



Family Justice Research Bulletin

New and forthcoming research and analysis for the Family Justice System

Welcome to the fifth bulletin from the Family Justice Knowledge Hub

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What is the aim of Knowledge Hub?

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

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

What can you expect from the Research Bulletin?

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

This bulletin includes recently published and ongoing or forthcoming studies in both public and private family law in England and Wales. We also include a section on family justice matters in other countries to provide an international perspective.

What is included in the Bulletin?

There are no fixed criteria for the material included in the bulletin. The content comes from a range of sources which include:

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

MoJ AS assess all suggestions of research projects to be included in the bulletin and consider the robustness of the methodology, whether the research was conducted ethically, and the accessibility and relevance of the findings. The bulletin does not claim to be comprehensive. For the reports included in the bulletin, MoJ AS provides a summary of the research which draws out the aims, methodology and main findings and, where possible, includes a web link to allow readers to access the full report. The summary provided of each research report is approved by the author and the bulletin is subject to independent peer review.

How can you get in touch?

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

Please note this bulletin is designed to provide an overview of research and practice within the wider landscape of family justice. While MoJ AS will apply discretion in assessing the relevance of material included, inclusion in the Research Bulletin does not mean the research is endorsed by the MoJ. The information included is not intended as an official view of the MoJ or a reflection of MoJ policy. Where the research included here has been independently peer reviewed, this is noted in the bulletin.

Public Attitudes to the Family Justice System



Summerfield, A. and Freeman, L. (2014) Public Experiences of and Attitudes Towards the Family Justice System

Funder: MoJ

Peer Review status: peer reviewed

Report: MoJ

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319365/public-experience-family-justice-system.pdf

This Ministry of Justice analytical summary presents findings from the 2012/13 Crime Survey for England and Wales (CSEW) examining public attitudes and experiences of the family justice system, including mediation. The CSEW is a nationally representative household survey. In the 2012/13 survey, around 35,000 adults were interviewed, with a response rate of 73 per cent.

The research questions included:

- What recent experiences does the public have of the family justice system?
- How aware is the public of the family justice system and its roles?
- How well does the public think the family justice system works for the families who use it?

Key findings include:

Experiences of the Family Justice System

- The public's direct experience of the family justice system (FJS) was limited. One per cent of adults said

they had taken part in mediation, and less than one per cent of adults said they had been involved in a family court case in the two years prior to interview.

Awareness of the Family Justice System

- Just under half (47%) of adults said they had heard of the FJS before interview. Just over half (53%) of adults said they were aware of mediation as an alternative to court for resolving family disputes.
- Overall, respondents were likely to over-estimate the proportion of couples who make contact arrangements through the court after separation. Awareness and perceptions of the FJS and mediation varied by socio-demographic characteristics; women and graduate respondents were more likely to say they were aware of both the FJS and mediation than men and respondents with lower or no educational qualifications.

Confidence in the Family Justice System

- Overall, the majority of adults had confidence in the FJS. Approximately seven in ten adults felt that the courts, in private law cases, would take both parents' views into account (72%) and come to a decision that was in the best interests of the child (71%). Levels of confidence were slightly lower for the care case scenario where approximately two-thirds (67%) felt the court would come to a decision in the best interests of the child and approximately two thirds (65%) felt the court would take the views of parents into account.

Public Family Law Implementation of the Revised Public Law Outline (PLO)

Harvey, P., Szyndler, R., Fowler, H., Slater, D., Cook, R. and Welbourne, P. (2014) **Action research to explore the implementation and early impacts of the revised Public Law Outline (PLO)**

Funder: MoJ

Peer review status: peer reviewed

Report: Ipsos MORI and Plymouth University

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304477/action-research-to-explore-plo-implementation-and-early-impacts.pdf

The Family Justice Review highlighted concerns around the delays in care and supervision proceedings. As a result, the Government introduced a statutory time limit for all care and supervision cases to be completed within 26 weeks, wherever possible. In preparation for this the Public Law Outline (PLO) - the key guidance the judiciary uses when managing public law cases - was revised to institute streamlined processes and lay the foundation for the introduction of the statutory time limit. The revised PLO placed an increased emphasis on local authority documentation and assessments being completed earlier during pre- proceedings, and for this evidence to be focused and analytical. The revised PLO also introduced reduced timeframes for key stages during court proceedings.

The Ministry of Justice commissioned Ipsos MORI to explore the early perceptions and experiences of implementing the revised PLO at a local level. The mixed methods study included workshops at eight Local Family Justice Boards (LFJBs), 123 in-depth qualitative interviews with family justice practitioners and an online survey with 164 LFJB members.

The study aimed:

- To explore how the revised PLO was understood and implemented in practice.
- To explore how the changes are perceived to be impacting on pre-proceedings work, court proceedings and the wider FJS.
- To identify any challenges experienced and any additional amendments to the revised PLO and associated guidance that may be required.

Key findings include:

- Overall, practitioners were very positive about the drive to reduce the time that public law cases spent in court. Many felt that cases were being managed more efficiently under the revised PLO and the process was better focused on the children involved.

Pre-proceedings

- An increased drive to complete documentation and assessments earlier during pre-proceedings was welcomed. Most practitioners felt that local authorities were delivering the required documentation at the outset of cases.

- Practitioners were particularly positive about the emphasis on social workers taking ownership of their cases and presenting evidence in court. Some felt that social workers may take time to adapt to the new requirements, particularly in adopting an analytical approach to presenting their evidence.
- The majority of practitioners perceived that there had been a decline in the instruction of experts, restricting the evidence to what is 'necessary' for the court and enabling the social worker to be viewed as the key expert in the case.
- Some practitioners expressed concern about perceived delay during pre-proceedings whilst evidence is compiled and assessments are undertaken.

