (adults and children) involved in public law cases in the study was 4.5.¹⁴

Almost two thirds of the children involved in public law cases (64%) were aged four or under at the start of the case. Of those cases involving a care application, 68% of the children were aged four or under at the start of the case. The age of children (their age at the start of the case) involved in all public law cases is presented in Table 2.

Table 2 – Age of children in public law cases

Age of child at start of case	% of children	Number of children
Newborn ¹⁵	14	93
Less than 1 year old	14	93
1 year old	13	84
2 years old	9	57
3 years old	8	49
4 years old	7	43
5 to 9 years old	22	144
10 to 15 years old	13	84
16+ years old	1	4
Total	100	651

Base: 651 children involved in 357 public law cases where an order was made in 2009. Data on age of children was missing in 19 cases. (Percentages do not add up to 100% due to rounding.)

¹⁴ The data indicates that on average cases from FPCs have fewer adults and children involved than cases from county courts.

¹⁵ These could include children for whom an order was sought immediately after birth and cases which were already in progress due to an older sibling.

Progress of case through the courts

85% of the public law cases where the order was made in a county court had been transferred from the FPC; 90% of those cases involving care applications being heard in a county court had transferred.

An attempt was made to collect data on the number of hearings in public law cases, but it was not always possible to extract this information from the case file. Data collectors attempted to ascertain whether hearings that were listed actually took place but this was not always clear. For the purposes of this analysis only hearings with evidence that they actually took place have been used. As such, Table 3 may provide an undercount of the number of hearings in public law cases. In addition, a large number of cases (69) had data missing on this item, further reducing its reliability.

Table 3 – Number of hearings in public law cases¹⁶

Number of hearings	% of cases	Number of cases
1 to 4 hearings	29	89
5 to 9 hearings	41	125
10 to 14 hearings	18	56
15 to 19 hearings	7	20
20+ hearings	6	17
Total	100	307

Base: 307 public law cases where an order was made in 2009. Data on number of hearings was missing in 69 cases. (Percentages do not add up to 100% due to rounding.)

There was an average (mean) of 8.1 hearings in public law cases. In cases involving a care application there were an average of 8.8 hearings.

Expert reports were ordered in 87% of public law cases. Reports were ordered in 92% of cases involving care applications.¹⁷ The average number of reports ordered was 3.7 per case in all public law cases and 3.9 in cases involving a care application (excluding those cases where no expert reports were ordered). The numbers of expert reports ordered in all public law cases are shown in Table 4.

¹⁶ The data indicates that on average there were fewer hearings in cases from FPCs than cases from county courts.

¹⁷ This does not differ markedly from findings from previous case file research. Masson (2008) found expert reports were ordered in 91% of public law cases.

Table 4 – Numbers of expert reports ordered in public law cases¹⁸

Numbers of expert reports ordered	% of cases	Number of cases
0	13	49
1	13	49
2	14	52
3	16	59
4	18	67
5	11	42
6	7	25
7+	9	33
Total	100	376

Base: 376 public law cases where an order was made in 2009. (Percentages do not add up to 100% due to rounding)

The types of expert reports ordered are shown in Table 5. It appears that reports that are based on the adult were more prevalent than reports that are based on the child. There were 213 cases (57%) with at least one of the adult-based reports, and 132 cases (35%) with at least one of the child-based reports. There were 277 cases (74%) that involved at least one of the other types of report.

The most common types of reports ordered were adult psychiatric reports (in 35% of cases), independent social worker reports (in 33% of cases), and parent's psychological reports (in 33% of cases). Residential parenting assessments were ordered in 16% of cases and non-residential parenting assessments in 15% of cases.

Table 5 – Types of expert reports ordered in public law cases

Type of expert report ordered	% of cases	Number of cases
Adult based reports		
Adult psychiatric	35	132
Parent's psychological	33	123
Child based reports		
Paediatric	17	63
Child psychiatric	12	44
Child clinical psychological	9	34
Paediatric radiologist	4	15
Child educational psychological	4	15
Reports that may relate to both adults and children		
Independent social worker	33	125
Drug test	20	74

¹⁸ The data indicates that on average there were fewer expert reports in cases from FPCs than in cases from county courts.

