



Ministry
of Justice

Experimental Statistics: analysis of estimated hearing duration in Private Law cases, England and Wales

Ministry of Justice
Ad-hoc statistics bulletin

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Introduction

This ad-hoc experimental statistics bulletin presents the result of exploratory analyses into the impact of an increased number of parties without legal representation in Private Law cases on

- the number of hearings; and
- hearing duration.

Private Law refers to Children Act 1989 cases where two or more parties are trying to resolve a private dispute. This is commonly where parents have split-up and there is a disagreement about contact with, or residence of, their children.

This stand-alone statistical bulletin also attempts to ascertain the quality and availability of centrally held data on hearing duration in private law cases. The results should be considered alongside the key caveats provided at pages 9 to 11.

Legal Aid, Sentencing and Punishment of Offender Act, 2012

The implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in April 2013 made changes to the scope and eligibility of legal aid.

From April 2013, legal aid is now only available for private family law cases (such as contact or divorce) if there is evidence of domestic violence or child abuse and child abduction cases. Legal aid remains available for public family law cases (such as adoption).

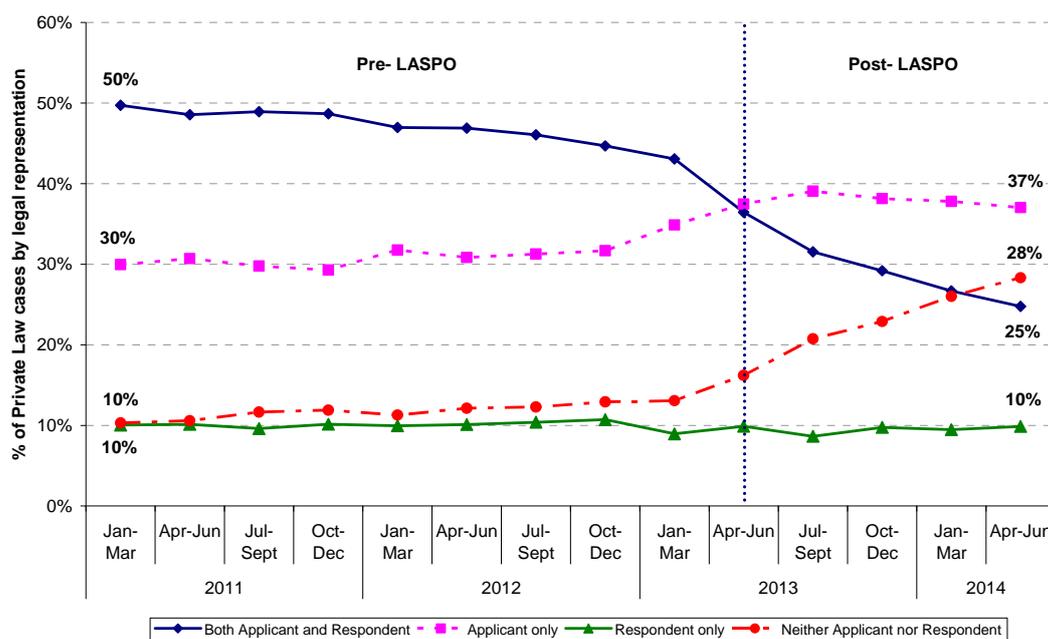
The full details of the LASPO Act can be found here:

www.legislation.gov.uk/ukpga/2012/10/enacted

The removal of legal aid for many private law cases has resulted in a change in the pattern of legal representation: Figure 1 shows how this has changed over the time, in particular the period just before and after the LASPO reforms were implemented. There has been an increase in cases where neither party or only the applicant are represented, whilst those cases with only the respondent represented have stayed relatively constant. Cases where both parties are represented have fallen over time, with a sharp decrease seen around the time that the LASPO reforms were implemented.

The LASPO reforms have had a clear impact on the number of people without legal representation in private law cases. However, it is less clear what impact that has had on the associated hearings – both in terms of number of hearings and their duration.

Figure 1 - Proportion of parties in private law cases with legal representation (January 2011 - March 2014)¹



Existing measures of private law case disposal and timeliness published within Court Statistics Quarterly² provide an indication of the impact of the increase in cases without legal representation (Table A.1). Average time to first definitive disposal has increased each quarter in private law cases overall - this is being driven by sustained increased in cases where both parties or just the respondent are represented, whilst those without representation show no clear pattern.

However, these measures only provide an indication of case length and not the duration or number of hearings within each case. It is important to look not only at the hearing duration but also the number of hearings – for example, it may be that not having legal representation in private law cases results in shorter hearings but an increase in the total number of hearings per case, particularly for more complex cases.

These experimental statistics have been produced to provide a contribution to addressing the known evidence gap in relation to hearing duration. There are key caveats and data quality issues to be considered when looking at the results and further work is planned to complement the findings of these initial analyses.