Court proceedings

- Practitioners felt that the Case Management Hearing (CMH) was more focused and effective than First Hearings under the previous PLO and this meant that few cases required a further CMH. The majority of practitioners also felt that the requirement for the CMH to be completed by Day 12 was appropriate but that flexibility was required for more complex cases.
- Improved communication and greater cooperation between agencies, as well as a proactive judiciary were identified as beneficial in the successful implementation of the revised PLO.
- There were some early concerns that the reduced timeframes may impact on the ability of families to demonstrate sufficient change in their parenting capacity. A further concern was that the revised PLO may affect the type of orders that were issued at the final hearing.

The wider family justice system

- Although some practitioners felt that the revised PLO had increased their workloads as they adapted to the new requirements, they did not feel this challenge was insurmountable. Many felt that the changes meant their workloads were more concentrated to the early stages of proceedings.

The research highlighted some areas for further consideration. These included that social workers may benefit from additional training on developing an analytical approach in presenting evidence, and that further clarification was needed on how to handle pressing or complex cases.

Overall, the majority of practitioners welcomed the changes to the revised PLO and felt that the positives outweighed the concerns. However, it is important to note that these findings only reflect early experiences and perceptions.

Evaluation of the Family Drug and Alcohol Court



Harwin, J., Alrouh, B., Ryan, M. and Tunnard, J. (2014) Changing Lifestyles, Keeping Children Safe: an Evaluation of the First Family Drug and Alcohol Court (FDAC) in Care Proceedings

Funder: Nuffield Foundation

Peer Review Status: Reviewed by the Nuffield Foundation and members of the FDAC Steering Group

Report: Brunel University

<http://www.brunel.ac.uk/fdacresearch>

In 2008 the Nuffield Foundation commissioned an independent evaluation of the first Family Drug and Alcohol Court (FDAC) in England. The FDAC is an innovative approach to care proceedings where parental substance misuse is a key issue in the local authority's decision to bring proceedings. It involves a judge who both adjudicates and oversees the therapeutic role of the court. It includes a specialist multidisciplinary team who provide parents with intensive treatment and support, file reports to the court on their progress and produce intervention plans for the case. Parents have the same judge throughout the case and must attend review hearings

with their judge fortnightly. At the end of the proceedings, the judge will decide whether or not to make a care or supervision order (or other order) and whether or not the children should return home. The aim of the FDAC is to enable parents to overcome their substance misuse and be safely reunited with their children.

The research focused on the impact of FDAC in three central London boroughs. The design included both quantitative and qualitative methods including a case profile analysis, interviews with parents and professionals and observations of hearings. The sample consisted of 90 families who went through the FDAC and a comparison group of 101 families whose case was heard in ordinary care proceedings. All cases were tracked to the final order. One year later, a follow-up was conducted with 24 FDAC and 18 comparison families whose children went home. The aims were to identify how successful these parents were in abstaining from substance misuse and raising their children safely.

The key aims of the evaluation were to identify the effects that FDAC had on:

- Parental substance abuse cessation rates
- Rates of family reunification and sustainability
- Placement rapidity with alternative permanent carers when reunification was not possible
- The cost of FDAC
- Parental and professional satisfaction with FDAC
- To identify any recommendations for improving FDAC

Key findings include:

Cessation at the end of care proceedings

- 40 per cent of FDAC mothers and 25 per cent of FDAC fathers had stopped misusing substances, compared with 25 per cent and 5 per cent respectively of the comparison group. This difference was statistically significant.
- There was a significant difference between the number of FDAC parents who were offered substance misuse services (95% of FDAC mothers and 58% of FDAC fathers) compared with the comparison parents (55% and 27% respectively).

Reunification

- There was a significant difference between the rates of family reunification **and** cessation in the FDAC

families and the comparison group. There were over a third (35%) of FDAC mothers who had stopped misusing **and** were reunited with their children whilst only 19 per cent of comparison mothers were.

- One year after reunification, fewer children in FDAC families experienced neglect or abuse compared to the comparison sample.
- Where reunification was not possible, there was no difference between FDAC and comparison families on the average time it took to place children with alternative carers.

Costs of FDAC

- The first stage of the evaluation had identified that FDAC cost less than ordinary care proceedings. The average cost per case through FDAC was £8,740. The savings included fewer legal representatives at hearings, shorter hearings, fewer contested cases and less need for foster placements.

Parental and professional satisfaction with FDAC

- Almost all the FDAC parents who were interviewed said that they would recommend FDAC to other parents. Those who had also experienced ordinary care proceedings found FDAC more helpful because it provides intervention treatments and practical and emotional support that increase the possibility of family reunification.
- The new legal requirement under the Children and Families Act 2014 to complete care cases in 26 weeks in all but exceptional circumstances was identified by some professionals as too short a period for assessing a parent's motivation and working intensively with them to return children home.
- The overall conclusion was that FDAC is a promising approach which merited further roll-out.

Recommendations from the evaluation

- Local authorities need clearer referral criteria so that families with some capacity to change can engage with the FDAC as early as possible.
- After the end of care proceedings, more support is needed for parents who retain care of their children and for those who do not.
- Local authorities should improve their work with children's fathers.
- Judges involved in FDAC would benefit from learning from one another and from training in problem-solving court approaches.

Residential Parenting Assessments

Munro, E., Hollingworth, K., Meeto, V., Quay, K., McDermid, S., Trivedi, H. and Holmes, L. (2014)
Residential Parenting Assessments: Uses, Costs, and Contributions to Effective Timely Decision- Making in Public Law Cases

Funder: DfE

Peer review status: peer reviewed

Report: Childhood Wellbeing Research Centre

<https://www.gov.uk/government/publications/residential-parenting-assessments>

The Family Justice Review identified that decision-making in care proceedings assessments should be more timely, of a higher quality and ensure the interests of the child are put first. As a result, the Department for Education commissioned the Childhood Wellbeing Centre to conduct a small-scale research study to explore the use and effectiveness of Residential Parenting Assessments (RPAs). An RPA is an assessment of parents who have been placed in residential parenting centres (RPC) because their child's welfare is potentially at risk, which evaluates their skills and capacity to provide and care for their child. The information from the assessments is provided to local authorities and courts so they can assess parenting capability and see how this is affecting the child's wellbeing. The aims of the research included exploring the costs, uses, strengths and limitations of RPAs. It also aimed to identify how RPA recommendations are reflected in court decisions and to assess the added value of RPAs to these decisions.