Type of expert report ordered	% of cases	Number of cases
Residential parenting	16	60
Non-residential parenting	15	58
DNA test	12	46
Parent's and child psychological	10	38
Multi-disciplinary	7	27
Parent's and child psychiatric	6	24
Immigration expertise	2	6
Other medical reports	17	64
Other	19	73

Base: 376 public law cases where an order was made in 2009.

The Official Solicitor was recorded in the case files as having been involved in 5% of all public law cases, and 5% of the subsample of cases involving care applications. The Official Solicitor provides services where needed to those deemed vulnerable either because they are adults who lack mental capacity or because they are children (other than those who are the subject of child welfare proceedings).

Case length and associated factors

The length of cases was calculated as the number of weeks between the date of the first application and the date of the final order(s). The average length of a public law case in the study was 49 weeks. The average length of a case involving an application for a care order was 54 weeks.¹⁹

Table 6 – Length of public law cases in weeks

Length of public law cases in weeks	% of cases	Number of cases
0 to 29 weeks	27	98
30 to 49 weeks	30	110
50 to 79 weeks	29	103
80 to 99 weeks	8	29
100+ weeks	6	21
Total	100	361

Base: 361 public law cases where an order was made in 2009. Data on case length were missing in 15 cases.

¹⁹ Our estimate on case length does not differ markedly from National Statistics available on average length of public law cases and estimates from previous research. *Court Statistics Quarterly* reports average case length for care and supervision applications disposed of in Q2 2010 (the first quarter for which data is available) as 53 weeks. Masson (2008) reported case length as 48 weeks. However, our data and data from National Statistics indicate that cases from FPCs were on average shorter than cases from county courts, in which case our overall estimate may be an overestimate because FPCs are under-represented in our sample and county courts are over-represented.

Using bivariate analysis, we investigated variables that may be associated with case length and, as detailed below, found that the number of adults and children involved, the number of hearings and the number of expert reports, seemed to be associated with case length.

A greater number of adult parties to a case were associated with longer cases. Public law cases with just one adult involved lasted an average of 42 weeks, compared to 43 weeks when two adults were involved, 50 weeks when three adults were involved and 66 weeks when four or more adults were involved. Cases which had a grandparent or a step-parent as respondent were also longer than average (67 weeks and 58 weeks respectively).

Cases involving just one child were shorter on average, lasting an average of 45 weeks, compared to cases involving two children, which lasted an average of 57 weeks. Cases involving three or more children lasted an average of 52 weeks.

Public law cases with more hearings also appeared to be longer on average.²⁰ Cases with 1 to 4 hearings lasted an average of 37 weeks, cases with 5 to 9 hearings lasted an average of 50 weeks, cases with 10 to 14 hearings lasted an average of 55 weeks, and cases with 15 or more hearings lasted an average of 82 weeks.

Public law cases involving expert reports were longer on average than cases where no expert reports were ordered, perhaps due to them involving more difficult decisions. Cases with no expert reports lasted an average of 26 weeks, cases where between one and three expert reports were requested took an average of 50 weeks, cases where four to six expert reports were requested took an average of 52 weeks, and cases where seven or more expert reports were requested took an average of 65 weeks.²¹

Some factors were associated with shorter cases. Public law cases that were heard by magistrates were shorter than average at 38 weeks. However, please note the sample size is small (30 cases heard by magistrates had case length data). Cases where there was evidence of siblings taken into care

were also shorter than average at 43 weeks (based on 111 cases).

The reasons behind applications, and age of the children involved, did not appear to be associated with much variation in public law case length.

Outcomes from proceedings

Only outcomes from cases with applications for care orders are presented, as the sample sizes for cases with other applications were too small. Table 7 shows final orders made in cases that involved a care application (excluding applications for interim orders and cases where final orders were unclear).

Table 7 – Final orders made in public law cases involving an application for a care order²²

Final order made	% of cases	Number of cases
Care	51	144
Supervision	29	83
Section 8 residence	19	54
Section 8 contact	16	46
Special guardianship	14	39
Emergency protection	7	19
Parental responsibility	6	18
Placement for adoption	4	12
Application withdrawn	2	5
Contact with child in care	1	3
Authority to refuse contact	1	2
Secure accommodation	<1	1
Order for no order	<1	1
Order refused	<1	1
Other	6	16
Total		285

Base: 285 public law cases with an application for a care order where an order was made in 2009. There were 320 cases with an application for a care order but data on orders made were missing in 4 cases, with a further 31 cases where the final orders were not clear. (Cases could have multiple final orders, therefore the %s do not sum to 100%.)