¹ Source: Court Statistics Quarterly (January to March 2014). Figures are based on the quarter in which disposal was made.

² Court Statistics Quarterly www.gov.uk/government/collections/court-statistics-quarterly

Results

There is no strong evidence from the data sources examined that hearing durations have significantly changed over time. This is in line with existing measures used to monitor the case disposal and timeliness of private law cases.

However, there are a number of caveats with this finding, the most important of which is that the data analysed are based on estimated rather than actual hearing durations.

Analysis of FamilyMan

Initial findings

The average hearing duration for cases starting between April 2012 and March 2013 (pre-LASPO) and disposed of within 12 weeks was compared with that for cases starting between April 2013 and March 2014 (post-LASPO) and disposed of within 12 weeks. Initial findings provided in Tables 1-3 below show:

- a. No change in overall average (mean) hearing durations. There is some evidence that hearings where both parties are represented have increased in duration whilst hearings where neither party is represented have decreased in duration.
- b. Directions hearings³ have increased in average (mean) duration across most representation types. Full hearings have decreased in average (mean) duration, particularly for hearings in which neither party were represented.
- c. Median hearing durations (not detailed in this paper) have remained unchanged across all hearing types and representation types, except for full hearings in which neither party was represented. Median hearing durations for these hearings have decreased from 300 minutes (2012/13 median) to 180 minutes (2013/14 median).
- d. A substantial decrease in average hearings per case, though this appears to be part of a longer term trend.

³ Directions hearing: initial hearing held after application for a court order is made

Table 1 - Key results - all hearing types

	Pre LASPO (April 2012 – March 13)	Post LASPO (April 2013 – March 14)	<i>change</i>
Hearings per case			
All rep. types	3.0	2.2	-0.8
Both	3.8	2.9	-0.8
Applicant only	2.3	2.1	-0.3
Respondent only	3.8	2.8	-1.0
Neither	2.4	1.9	-0.5
Mean duration per hearing (minutes)			
All rep. types	73	74	0
Both	79	89	+10
Applicant only	62	67	+5
Respondent only	80	87	+8
Neither	69	63	-6

Table 2 - Key results - directions hearings only

	Pre LASPO (April 2012 – March 13)	Post LASPO (April 2013 – March 14)	<i>change</i>
Hearings per case			
All rep. types	2.1	1.3	-0.8
Both	2.6	1.7	-1.0
Applicant only	1.6	1.2	-0.4
Respondent only	2.6	1.6	-1.0
Neither	1.6	1.1	-0.5
Mean duration per hearing (minutes)			
All rep. types	41	44	+3
Both	43	50	+7
Applicant only	37	41	+4
Respondent only	44	52	+8
Neither	40	40	0

Table 3 - Key results - full hearings only

	Pre LASPO (April 2012 – March 13)	Post LASPO (April 2013 – March 14)	<i>change</i>
Hearings per case			
All rep. types	0.4	0.3	-0.1
Both	0.5	0.5	-0.1
Applicant only	0.2	0.2	0.0
Respondent only	0.5	0.4	-0.1
Neither	0.3	0.2	-0.1
Mean duration per hearing (minutes)			
All rep. types	258	238	-19
Both	270	280	+9
Applicant only	234	222	-12
Respondent only	265	271	+6
Neither	231	185	-47

Key caveats

- Estimated hearing duration is taken from a text field in FamilyMan (county court administrative system) which is populated for around 70% of hearings. Where it is populated, it was possible to convert the text to a numerical value in over 95% of cases.
- The text field in FamilyMan is not intended to provide reliable statistical data to be used for performance monitoring.
- As with the measures published within Court Statistics Quarterly, representation status is based on representation at the first full order. Therefore, this is only a proxy as representation status can change throughout the case.

Analysis of eDiary

Initial findings

Initial findings are:

- a. Some evidence of increased hearing duration for first hearings - small increases in 38% of courts that regularly used eDiary (Table 4)
- b. No evidence of increased hearing duration for final hearings - an increase in only 8% of courts that regularly used eDiary (Table 5)

Table 4 - Initial hearings: eDiary results

	Count	%
Courts using eDiary	134	
<i>of which...</i> Courts consistently using eDiary over 4 years	45	
<i>of which...</i> Varies across 2010-2013	7	16%
Constant across 2010-2013	17	38%
Decrease in 2013	4	9%
Increase in 2013	17	38%

Table 5 - Final hearings: eDiary results

	Count	%
Courts using eDiary	142	
<i>of which...</i> Courts consistently using eDiary over 4 years	78	
<i>of which...</i> Varies across 2010-2013	61	78%
Constant across 2010-2013	6	8%
Decrease in 2013	5	6%
Increase in 2013	6	8%

Key caveats

- eDiary is not intended to provide reliable statistical data to be used for performance monitoring.