The study used a mixed method approach, including a national online survey sent to Assistant Directors of Children's Social Care Services (44 local authorities responded; providing a response rate of 29%). The method also used a case file analysis of 33 cases from three local authorities; two expert panels to assess the 'value added' judgements; and, interviews with ten social workers and a costing exercise.

Key findings included:

- The survey found that over the course of the 2012-13 financial year, the mean number of RPAs per local authority was five. The number of assessments was likely to be affected by factors such as court and local authority policy, procedures and the perceptions of the efficiency of RPAs.

- The average spend on RPAs per local authority in 2012-13 was £154k whilst the average cost per individual assessment was £28k. The in-depth review found that in 43 per cent of cases, RPAs were considered justifiable in terms of costs and because the information from the assessment was considered beneficial and child-centred.
- RPAs were mostly used at the direction of the court, to inform courts and local authorities of parenting capabilities and to support long-term planning.
- As the assessments take place in RPCs this ensures child welfare without separating the child from their parent, and they may also support parents with substance abuse and other issues. However, being placed in RPCs may mean that families are living away from their community and support networks.
- In 26 out of 28 cases, the placement outcomes by the courts were in line with the recommendations of the RPA. Any major differences of professional opinion were most often about whether parents could maintain changes long term.
- The expert panel determined that 58 per cent of commissioned assessments were appropriate. Forty-two per cent were deemed not appropriate on grounds such as there were other more suitable assessments which allowed parents to remain within the community.

This research gives insight for local authorities and the courts into the effectiveness of RPAs. The study notes that the small sample sizes mean the findings might not be representative of the national picture and that further research in this area may be beneficial.

Public Family Law Research in Progress Update

Social work contact

Scourfield, J. Social Work Contact in Four UK Cohort Studies (Nuffield Foundation)

<http://www.nuffieldfoundation.org/social-work-contact-four-uk-cohort-studies>

The Nuffield Foundation is currently funding a study which explores data from four UK cohort studies over two decades. The research began in October 2013 and is expected to be completed in 2015.

The research focuses on children from different age groups who have contact with social workers. A comparative method is used with the aim to:

- Identify how the use of social workers changes as children get older.
- Identify the outcomes for children who have contact with social workers in terms of their wellbeing, occurrence of abuse or neglect and any entry into care. These will be compared with the general population as well as a sample of children who experience similar situations but do not have contact with social workers.
- Compare the outcomes for children who have social workers with those who have similar problems but have contact with professionals other than social workers.

Private Family Law Dispute Resolution

**Barlow, A., Hunter, R., Smithson, J. and Ewing, J. (2014)
Mapping Paths to Family Justice, Briefing Paper and
Report on Key Findings**

Funder: ESRC

Peer review status: not peer reviewed

Report: University of Exeter and University of Kent

**[http://socialsciences.exeter.ac.uk/law/research/frs/
researchprojects/mappingpathstofamilyjustice/about](http://socialsciences.exeter.ac.uk/law/research/frs/researchprojects/mappingpathstofamilyjustice/about)**

This paper outlines the findings of a research project funded by the Economic and Social Research Council (ESRC) which aimed to analyse different out of court Family Dispute Resolution (FDR) methods. The research focused on three forms of FDR; mediation, solicitor negotiation and collaborative law.

The central aims of the research were:

- To analyse the awareness, usage, experiences and outcomes of each form of FDR.
- To produce a map of FDR pathways and to identify which pathway is most appropriate for which case type.
- To identify the norms held within the different processes.
- To identify policy implications and best practice.

The research used a mixed method approach that was integrated into three different phases.

- Phase 1 used nationally representative surveys to identify the public level of awareness and experiences of out of court FDR methods. There were 2,974 respondents from the Omnibus survey and 3,700 respondents from the Civil and Social Justice Panel Survey.
- Phase 2 used qualitative interviews which were carried out with 96 parties and 40 practitioners to identify their understanding and experiences of FDRs.
- Phase 3 recorded three examples of collaborative law processes and five examples each of mediation and solicitor-client interviews, and the transcripts were analysed using thematic and discourse analysis.

Key findings include:

Awareness of FDRs

- The Omnibus survey findings from phase 1 found that almost half of the respondents (45%) had not heard of any FDR method. In terms of public awareness of the individual FDR methods, 32 per cent said they were aware of solicitor negotiation, 44 per cent said they were aware of mediation and 14 per cent were aware of collaborative law.
- Women were 10 per cent more likely than men to have heard of mediation and those of a higher socio-economic group were more likely to have heard of each FDR method. Also, awareness of mediation and solicitor negotiation was highest in those between 45 and 54 years of age.
- Some parties interviewed were not aware that solicitors could be used for out of court family resolution and the majority had little knowledge or understanding of collaborative law.

Choosing FDR

- Factors such as the desire for a non-adversarial process and time were important in people's considerations when choosing mediation. Conversely, not being emotionally prepared, power dynamics between the parties and agreements not being enforceable discouraged parties from choosing mediation.
- Solicitor negotiation was often a default option because it was the only real choice parties were offered or the only viable option when their ex-partners refused alternatives.

- The parties who chose collaborative law were often well informed about this method and were positive about having a lawyer on their side to support them. However some parties rejected collaborative law due to discomfort about being in the same room as their ex-partner.

Resolution rates and party satisfaction

- Resolution rates were higher in mediation (55% children matters, 71% financial matters) than solicitor negotiations (20% children matters, 58% finance matters). This is likely to be due to differences in the parties as much as differences in the processes: the parties who went to mediation were generally more willing and able to reach an agreement than those who chose or found themselves in solicitor negotiations. The majority of unresolved cases went to court.
- In terms of satisfaction, around three-quarters of the parties who had experienced mediation were satisfied with the process while two-thirds were satisfied with the process of solicitor negotiation.