Of the cases with a care application, 51% had a final care order made.²³ The reasons some of the cases with a care application did not result in final care orders were not clear from the data collected. However, some descriptive information collected from the case files, and previous research²⁴ suggest it may reflect change occurring over the lifetime of the case.

²⁰ Due to missing data on number of hearings this analysis is based on a reduced sample of 294 cases.

²¹ Masson (2008) also found a relationship between number of expert reports requested and length of case.

²² Excludes interim orders.

²³ Masson (2008) found care orders were made in relation to the Index Child in 59% of cases.

²⁴ For example the dynamic nature of cases are referred to in Harwin et al (2003), Masson (2008) and Pearce et al (2011).

For example, care proceedings may prompt parents to improve parenting issues or a family member to volunteer to care for a child under a section 8 residence order. That the care application does not result in a final care order does not necessarily reflect on the validity of the Local Authorities' cases and plans at the time of application.

Private Law

Description of cases

Private law cases relate to parental disputes concerning the upbringing of children. A minority of such disputes will reach the courts. According to one study, about 1 in 10 child contact arrangements are ordered by the courts.²⁵

In 58% of private law cases an application for a contact order was made, and 56% an application for a residence order. Applications for contact and residence were often present in the same case: 21% of private law cases involved applications for both contact and residence orders. Other common applications were for a prohibited steps order (28% of cases), a parental responsibility order (16%), and specific issue order (10% of cases).²⁶

In 60% of private law cases, the father was listed as an applicant, whereas the mother was listed as an applicant in 32% of cases. Grandparents were listed as applicants in 7% of cases, step-parents in 2% of cases, and aunts or uncles in 1% of cases.²⁷

Table 8 shows whether mothers or fathers were listed as the applicants for the most common types of applications.

Table 8 – Applicants in private law cases by application type

Cases with application for	Father % cases	Mother % cases	Other % cases	Total no. of cases
Contact order	77	20	8	233
Residence order	46	44	15	224
Contact and residence	59	36	8	86
Prohibited steps	35	57	13	111

Base: sizes vary by application type(s) – see 'Total no. of cases', above, for each base size. (Cases could have multiple applicants and multiple applications; therefore, the sums of %s are greater than 100% and numbers of cases are greater than the total numbers of cases in the sample.)

²⁵ Office for National Statistics (2008) Omnibus Survey Report No. 38. Non-resident parental contact, 2007/8. A report on research using the National Statistics Omnibus Survey produced on behalf of the Ministry of Justice and the Department for Children, Schools and Families.

²⁶ Cases could involve multiple applications.

²⁷ Cases could involve multiple applicants.

In cases that involved an application for a contact order, the father was listed as an applicant in 77% of cases, whereas the mother was listed as an applicant in 20% of cases. Cases involving an application for a residence order were more evenly split in terms of applicants, with fathers listed as applicants in 46% of cases and mothers in 44% of cases. In cases involving applications for both contact and residence orders, the father was listed as an applicant in 59% of cases, whereas the mother was listed as an applicant in 36% of cases. Cases involving an application for a prohibited steps order had the mother listed as applicant in 57% of cases and the father as applicant in 35% of cases.

In 65% of private law cases the mother was listed as a respondent, and the father was listed as a respondent in 39% of cases. Grandparents were listed as respondents in 3% of cases, step-parents in <1% of cases, and aunts or uncles in <1% of cases.²⁸

Table 9 shows whether mothers or fathers were listed as the respondents for the most common types of applications.

Table 9 – Respondents in Private Law Cases by Application Type

Cases with application for	Father % cases	Mother % cases	Other % cases	Total no. of cases
Contact order	21	79	7	233
Residence order	53	52	11	224
Contact and residence orders together	40	62	7	86
Prohibited steps	66	41	7	111

Base: sizes vary by application type(s) – see 'Total no. of cases' above for each base size. (Cases could have multiple respondents and multiple applications; therefore, the sums of %s are greater than 100% and numbers of cases are greater than the total numbers of cases in the sample.)