- eDiary is used in 60-70% of courts and typically in smaller courts.
- As with FamilyMan, eDiary provides an estimated measure of time allocated for a given hearing.

Limitations of the analyses and future work

The analyses presented in this paper rely on examination of trends over time and pre-post test comparisons. Future work to address this evidence gap could include:

- refine and produce analyses by case type in an attempt to reflect complexity of case as an explanatory factor, e.g. are more complex cases having longer and more hearings?
- explore whether a robust comparison group can be identified to assess the impact of the LASPO reforms – for example those private law cases which have been unaffected by the LASPO reforms (e.g. those involving domestic violence) to carry out a ‘difference in difference’ analysis. However, it may be that a suitable comparison group cannot be constructed due to the differences in the complexity and sensitivity of different case types – these may have more of an impact on hearing duration than the presence or not of legal representation
- investigate the use of interrupted time series analyses – this will look for statistically significant break points within the time series and any associated trend changes
- investigate ways to capture a sample of actual hearing durations from private law cases to address the key caveat associated with these analyses
- explore long-term data collection solutions to capturing actual hearing duration information

Annex: Data sources and key caveats

FamilyMan

The data on family related court cases is principally sourced from the county court administrative system, FamilyMan, which is used by court staff for case management purposes – it contains good quality information about a case's progress through the family courts.

Data

For the purpose of these experimental statistics, data were extracted from FamilyMan with the following characteristics:

- Private law children cases;
- First application made between January 2011 and June 2014; and
- A full order made within 12 weeks, and by June 2014

FamilyMan does not record the actual duration of a hearing however, there is an estimate of the hearing duration collected within a free-text field. This provides the time estimate given by the judiciary for each case when directing it to be listed. This field is populated in around 70% of the data.

To analyse the data contained within the text field, it was necessary to transform the free text into numerical values – we were able to do this for over 95% of the cases where information was collected. Therefore, it has been possible to include just over two thirds of hearings in this analysis.

In order to check that there was no selection bias within the cases we were able to extract hearing duration information from, we compared characteristics of those with and without hearing duration information. This did not provide any indication of systematic bias in the data used within these analyses. However, there remains a risk of bias in the sample of hearings/cases that have the text field completed which cannot be measured. For example, it is possible that longer, more complex cases may be more likely to have an estimate recorded than shorter ones.

Key caveats

There are a number of key caveats associated with the FamilyMan data and the analyses reported above:

- As previously mentioned, the estimated hearing duration is taken from a text field in FamilyMan which is populated for around 70% of hearings. Where it is populated, it was possible to convert the text to a numerical value in over 95% of cases.
- The text field in FamilyMan is not intended to provide reliable statistical data to be used for performance monitoring. It contains an estimate of the scheduled hearing duration and therefore it has only been possible to look at the impact of representation on the scheduled or listed, rather

- Any change in scheduled hearing duration estimates could be due to other factors such as court listing staff adjusting (or not) their estimates in response to the representation status for the hearing/case, e.g. by overcompensating for a perceived effect of non-representation where none is present.
- As with the measures published within Court Statistics Quarterly, representation status is based on representation at the first full order. Therefore, this is only a proxy as representation status can change throughout the case.
- The analyses include a full year of data for the post-LASPO caseload. This restricts the analysis to cases which reached a disposal within 12 weeks (to ensure cases beginning in March 2014 have reached a disposal by June 2014). Imposing this restriction avoids biasing the caseload data (otherwise there is a risk that recent cases may be quicker or simpler than earlier cases). This restriction ensures we are comparing like-with-like caseload. Although we have checked that these results hold for a smaller sample of longer cases (for example, comparing cases that reached a disposal within nine months for the six month periods pre/post LASPO), they may not be representative for the longest cases.

E-Diary

eDiary is a scheduling tool used by court listing officers to allocate time for hearings. It records estimated hearing durations for a variety of different hearing types.

Data

The analyses described above relate to one source of estimated hearing duration. As a means of validating of the findings above, we analysed a second source of information - eDiary is a scheduling tool used by court listing officers to allocate time for hearings. It records estimated hearing durations for a variety of different hearing types.

eDiary data does not distinguish between types of representation so can only provide overall average changes in hearing time and provides no indication of how changes in representation may have had an impact on any observable change.

The analyses have been restricted to courts that have consistently used eDiary for the past four years⁴ (45 courts for first hearings; 78 courts for final hearings).

⁴ Defined as at least 10 cases per year and at least 100 cases over the four years examined

Each court was then classified into categories by comparing the average hearing duration for family private law cases in the final year of data (2013) against the previous three years:

- clearly increases or decreases
- is fairly constant; or
- demonstrates no clear pattern (“varies”).