Normative expectations

- In children's matters the most common concerns held by mothers were about child welfare, whereas concerns held by fathers were often about their own rights and achieving equal time with their children.

Policy implications and recommendations

- The study highlighted that better screening of cases involving abuse is required as some were unsuitably referred to mediation.
- Currently to obtain a divorce and settle financial matters, one party is required to provide a fault-based accusation against the other. This process can create difficulties between the parties and undermine the effectiveness of the dispute resolution processes. A no-fault basis for divorce would be more consistent with non-adversarial methods of dispute resolution.
- The study suggested that the term Mediation Information and Assessment Meetings (MIAMS) could be changed to Dispute Resolution Information and Assessment Meetings (DRIAMS) to better explain all out of court FDRs. It also recommended that public funding should be provided for those below the means threshold who require solicitor negotiation, collaborative law or court intervention when mediation and other methods are unsuitable.

Bloch, A., McLeod, R. and Toombs, B. (2014) Mediation Information and Assessment Meetings (MIAMs) and mediation in private family law disputes, qualitative research findings

Funder: MoJ

Peer review status: peer reviewed

Report: MoJ and TNS BMRB

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300260/mediation-information-assessment-meetings.pdf

The Ministry of Justice commissioned a programme of research to develop the evidence base on client use and experience of Mediation Information and Assessment Meetings (MIAMs) and mediation. The programme of research was split into two phases; qualitative and quantitative research. This report focuses on the qualitative findings from 20 depth interviews with mediator practitioners, 36 depth interviews with MIAM clients and 24 depth interviews with court parties. Recruitment was achieved through heads of national mediation bodies. Quotas were used in the sampling process to ensure a range of variables of potential interest were included. These included case type, geographical location and type of representation. The aim of this phase was to understand the effect that MIAMs are having on the use of mediation and other resolution methods. Please see the section on private law ongoing research studies for a summary of progress on the Phase 2 quantitative phase of this study.

Key findings from these depth interviews included:

- Mediators felt that solicitor referrals to MIAMs had dropped since LASPO as solicitors have lost the incentive of legal aid funding. Some mediators had experienced a decline in the number of referrals of low income clients who were no longer in the legal aid threshold or unaware that they could claim legal aid.
- The majority of clients had limited knowledge about MIAMs and understanding of the difference between MIAMs and mediation.
- The research identified three mediator types in relation to their approach to the process and four client types in terms of their motivation for attending MIAMs:

Mediator type

Purists: Were reluctant to take on challenging cases unless they knew mediation was appropriate

Realists: Took on more challenging clients as they knew the clients had limited options

Optimists: Took on the widest range of clients believing all willing clients were appropriate

Client type

Engaged: Engaged with mediation and had the highest expectations

Compelled: Lacked other opportunities for resolution and were sceptical about mediation

Unclear: Needed clarifications due to limited understanding/ and prior considerations

Strategic: Attended mediation as a step to get to other resolution methods

- Mediation was difficult with ‘purist’ mediators and with ‘unclear’ clients because ‘purist’ mediators were less willing to take on clients who were not fully engaged. Further, the assessments used by mediators meant that ‘unclear’ clients could be intimidated and less willing to engage. ‘Strategic’ clients could repeatedly return to mediation as their agreements were more likely to break down as they were less engaged with the mediation process.
- Mediators and clients identified that for MIAMs to be successful parties needed to be open to mediation, be emotionally ready for resolution and understand the duration, costs, and limitations of mediation. Further, the mediator needed to explain when mediation was inappropriate, to be impartial and empathetic and signpost legal advice and other resolution options. They also needed to ensure equal dynamics within the process and to make sure the clients felt confident and comfortable.
- Reasons for people not attending MIAMs or mediation included a lack of emotional preparedness, preference for another method and cost.
- Court was mostly used because of complex problems, unsuccessful MIAMs or by ‘Strategic’ clients.

Recommendations

- Technology should be used to provide more information about mediation to the public.
- Mediators could adapt their approach to meet the needs of different client needs.
- More work is needed to better explain and differentiate the MIAMs process from mediation.

Divorce



Woodward, H. and Sefton, M. (2014) Pension on Divorce: an Empirical Study

Funder: Nuffield Foundation

Peer review status: not peer reviewed (received input from an advisory group at all key stages).

Report: Cardiff Law School

<http://orca.cf.ac.uk/56700/>

This report describes the first detailed study into pensions on divorce since pension sharing orders were introduced in England and Wales in 2000. It aims to identify how and in what circumstances pensions are included in divorce financial remedy orders. A pension sharing order is one where all or part of one spouse’s pension is transferred to the other as a separate pension fund following divorce.

The research used the following mixed methodology:

- A survey was conducted where 369 divorce files were randomly selected from three courts where a petition for divorce was issued after 1 April 2009 and where a final financial remedy order had been made on or before 31 December 2010.
- Semi-structured interviews with 32 family solicitors (hereafter ‘practitioners’).
- Meetings with seven district judges from three courts.
- Pension expert assessment of the data from 130 court files disclosing a relevant pension (any pension other than a basic state pension).

Key findings include:

- 17 per cent of court cases in which one or both parties disclosed a relevant pension included one or more pension orders. All but two of the orders were in favour of the wife.
- Pension orders were more likely to be made in cases where the parties were older, had longer marriages, had a higher socio-economic status and had a greater income, capital and pension wealth.
- Cases in which both parties were legally represented were more likely to include a pension order. Almost a quarter (23%) of cases in which both parties were represented included a pension order compared to eight per cent of cases where one or neither party was represented.
- Practitioners perceived pensions as complex but not especially contentious. Many also suggested that although clients’ awareness of taking pensions into account on divorce proceedings had improved, most still needed legal advice.
- The more experienced and confident practitioners said they frequently referred to pension experts to help manage pension cases. Most agreed that once an expert had been instructed pension issues were settled quickly. However, only ten of the court file cases had clearly involved an expert.
- About three quarters of court cases were uncontested. Cases involving relevant pensions and pension orders were more likely to involve contested or initially contested proceedings. However, this appeared to relate more to the wider, higher value, nature of the cases than to pension issues themselves.
- In around one quarter of the uncontested cases the judge raised a query before approving the order, and

about one third of those included a pension query, usually about missing information or fairness of proposals.