In cases that involved an application for a contact order, the mother was listed as respondent in 79% of cases, whereas the father was listed as respondent in 21% of cases. Cases involving an application for a residence order were more evenly split in terms of respondents, with fathers listed as respondents in 53% of cases and mothers in 52% of cases. In cases involving applications for both contact and residence orders, the father was listed as respondent in 40% of cases, whereas the mother

²⁸ Cases could involve multiple respondents.

was respondent in 62% of cases. Cases involving an application for a prohibited steps order had the father listed as respondent in 66% of cases and the mother as respondent in 41% of cases.

Although typically private law cases involved two adults (an applicant and a respondent in 82% of cases), in 18% of cases more than two adults were involved. Three adults were involved in 11% of cases, four adults in 4% of cases and five or more adults in 2% of cases (figures do not sum due to rounding).

In 62% of private law cases one child was involved, 27% involved two children, 8% involved three children, and 4% involved four or more children. Overall, the average number of people involved in private law cases in the study was 3.8 (2.3 adults and 1.5 children).

Table 10 shows the age of children involved in private law cases.

Table 10 – Age of children in private law cases

Age of child at start of case	% of children	Number of children
Less than 1 year old	5	32
1 year old	7	45
2 years' old	8	50
3 years' old	10	60
4 years' old	8	51
5 to 9 years' old	38	228
10 to 15 years' old	21	129
16+ years' old	1	7
Total	100	602

Base: 602 children involved in 393 private law cases where an order was made in 2009. Data on age of children was missing in 9 cases. (Percentages do not add up to 100% due to rounding.)

Progress of case through the courts

The case file review sought to collect data on the legal aid status of applicants and respondents in private law cases.²⁹ A relatively high proportion of files did not hold the information. In 45% of private law cases, at least one applicant was legally aided, in 30% of cases the data collector concluded that no applicant was legally aided, and in 26% of cases the

²⁹ At the time of the proceedings for cases in the study, legal aid was available to participants in private law proceedings on a means and merits basis. At the time of publication eligibility for legal aid is subject to reform.

legal aid status of applicants was unclear.³⁰ Looking at the legal aid status of respondents in private law cases, at least one respondent was legally aided in 35% of cases, no respondent was legally aided in 32% of cases, and in 33% of cases the legal aid status of respondents was unclear.

As shown in Table 11, in 62% of private law cases, both applicants and respondents were legally represented throughout the case. In 5% of cases, neither applicants nor respondents were represented at any stage, and 32% of cases had at least one party without legal representation throughout.

Table 11 – Legal representation of parties in private law cases³¹

Parties legally represented during the case	% of cases	Number of cases
Applicant and respondent throughout	62	245
Applicant throughout, respondent at some stage	4	15
Applicant throughout, respondent never	20	80
Respondent throughout, applicant at some stage	2	7
Respondent throughout, applicant never	5	21
Applicant at some stage, respondent at some stage	<1	2
Applicant at some stage, respondent never	<1	2
Respondent at some stage, applicant never	<1	2
Neither applicants nor respondents represented	5	19
Total	100	393

Base: 393 private law cases where an order was made in 2009. Data on legal representation was missing in 9 cases. (Percentages do not add up to 100% due to rounding.)

McKenzie friends³² were not commonly used in private law cases; 1% of all cases had an applicant with a McKenzie friend and 1% of all cases had a respondent with a McKenzie friend.

³⁰ Percentages do not add up to 100% due to rounding.

³¹ For the purposes of this table, if a case has multiple applicants, it is counted as having a legally represented applicant when at least one applicant is legally represented, and similarly for cases with multiple respondents.

³² A McKenzie friend assists a litigant in person in court.

Private law case files indicated that mediation had been attempted before the case in 10% of all cases, and in a total of 19% of cases mediation had been attempted at some point (either before or during the case). However, it is unclear whether the mediation referred to constituted attendance at an assessment for mediation or actual mediation.

For the same reasons as with public law cases, we are not completely confident about the reliability of data on the number of hearings in private law cases. As such, Table 12 may provide an undercount of the number of hearings in private law cases. There was an average (mean) of 5.5 hearings in private law cases.