Key caveats

There are a number of important caveats with the eDiary data

- eDiary is not intended to provide reliable statistical data to be used for performance monitoring.
- eDiary is used in 60-70% of courts and typically in smaller courts. Due to this, there is a risk of only including certain types of courts or hearings which could bias the sample.
- eDiary provides an estimated measure of time allocated for a given hearing which we use as a proxy for actual hearing time.

Table A.1

Number of disposals and average time to first definitive disposal in courts in England and Wales for Private Law cases by legal representation of parties¹, Jan-Mar 2011 to Apr-Jun 2014

Year	Quarter	Parties with legal representation ²								All types ³	
		Both Applicant and Respondent		Applicant only		Respondent only		Neither Applicant nor Respondent		Number of disposals	Mean (median) duration in weeks ^{4,5,6}
		Number of disposals	Mean (median) duration in weeks ^{4,5,6}	Number of disposals	Mean (median) duration in weeks ^{4,5,6}	Number of disposals	Mean (median) duration in weeks ^{4,5,6}	Number of disposals	Mean (median) duration in weeks ^{4,5,6}		
2011	Q1	12,693	20.5 (10.6)	7,647	14.0 (6.4)	2,563	21.7 (11.1)	2,631	19.3 (9.1)	25,534	18.6 (8.6)
	Q2	11,640	19.5 (9.9)	7,361	12.4 (5.9)	2,430	20.8 (10.4)	2,540	14.1 (7.3)	23,971	16.9 (7.9)
	Q3	12,473	19.6 (7.9)	7,591	11.7 (4.9)	2,449	19.1 (7.6)	2,968	14.8 (7.0)	25,485	16.6 (6.4)
	Q4	11,562	18.2 (8.0)	6,956	11.5 (5.0)	2,409	18.4 (8.4)	2,823	14.1 (6.9)	23,751	15.8 (6.9)
2012	Q1	11,292	18.1 (8.1)	7,637	11.9 (5.7)	2,396	18.7 (8.9)	2,714	16.1 (7.9)	24,039	16.0 (7.1)
	Q2	11,052	17.7 (8.0)	7,272	11.5 (5.7)	2,385	16.9 (9.3)	2,858	15.3 (7.7)	23,568	15.4 (7.0)
	Q3	11,738	16.2 (7.7)	7,967	11.2 (5.1)	2,648	15.3 (7.9)	3,129	13.2 (7.1)	25,486	14.2 (6.9)
	Q4	11,346	17.9 (9.3)	8,041	12.6 (6.0)	2,723	18.1 (9.6)	3,279	15.0 (7.9)	25,391	15.9 (7.7)
2013	Q1	10,424	17.2 (9.1)	8,443	12.0 (6.0)	2,169	17.8 (10.0)	3,165	14.8 (8.1)	24,202	15.1 (7.9)
	Q2	8,635	22.2 (14.7)	8,878	11.5 (6.7)	2,341	19.1 (11.1)	3,839	12.6 (7.1)	23,693	16.3 (8.7)
	Q3	8,249	22.1 (16.0)	10,217	12.8 (8.3)	2,262	18.0 (10.7)	5,423	11.5 (7.3)	26,151	15.9 (9.6)
	Q4	7,199	23.2 (17.0)	9,406	14.3 (8.7)	2,406	20.1 (11.4)	5,647	13.2 (8.9)	24,658	17.2 (10.3)
2014	Q1	5,835	23.3 (15.7)	8,264	15.1 (8.0)	2,071	20.8 (14.9)	5,688	15.1 (9.9)	21,858	17.9 (10.4)
	Q2	5,062	24.7 (16.3)	7,567	14.8 (7.9)	2,016	22.1 (15.6)	5,789	14.6 (9.9)	20,434	17.9 (10.6)

Notes:

1) Self-representation is determined by the field 'legal representation' in Familyman being left blank. Therefore, this is only a proxy measure and parties without a recorded representative are not necessarily self-representing litigants in person.

2) A party is considered 'applicant-represented' if at least one applicant has a recorded representative, and likewise for respondents.

3) 'All types' includes a small number of disposals where representation status is unknown, so may exceed the sum of the other categories. These figures may not be identical to those given in other tables for various reasons - such as incomplete or invalid data, or for Public and Private law the fact that the above figures only relate to specific order types.

4) Duration is calculated from the earliest application/petition date (or date the case was transferred in to the court if earlier) to the date of the earliest disposal/decreet nisi.

5) The mean duration is calculated as the total of all durations within the category, divided by the number of orders/decreets nisi.

6) The median duration is the time within which half the disposals in the category reached a disposal, and provides a more representative measure of how long cases take than the mean in situations where the data may be skewed by a few very long-duration cases.

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