- Offsetting, which is where one spouse compensates the other for the loss of pension assets by taking a larger share of non-pension assets, appeared to be the main alternative to pension orders and was said to be popular with the parties themselves. However, practitioner views of the merits of offsetting varied with some finding the method problematic.
- Based on the information from the court files, the project expert assessed the quality of financial and pension disclosure as poor or unclear in the majority of cases considered.
- The expert also assessed that fewer than half of the approaches to pensions in the court files made clear economic sense and only around one third of settlements appeared fair. Pension orders were more likely to be assessed as economically rational and fairer than others.

Hitchings, E., Miles, J. and Woodward, H. (2013) Assembling the jigsaw puzzle: understanding financial settlement on divorce

Funder: Nuffield Foundation

Peer review status: draft report read by project’s expert advisory group

Report: University of Bristol www.bristol.ac.uk/law/research/researchpublications/2013/assemblingthejigsawpuzzle.pdf

Summary published in (2014) Family Law March issue

This is the first report from a mixed methods study of the settlement of financial cases on divorce. This area of law and practice has been the subject of relatively little empirical research in the last decade, in particular since the introduction of new procedures for the conduct of these cases in 2000. The study aimed to help address the evidence gap identified in the Family Justice Review, to highlight various problems currently evident in practice and to explore potential policy implications.

The report combines data from two sources, (1) a court file survey of almost 400 cases resulting in a financial order following divorce from four courts in different regions of England and (2) semi-structured interviews with 32 family justice practitioners - 22 solicitors (six of whom are also qualified as mediators) and ten mediators. All data was collected prior to the implementation of the legal aid reforms by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012.

This report focuses on the ‘how’, ‘when’ and ‘why’ of the financial settlement process, examining cases that come to court as a consent order application, those that start life contested but settle before requiring adjudication, and those that require adjudication following a final hearing:

- The vast majority of cases settle out of court or during the course of contested proceedings, but **how** is settlement achieved – what dispute resolution methods are used? In particular, how prevalent are the uses of solicitor negotiation and mediation, as evident from material on court files? What role do the family judges have in directing or shaping outcomes in cases resolved by consent?
- Where settlement comes during contested proceedings, **when** does it occur? This study provides the first systematic analysis of this since the new procedures came into operation.
- And where settlement is achieved, whether or not out of court, **why** is settlement achieved and why is it achieved at that particular stage? What factors appear to help, delay or – in the unusual adjudicated cases – entirely prevent settlement?

The report also examines the prevalence (pre-LASPO) of parties apparently acting without legal advice and assistance in consent order cases and of litigants in person in contested cases and the difficulties that they may encounter in reaching settlement at all or early in the case.

Key findings include:

- The study found that the factors which contribute to settlement (or its failure), and to early settlement, are rarely simple: several factors, many non-legal / inherent in the particular parties involved, must combine in order for settlement to be achievable. Key amongst these are the degree of both parties’ emotional readiness to settle and engagement in the settlement process, and their receipt (or not) of sensible legal advice and expectation management.
- Solicitors and mediators have complementary roles to play in helping parties to reach this point. Solicitors play a central role in achieving settlement out of court, and where proceedings have begun, the involvement of the court can be a key stimulus to settlement at all stages. Where lawyers have not been involved, settlement may be harder to reach and the burden on the court system correspondingly increased.

- The additional support needs of litigants in person attempting to navigate contested proceedings unaided (even before the recent legal aid reforms) may require adaptation of court processes and paperwork, and of judicial style in handling such cases.

Litigants in Person

Trinder, E., Hunter, R., Hitchings., E., Miles, J., Moorhead, R., Smith, L., Sefton, M. Hinchley, V., Bader, K. and Pearce, J. (2014) *Litigants in Person in Private Family Law Cases*.

Funder: MoJ

Peer review status: peer reviewed

Report: University of Exeter

<https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases>

The Ministry of Justice commissioned a study to develop the evidence base on litigants in person (LIPs), including their behavioural drivers, experiences and support needs, and their impact on the court prior to legal aid reforms in April 2013.

The research included three linked studies:

- *Intensive Cases Study* (ICS). The main study included detailed analysis of a sample of 151 cases heard in five courts between January and March 2013. For each case, the hearing was observed, the court file examined and parties and professionals associated with the observed case were interviewed.
- *Local Contextual Study* (LCS). To provide wider context, a series of focus groups in each of the five courts with local stakeholders including judges, lawyers, Cafcass and court staff were conducted. This also included interviews and observations with local LIP support organisations and observations of public areas such as court counters and waiting rooms.
- *Secondary Analysis Study* (SAS). This involved secondary analysis relating to LIPs of two large national datasets from two current studies led by members of the research team.

Key findings include:

- The main reason for self-representation in the sample was inability to afford a lawyer, with around one quarter of LIPs in person out of choice. Around half of LIPs had had some form of legal representation at some point in their case or in earlier proceedings.