Table 12 – Number of hearings in private law cases

Number of hearings	% of cases	Number of cases
1 to 4 hearings	53	201
5 to 9 hearings	31	118
10+ hearings	16	62
Total	100	381

Base: 381 private law cases where an order was made in 2009. Data on number of hearings was missing in 21 cases.

Private law case files indicated that a CAFCASS³³ report was requested in 58% of cases.³⁴ Expert reports were requested in 37% of private law cases. The average number of reports requested in those 37% of cases was 2. The most commonly requested expert reports were drug tests (requested in 10% of all private law cases), independent social worker (8% of cases), and adult psychiatric reports (6% of cases).

Private law case files indicated that a C1a form³⁵ had been completed in 53% of all cases.³⁶ In 32% of cases with allegations (i.e. those cases where a C1a form had been completed), data collectors found evidence in the case file that allegations of domestic violence had been substantiated. This represents 17% of all private law cases. As the method of

substantiation was not recorded, it is not clear whether this was from an admission, a finding of fact hearing, CAFCASS safeguarding checks or some other method.

A guardian was appointed in 10% of all private law cases. The Official Solicitor was involved in 2% of all private law cases.

Factors associated with case length

Table 13– Length of private law cases in weeks

Length of private law cases in weeks	% of cases	Number of cases
0 to 29 weeks	45	178
30 to 49 weeks	18	72
50 to 99 weeks	24	95
100+ weeks	12	49
Total	100	394

Base: 394 private law cases where an order was made in 2009. Data on case length were missing in 8 cases. (Figures do not sum to 100% due to rounding.)

The average length of a private law case in the study was 46 weeks.³⁷ Cases that resulted in a final order of a contact order lasted on average 51 weeks (based on 275 cases with case length data), while cases that resulted in residence orders lasted on average 35 weeks (146 cases).

Cases where the final order was by consent took on average 46 weeks (based on 210 cases with case length data), compared to 41 weeks where the final order was not by consent (149 cases).

Cases where there was evidence in the case file of previous proceedings were longer than average at 54 weeks (based on 108 cases with case length data). Cases where a CAFCASS report was requested (229 cases) were longer than average at 58 weeks, as were cases where at least one expert report was requested, at 65 weeks (146 cases).

Cases where a C1a form had been completed and domestic violence appeared to have been substantiated, were slightly longer than average at 50 weeks (66 cases with case length data).

³³ CAFCASS stands for the Children and Family Court Advisory and Support Service. CAFCASS Cymru in Wales.

³⁴ This is not markedly different from Hunt and Macleod's (2008) finding that CAFCASS reports were requested in 59% of contact cases.

³⁵ C1a forms are used to gather detailed information concerning allegations of domestic abuse, risk of abduction, or other concerns about harm to children, at an early point in a case.

³⁶ Hunt and Macleod (2008) found that allegations of domestic violence perpetrated by the non-resident parent had been made at some point in 50% of cases with a contact application.

³⁷ This is not markedly different from Hunt and Macleod's (2008) finding that mean case length for contact and residence cases was 10.8 months. There are no available National Statistics on case length to compare with the figure from the current study.

Private law cases with more hearings also appeared to be longer on average. Cases with 1 to 4 hearings lasted an average of 22 weeks, cases with 5 to 9 hearings lasted an average of 53 weeks, and cases with 10 or more hearings lasted an average of 101 weeks. Due to missing data on the number of hearings this analysis is based on a reduced sample of 377 cases.

In contrast to public law cases, greater numbers of adult or child parties did not appear to be associated with much variation in private law case length.

Lack of legal representation was associated with shorter cases. Cases where no applicants were represented were shorter on average at 38 weeks compared to cases where at least one applicant was represented throughout the case at 49 weeks. Cases where no respondents were legally represented were shorter on average at 28 weeks, compared to cases where at least one respondent was represented throughout at 54 weeks.

Where sample size allowed, we examined how the combination of legal representation across applicants and respondents was associated with case length. Cases where applicants and respondents were legally represented throughout the case appear longer on average at 53 weeks³⁸ than cases where an applicant was legally represented but respondents were not, which lasted an average of 27 weeks.³⁹

As was the case with public law cases, private law cases that were heard by magistrates were shorter than average at 37 weeks, but the sample size is small (44 cases were recorded as heard by magistrates and had case length data). Circuit court judges presided over cases that were on average 69 weeks long (73 cases), and district judges over cases that were on average 51 weeks long (236 cases).⁴⁰

³⁸ Based on 239 cases. There were 245 cases where at least one applicant and at least one respondent were legally represented, but data on case length was missing for six of these.