- The majority of LIPs had difficulties navigating the procedural and legal issues involved in their case. Around half were observed to be personally vulnerable in some way, which added to the difficulties of self-representation. LIPs appeared no more likely than represented parties to bring unmeritorious or serial applications. LIPs may create problems for the court by refusing to engage in proceedings.
- Snapshot data from the observed hearings and associated case files suggested that semi-represented cases had longer final hearings and may require more hearings than fully represented or non-represented cases, although a larger quantitative dataset is required to test these findings conclusively.
- Some LIP hearings work better than others. Courts and LIPs manage better with relatively simple cases and at directions rather than substantive hearings. The availability of additional professional legal or judicial help was often key to success.
- The experiences of LIPs were mixed. In interviews, many LIPs reported their experience was confusing but sometimes it was better than expected. LIPs had a wide range of support needs but varied in their willingness to seek support and their effectiveness in doing so. At the time of the study, the support available was found to be limited, with tailored legal advice least available.

The report discusses the policy and practice implications of the findings and provides recommendations to address the support needs of LIPs. These recommendations relate to LIPs' information needs, emotional support, and practical support and legal knowledge.

Private Family Law Research in Progress Update

Dispute Resolution

MIAMS and Mediation in Private Family Law Disputes: Quantitative research findings

This research was commissioned by the Ministry of Justice (MoJ) as part of a two-phase project to increase understanding of client use and experience of MIAMs and mediation in private family law children and financial disputes. The research was conducted in two phases; the first involved qualitative research and was published in April 2014 (see summary of findings above). The second phase employed a quantitative approach. It included a national survey of mediation services to estimate MIAM and

mediation use in England and Wales by privately funded clients, and a case file review of 300 private law court cases to identify the proportion of publicly and privately funded clients who used MIAMs and mediation prior to applications to court to resolve private family law disputes. This research is intended to be published in early 2015.

Expert Witnesses

Experts in Private Family Law Cases

The MoJ commissioned a two-phase research study with the aims of exploring the processes for commissioning expert reports, how expert reports affect the progression and duration of family law cases and the factors that affect the quality of expert reports and their contribution in helping the court reach just and timely decisions. The first phase included focus groups, interviews with the judiciary, an online survey sent to a range of professionals and analysis of case timeliness data. Phase two involves in-depth discussion groups with a range of professionals to explore the expert witness process and identify good practice and areas for improvement. This research is intended to be published in 2015.

Justice Problem Resolution

The Varying Paths to Justice: Mapping Problem Resolution Routes for Users and Non-Users of the Civil, Administrative and Family Justice Systems

This qualitative research study, commissioned by the MoJ, will use depth interviews to understand how and why people do or do not resolve their civil, administrative and family justice problems and what factors influence their decisions. The research aims to map critical points where decisions are made about whether to go to court, use alternative resolution methods, seek informal support or do nothing. The study will explore the experiences of those who use these different pathways and how effective they are perceived to be. This research is intended to be published in mid 2015.

Separated Families

Haux, T. Parenting and contact before and after separation (Nuffield Foundation)

<http://www.nuffieldfoundation.org/parenting-and-contact-and-after-separation>

This upcoming piece of research analyses data from the Millennium Cohort Study using multivariate and survival analysis. The analysis includes almost 2,000 children who were in intact families at nine months of age but whose parents had separated between then and the time children turned 11, i.e. at the most recent sweep of the survey.

The aims of the research are to:

- Identify whether and if so, which, parental behaviour and attitudes prior to separation influence contact failure and frequency post separation.
- Identify whether parenting activities and attitudes of the parent with care are affected by separation, opposed to other factors, and if so, whether the change is permanent or not.
- Both questions will be investigated with particular reference to the age of the child at separation.

This research is expected to be published in early 2015.

Research scoping study: data we have - and data we need - to understand the lives of separating and separated families (Nuffield Foundation)

This 18-month project is funded by the Nuffield Foundation, and involves a team of survey methodologists and academics led by Bryson Purdon Social Research (BPSR). The researchers will assess the extent to which the current and planned UK research data infrastructure provides the evidence on separating and separated families required by government, researchers and third sector stakeholders. They will identify requirements for further data collection, and propose robust methods for doing so. They will be consulting with stakeholders throughout the project, due for completion at the end of 2015.

Child Development

Dezateux, C., Role of fathers and co-parents in child development: life study (Nuffield Foundation)

<http://www.nuffieldfoundation.org/role-fathers-and-co-parents-child-development-life-study>

This research uses the Life Study, a birth cohort study, to track 90,000 UK babies and their families in order to identify factors which affect the child's growth, development, health, wellbeing and social circumstances. A particular emphasis is being placed on observing how fathers and partners are being recruited and retained within other cohort studies so that a 'best practice' model for the recruitment of this demographic can be used. This research is expected to be published in September 2015.

International Private Law

Australia

Qu, L., Weston, R., Moloney, L., Kaspiew, R. and Dunstan, K. (2014) Post-separation parenting, property and relationship dynamics after five years 2014

Funder(s): First two waves were funded by Australian Government Attorney-General's Department (AGD) and Department of Families, Housing, Community Services and Indigenous Affairs (DHS) and the third wave was funded by the AGD

Peer review status: reviewed by the Australian Institute of Family Studies (AIFS) and the AGD

Report: AIFS

<http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyLawSystem/Pages/Familylawpublications.aspx>

The 2006 Australian family law reforms included opening new family relationship centres, expanding pre-existing intervention and post-separation services and establishing and expanding new alternative community-based and relationship focused pathways. These reforms are similar to the current focus of the family justice system in England and Wales, which aims to avoid court proceedings where possible and ensure the protection of children involved in family breakdown. As a result, the Australian Institute of Family Studies (AIFS) was commissioned to provide an evaluation of these reforms with the aim of understanding the experiences, behaviours and circumstances of parents and their children.

AIFS developed a nationally represented Longitudinal Study of Separated Families (LSSF) which includes parents with children under 18 who separated after the reforms and who were in the child support program in 2007. The research comprised three waves with the findings from all of the waves being presented and compared within this report:

- **Wave 1** - in (2008) 10,000 parents were interviewed
- **Wave 2** - in (2009) 70 per cent of the original parents were re-interviewed after being separated for an average of 15 months
- **Wave 3** - in (2012) 9,028 parents, who had been separated for an average of five years, were interviewed (5,755 of the original sample)

Key findings include:

Post-separation relationships

- Throughout all the waves the majority of the parents had positive inter-parental relationships and those who were less positive were more likely to be distant rather than conflictual or fearful.
- The frequency of communication between the resident parent and non-resident parent, about their child, usually fell over the course of the waves. Many still maintained contact at least once a week.

Experiences of violence or abuse

- Around one-fifth of parents had safety concerns for themselves or their children, most commonly relating to violence or abuse, anger issues or mental health issues. Sixty-nine per cent of fathers and 80 per cent of mothers had experienced some form of violence or abuse in at least one of the waves. The most common forms of emotional abuse included humiliating insults and defamatory comments. As reported in wave 1, mothers were more likely to have been physically hurt than fathers and this was most prevalent before separation. Safety concerns and experiences of abuse were notable factors affecting the quality of inter-parental relationships.

Service use

- For the minority of parents who used separation services, counselling, mediation and family dispute resolution (FDR) were most common. These were most often held in a family relationship centre which provided services such as support with parenting, advice and information or financial dispute resolution. However, family relationship centres were the least likely to be associated with a 'very helpful' rating whilst lawyers were most likely.

Arrangements

- In each wave the majority of parenting arrangements had been agreed. Over two thirds of parents had made their arrangements by wave 3; only eight per cent of parents had not made any arrangements in any of the waves. Four in ten parents who went to FDR reached an agreement through this process, with one-half of parenting agreements remaining in place throughout all three waves. The most common methods for forming parenting arrangements were either by informal discussions or perceptions that 'it just happened'. However, the longer it took for arrangements to be agreed the more likely formal services and courts were used.

- Just under half (45%) of parents who had property to divide resolved matters in less than a year after separation whilst 30 per cent took at least two years. Around four in ten parents made arrangements through discussions whilst a minority of parents used lawyers, courts or mediation.

Child support

- In four out of five cases in each wave (80%, 79% and 78% respectively), the father was required to pay child support. The majority of payments were paid in full and on time while those which were less likely or regularly paid were often cases where the father saw the child less or where there were experiences of abuse.

Child wellbeing

- The majority of parents viewed their child's wellbeing positively throughout all the waves. Child wellbeing was more likely to improve rather than deteriorate through the waves and any changes were associated with changing family dynamics, specifically, the experience of violence or abuse, having safety concerns and the quality of inter-parental relationships.

Canada

Boyd, J-P. and Bertrand, L. (2014) Self- represented litigants in family law disputes: contrasting the views of Alberta family lawyers and judges of the Alberta Court of Queens Bench

Funder: Alberta Law Foundation

Peer review status: not peer reviewed

Report: Canadian Research Institute for Law and the Family

<http://www.crilf.ca/Documents/Self-represented%20Litigants%20-%20Views%20of%20Judges%20and%20Lawyers%20-%20Jul%202014.pdf>

This Canadian report aims to compare and analyse two recent studies with similar aims; to identify the perspectives and experiences of judges and lawyers in Alberta on self-represented litigants in family law disputes.

The report focuses on two surveys:

- The 2012 web based survey on 'Experiences with Self-represented Litigants' was completed by a sample of 73 Alberta Lawyers.

- The ‘Survey on Self-represented Litigants in Family Law Matters’ sampled 32 judges from the Alberta Court of Queen’s Bench education seminar.

Key findings include:

- The majority of both lawyers and judges felt that the number of self-represented litigants (SRLs) has increased since 2009. Many lawyers and judges perceived that this increase was often due to financial reasons; the costs of lawyers were too high and parties may not be eligible for legal aid.
- Almost all lawyers and three-quarters of judges felt that SRLs ‘always’ or ‘usually’ had unrealistically high expectations.
- Many lawyers and judges also felt that SRLs ‘usually’ or ‘always’ were less likely to settle and that they achieve worse results in matters regarding child and property arrangements than those who were represented.
- Both lawyers and judges tended to think that benches treated SRLs ‘fairly’ or ‘very fairly’.

Lawyers

- Almost half (48%) of family law cases, on average in the past year, involved at least one self-represented party for part of the litigation process. Many lawyers felt that the court gives SRLs more leniency than those who are represented.
- Many also felt that the reasons for self-representing were different for females and males; females had more financial concerns while males were more likely to believe that they did not need a lawyer.

Judges

- In the last year around one third (35%) of judges’ cases contained at least one SRL for the entire litigation process.

Recommendations

- Many of those surveyed identified that improvements to programs that assist SRLs in resolving disputes were needed.
- Legal aid should be more widely available.
- Further research into why people self-represent needs to be conducted.

News Update Useful Resources

Ward, H., Brown, R. and Hyde-Dryden, G. (2014)
Assessing Parental Capacity to Change when Children are on the Edge of Care: an Overview of Current Research Evidence

<https://www.gov.uk/government/publications/children-on-the-edge-of-care-parents-ability-to-change>

This report was commissioned by the Department for Education (DfE) and has been constructed as a resource to support social workers, children’s guardians and judges in conducting focused assessments of parenting capability and the capacity of parents to change negative behaviours which are impacting on their children’s welfare. The report draws together peer reviewed research from various disciplines and has been reviewed by a scientific advisory group. This group was used to review the findings of the literature search, the content of the report and to advise on any other suitable research to include. The database search used terms including: parent, intervention, treatment, substance, domestic abuse, alcohol and mental health. The search was limited to papers published in English within the last ten years, although earlier key papers were included in the review where they were extensively referenced by published, peer reviewed articles, or recommended by scientific advisers. The initial search returned 16,364 results. The relevance of the results was then considered against the aims of the review. Following this, 343 papers were identified as relevant and were examined in detail.