³⁹ Based on 80 cases. Cases where a respondent was legally represented but applicants were not, lasted an average of 51 weeks, but this is based on only 21 cases. Cases where neither applicants nor respondents were legally represented at any point in the case, lasted an average of 15 weeks, but this is based on only 19 cases.

⁴⁰ Only 339 cases contained data on both judge type and case length. Also 75 cases had more than one type of judge so findings should be treated with caution.

Outcomes from proceedings

When looking just at cases that involved applications for a contact order (233 cases), 93% resulted in contact orders at some stage during the case, and 76% resulted in a final order of a contact order.

When looking just at cases that involved applications for a residence order (224 cases), 83% resulted in residence orders at some stage during the case, and 58% resulted in a final order of a residence order. 65% of cases that involved applications for a residence order resulted in a final order of a contact order. Although the reasons for the difference between initial applications and final orders made in private law cases were not clear from the data collected, some descriptive information collected from the case files suggest it may reflect change occurring over the lifetime of the case. Also, previous research⁴¹ has indicated that parents' applications do not always reflect their intentions and this may only become apparent during the case.

The final order was made by consent in 52% of private law cases. There was evidence in the case file it was not made by consent in 38% of cases and consent was unclear from the case file in 10% of cases.

Where the final order was a contact order, it was made by consent in 57% of cases, it was not made by consent in 32% of cases, and consent was unclear from the case file in 11% of cases. Where the final order was a residence order, it was made by consent in 56% of cases, it was not made by consent in 40% of cases, and consent was unclear from the case file in 5% of cases.

The final order was made by consent in 61% of those cases where mediation of some kind had been attempted at some point (based on 69 cases).⁴² This compares with 51% of private law cases having the final order made by consent when there was no evidence of mediation in the case files (based on 277 cases).

Given the small sample sizes involved in the various permutations of legal representation in cases, it was not possible to determine whether legal representation was associated with the final order being made by consent.

⁴¹ Buchanan et al (2001).

⁴² The use of mediation during the case does not preclude participants from having legal representation.

Conclusions and implications

This case file study has improved our knowledge of the nature and complexity of public and private law family cases.

It has provided information on who is involved in cases, the numbers and types of expert reports involved, issues relating to legal representation and domestic violence (in private law), and the length of cases.

However, gaps remain in our understanding as to why family proceedings involving children take as long as they do and what can be done to minimise the time required to complete cases.

There may be merit in considering if some of the data items available in case files could be collected again, and more systematically, in the future to help monitor changes in the nature of family justice cases.

References/reports

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Appendix A

Sampling strategy

Two separate samples were drawn – 430 for public law cases and 468 for private law cases – using a stratified clustered two-stage sampling strategy. The sizes of the samples to be issued were calculated on the basis of them being sufficient to provide estimates at the 95% confidence level with a margin of error of 5%, given the total number of closed cases in 2009 as listed on Familyman.

For each sample to be drawn, a list of courts was drawn from Familyman for use as the sampling frame. This contained numbers of cases with orders made in 2009 for each court, and was stratified by tier of court – Family Proceedings Courts (FPC), county courts (CC) and High Courts (HC). The sample size to be collected from each of the three tiers of court (FPC/CC/HC) was proportional to their allocation of the total number of cases for the period. Not all FPCs were on Familyman in 2009. Approximately 94 out of a total of 175 FPCs⁴³ were on Familyman during 2009.

⁴³ Familyman was being rolled out during this time so figures are approximate.

Each court could be viewed as a cluster, with cases 'clustered' in each court. Some smaller courts (in terms of number of closed cases) were put together to create one primary sampling unit (PSU). This was done by region, and by area within the region wherever possible.

Approximately 5% of PSUs were selected from each tier of court. The number of PSUs selected for the public law sample were 4 FPCs, 3 CCs, and 2 HCs. For the private law sample there were 5 FPCs, 9 CCs and 4 HCs. PSUs were selected using probability proportionate to size (PPS), where size was determined by the number of closed cases listed on Familyman. Within selected PSUs, the cases to be studied were then chosen using simple random sampling. This approach allowed both courts and cases to be randomly selected, and each case within the sampling frame to have an equal probability of being selected.