Key messages include:

- Factors that can undermine parenting capability and increase the likelihood of child abuse include substance misuse, mental health problems and domestic violence, particularly when they appear in combination. External stressors such as unemployment or poverty can also make parenting more challenging and increase the likelihood that difficulties will arise. Abuse and neglect have been found to have long term effects on the child physically, psychologically and developmentally.
- Some research has shown that practitioners’ judgements concerning the risks of significant harm are insufficiently reliable and should be supported, but not replaced, by evidence-based tools and standardised measures to inform structured

professional decision-making. Assessment of parental capacity to change should be undertaken as a dynamic process in which strengths and weaknesses are identified, targets set and agreed, effective interventions identified and implemented and progress monitored over a specific time period.

- Motivational Interviewing (MI) and Family Group Decision Making (FGDM) were identified as two possible methods that could help to reduce parental resistance or ambivalence concerning the social worker's involvement and therefore increase their engagement with the process.
- It is recommended that tensions between professionals need to be resolved to allow better relationships and communication between agencies involved in these cases. The report also suggests that there needs to be more proactive case management to help prevent cases of neglect and abuse. The key message of the review is that change is both important and necessary when children are suffering abuse and neglect. Change takes time and relapse is common, so that sufficient change may not always be achievable within a child's timeframe. Although change can be supported and promoted through effective interagency interventions it is essential that parents are proactively engaged.

Learning Materials to Support Practice in Fostering and Adoption

The websites can be found here:

<http://fosteringandadoption.rip.org.uk>

<http://coppguidance.rip.org.uk/>

A key government priority is to ensure the safety and wellbeing of children who have experienced family breakdown. Cross-government policy discussions identified that more training resources should be available to social workers, supervising social workers and Independent Reviewing Officers working in fostering and adoption to ensure that they have access to current information to inform their practice.

Subsequently, the Department for Education commissioned Research in Practice to produce a learning programme that will enable social workers to build their skills and knowledge and support continuous professional development. The programme offers a summary of key messages and research, case studies and exercises on

16 key topics, including attachment, child development, monitoring and enabling parent capacity, placement stability and permanence, managing contact, and working with birth parents.

Research in Practice have also developed online materials to support professionals in understanding the statutory guidance 'court orders and pre-proceedings' (April 2014) and implement the changes in practice brought on by the Family Justice Review and the provisions of the Children and Families Act 2014. The materials are aimed at professionals who are working with children and families during pre-proceedings, through to making an application to court when care proceedings are needed.

Tavistock Centre for Couples Relationships (TCCR)

The website can be found here:

<http://www.tccr.org.uk>

The TCCR are funded by Department for Work and Pensions (DWP), and are working in partnership with Cafcass to deliver a pilot programme for parents in dispute. The intervention offers free service to separated and divorced parents who are currently or have previously been involved in the court process and whose relationship difficulties are affecting their children's wellbeing. The evidence based programme starts with an assessment session trialling the use of the Australian Detection of Overall Risk (DOORs) risk screening tool and is followed by six to twelve sessions for parents, together or separately, to help them put their children's needs first. TCCR also offers training for professionals and a range of clinical services to help all couples from UK communities.



Events and Conferences

Socio-Legal Studies Association (SLSA) 2014 Conference

<http://www.slsa.ac.uk/images/slsadownloads/events/SLSA2014RGU.pdf>

Over 300 delegates attended the 2014 SLSA annual conference in Aberdeen. During the three-day event the Family and Children Law and Policy stream presented 24 papers. Some of these papers related to child matters and focused on topics such as shared parenting orders, mediation in child protection cases and maintenance requirements for non-resident fathers. Other papers relating to practitioners involved in family law cases included judicial allocation decision making and the changing roles of solicitors. Further topics presented included financial settlements after divorce, domestic violence, and international papers on same sex marriage.

The next SLSA conference will be held at the University of Warwick between the 31 March- 2 April 2015.

The Faculty of Law, University College of London International Conference on Access to Justice and Legal Services, 2014

The latest UCL international conference was held over two days in June 2014. The conference attracted academics, lawyers and advice providers and identified key areas of debate such as changes to legal aid and advice. Attendees presented papers on topics such as international perspectives on legal needs, litigants in person, legal aid and alternative dispute resolution.

Statistics Publications

Department for Work and Pensions, Social Justice Outcomes Framework: Family Stability Indicator, 2014 Update

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288807/sj-indicator-2014.pdf

The research uses a quantitative approach to identify trends relating to family stability. Family stability was measured by identifying the proportion and age of children not living with both their birth parents; comparing the percentages of children who are not living with both parents from low income households and middle to higher income households and identifying the happiness levels of parental relationships where children are living with both parents. The report uses the 'Social Justice: Transforming Lives - One Year On' (2013) report findings as a baseline to compare the current 2011-12 findings to the findings from 2010-11.

Cafcass, Children and Family Court Advisory and Support Service, Annual Report and Accounts 2013-14

<http://www.cafcass.gov.uk/media/210273/cafcass-annual-report-2013-14.pdf>

This report outlines statistics on both public law and private family law. The public law statistics include the number of new cases, case types, demographics, the length and time public law cases take and changes in the volume of cases from the previous year. Similarly, the private law section includes statistics on the volume of new cases, any change since previous years and possible reasons for this, duration of cases and the numbers of litigants in person.

Ministry of Justice (MoJ), Court Statistics Quarterly, 2014

<https://www.gov.uk/government/statistics/court-statistics-quarterly-april-to-june-2014>

This edition of the Court Statistics Quarterly (CSQ) provides data for April to June 2014, and compares this to the equivalent quarter of April to June 2013. The report outlines the activity in courts throughout England and Wales, and includes a section on Family Courts.

- The bulletin provides statistics on both public and private law cases covering areas such as care and supervision cases, divorce, adoption and domestic violence.

- The statistics also identify the volume of new cases and duration of both public and private law cases during April to June 2014.
- 2012-13 data on mediation, provided by the Legal Aid Agency can be found within Annex C.

The July-September 2014 edition of CSQ no longer contains a section on Family Courts. Instead this has been replaced by a new family court statistics publication, which was released on 18 December 2014.

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