Table A1 shows the list of courts in the samples including details on court type, the number of cases sampled from each court, the achieved samples, and the total number of closed cases in 2009 from those courts as listed on Familyman. As indicated in the Approach section, not all files were available for collection.

Table A1: Sampled courts

Court	Region	Court type	Issued sample size	Achieved sample size	Total number of cases closed in 2009 from Familyman
Public Law					
Pontypridd/ Cardiff	Wales	FPC	22	22	22
Barnet	London	FPC	22	19	33
Luton	South East	FPC	22	21	40
Stoke on Trent/ Stafford	Midlands	FPC	22	22	52
Middlesborough/ Sunderland	North East	CC	108	90	127
Plymouth/ Truro/ Exeter and Tiverton	South West	CC	108	96	152
Romford/ Barnet/ Kingston Upon Thames/ PRFD/ Croydon	London	CC	108	91	485
Newcastle on Tyne	North East	HC	9	9	13
Plymouth/ Truro/ Exeter and Tiverton/ Taunton	South West	HC	9	6	22
			430	376	946
Private Law					
Caernarfon	Wales	FPC	10	10	21
Yeovil	South West	FPC	10	9	61
Telford/Shrewsbury/Hereford	Midlands	FPC	10	9	102
Southampton	South West	FPC	10	10	126
Worcester	Midlands	FPC	10	8	258
Boston	Midlands	CC	46	36	124
Maidstone	South East	CC	46	39	188
Walsall	Midlands	CC	46	42	250
Exeter and Tiverton	South West	CC	46	39	324
Blackburn	North West	CC	46	38	404
Coventry ⁴⁴	Midlands	CC	46	42	485
Reading	South East	CC	46	41	551
Nottingham	Midlands	CC	46	42	711
PRFD	London	CC	46	34	2,642
PRFD	London	HC	1	0	208
Crewe	North West	HC	1	1	1
Liverpool	North West	HC	1	1	11
Taunton	South West	HC	1	1	5
			468	402	6,472

⁴⁴ Coventry was not one of the courts originally chosen at random as part of the sampling strategy, but as one court refused to take part, it was chosen as next on the list.

Table A2: Comparison of profile of achieved sample with England & Wales National Statistics in terms of tier of court in 2009

Tier of court	Case file sample % of cases dealt with by tier of court	National Statistics ⁴⁵ % of children involved in orders made dealt with by tier of court
Public Law		
FPC	22%	37%
County court	74%	58%
High Court	4%	5%
Private Law		
FPC	11%	21%
County court	88%	78%
High Court	2%	1%

Please note data on tier of court from the case file review are not strictly comparable with National Statistics as National Statistics are reported based on numbers of children involved in orders made in 2009, whereas case file data relate to disposals on a per case basis in 2009. However, they can give an indication that cases from FPCs are under-represented in our sample and cases from county courts are over-represented.

Table A3: Comparison of profile of achieved sample with England & Wales National Statistics in terms of disposals in 2009

Order type	Case file sample % of cases resulting in final order	National Statistics: ⁴⁶ % of children involved in disposals
Public Law		
Care order	40	30
Supervision order	24	13
Section 8 residence order	16	11
Section 8 contact order	14	12
Special guardianship	11	4
Withdrawn	2	-

⁴⁵ Judicial and Court Statistics (2009).

⁴⁶ Judicial and Court Statistics (2009).

Order type	Case file sample % of cases resulting in final order	National Statistics: ⁴⁶ % of children involved in disposals
Final order unclear	12	-
Other order	21	29
Private Law		
Section 8 contact order	70	61
Section 8 residence order	37	19
Parental responsibility	5	5
Prohibited steps	4	10
Specific issue	2	3
Special guardianship	2	<1%
Withdrawn	2	-
Order for no order	1	-
Final order unclear	1	-
Order refused	<1%	-
Other orders	7	<1%

NB: Case files may have multiple final orders.

Please note data from the case file review are not strictly comparable with National Statistics as National Statistics are reported based on numbers of children involved in disposals rather than outcomes on a per case basis. However, they give an indication that our sample profile does not differ markedly from National Statistics in terms of disposals.