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Impact of the Family Justice Reforms: phase 3 - exploring variation across 21 local authorities

Research report

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Research in practice



Social Science in Government

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Disclaimer

The views expressed are those of the authors and are not necessarily shared by the Department for Education or the participating organisations.

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Glossary

Case Manager (also known as Case Progression Manager): A senior mentoring and quality assurance post introduced in the Tri-borough pre-proceedings pilot, recommended by the President of the Family Division and adopted widely across the country. The role includes rigorously exploring case work and Quality Assuring social worker statements for court; supporting legal planning meetings; modelling and coaching to facilitate quality court work; developing inter-professional relationships; developing case tracking mechanisms and using these to analyse causes of delay. See Julie Penny explain the role [here](#).

Children and Families Act (2014): Came into force in April 2014, introducing wide-ranging reforms to the Family Justice System. A revised Public Law Outline (PLO) introduced a 26-week timeframe for completing care proceedings. The intention was to support more timely decision-making for children and young people in a context in which average case duration had been running at 56 weeks, with many taking longer (Norgrove, 2011). The revised PLO was piloted in phases between July and October 2013.

Family Group Conference: A family-led process to plan and make decisions for a child who is at risk. Families, including extended family members, are assisted by an independent family group conference coordinator. See Family Rights Group explanation of FGC [here](#).

Family Justice Board (FJB): established in March 2012 as part of the Government response to the Family Justice Review and is accountable to the Secretaries of State for Justice and Education. The Board's overall aim is to drive significant improvements in the performance of the family justice system where performance is defined in terms of how effective (and efficient) the system is in supporting the delivery of the best possible outcomes. Local Family Justice Boards (see below) report to the Family Justice Board. Further information can be found [here](#).

Family Justice Review (2011): Led by David Norgrove, this major review made a range of recommendations aimed at tackling delays and generally improving the family justice system. The final report can be found [here](#). The government's response to the review can be found [here](#).

Legal Planning Meeting: Held by a local authority to obtain legal advice about a case. The purpose of this meeting is to obtain advice as to whether 'threshold criteria' for a care order under section 31 Children Act 1989 have been met. The meeting is attended by a child's social worker, social work managers and a local authority lawyer. At the meeting, a decision is made on whether the threshold criteria have been met in principle and whether it is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings, or whether proceedings should be initiated immediately. See various learning resources re: legal planning meetings [here](#).

Letter Before Proceedings: Sent to the parent(s) and any other party who has parental responsibility when a local authority is likely to apply to court for a care order. The letter sets out the concerns about the child's safety, what the family need to do to avoid the child being removed and what support the local authority will provide. The letter invites parents to a pre-proceedings meeting and gives information about legal advice and representation. Further information can be found here: [Court Orders and Pre-proceedings](#) and here: www.frg.org.uk/need-help-or-advice

The letter should:

- include a summary of the local authority's concerns about the actual or likely harm to the child and the evidence on which these concerns are based
- be expressed in plain language
- invite the parent(s) to a pre-proceedings meeting
- advise them to take the letter to a solicitor for advice.

The pre-proceedings meeting is a good opportunity for the family to be in a room with the social worker, discuss concerns and plans for the child, and have the benefit of independent legal advice. See learning resources [here](#).

Local Family Justice Board (LFJB): established in response to the Family Justice Review and intended to drive significant improvements in performance at the local level. There are 44 LFJBs across England and Wales which report through the Performance Improvement Sub-Group (PISG) to the Family Justice Board.

The Revised Public Law Outline (PLO): Piloted in 2013 and made law in the Children and Families Act in April 2014, the PLO is the judicial protocol regarding the process for care proceedings which all professionals in the system are required to follow.

Re B [2013]: An appeal in the Supreme Court against a care order, where the plan presented to court was for adoption. The court confirmed the principle that the state cannot simply remove children to a 'better' parent. The Court explained its decision to uphold the care order based on risk of future emotional harm and in terms of adoption being 'the last resort' (para. 74) 'where nothing else will do' (para. 198).

Re B-S [2013]: An appeal against a High Court order refusing leave to oppose an adoption order. Permission to appeal was granted to clarify whether the test for such a decision had changed as a result of *Re B*. The mother's application was dismissed and the High Court judge's ruling was upheld. The Court cites *Re B* in a discussion of 'the recurrent inadequacy of the analysis and reasoning put forward in support of the case for adoption' (para. 30) and lower courts' acceptance of this.

Re N [2015]: Court of Appeal judgment Court of Appeal concerning adoption cases with a foreign element and future good practice in relation to section 20 Children Act 1989. The appeal was against a decision at the final hearing of care and placement

proceedings relating to two Hungarian children to transfer the proceedings to Hungary. The President of the Family Court dismissed the appeal. The Court of appeal concluded that the English Court has ' jurisdiction (a) to make an adoption order in relation to a child who is a foreign national, and (b) to dispense with the consent of a parent who is a foreign national. The Court also expressed concern regarding the 'misuse and abuse' of section 20 agreements by local authorities, which will 'no longer be tolerated' (see below).¹

Re R [2014]: Court of Appeal judgment in which the President of the Family Court dismissed concerns that *Re B-S* had lowered the threshold for approval of alternative kinship placements.

Section 20 agreement: A section 20 arrangement allows a child to be accommodated by the local authority with the agreement of those with parental responsibility. There have been some recent cases in which local authorities have been criticised for the following:

- Accommodating children under s.20 agreements for unacceptably long periods of time before issuing proceedings;
- Obtaining consent to s.20 accommodation from parents lacking capacity to do so;
- Placing parents under undue pressure to consent to s.20 accommodation;
- Failing to explain properly to parents the meaning of s.20 and their rights under this provision;
- Misunderstanding what s.20 requires by way of parental consent;
- Exceeding the limitations of their powers under s.20 (see [here](#) for more information).

The Association of Directors of Children's Services (ADCS) and the Child and Family Court and Advisory Service (Cafcass) worked in partnership to produce practice guidance for local authorities on the use of section 20 accommodation, which can be found [here](#).

Further information on the terminology used in this report can be found here:

[Statutory Guidance on Court Orders and Pre-proceedings](#)

Research in Practice learning resources on Court Orders and Pre-proceedings:

[Research in Practice: Court Orders and Pre-proceedings:](#)

¹ <http://www.familylawweek.co.uk/site.aspx?i=ed150974>

Executive summary

Background

The Children and Families Act came into force in April 2014, introducing wide-ranging reforms to the Family Justice System. At the heart of public family law reform is the revised Public Law Outline (PLO), which introduced a 26 week timeframe for completing care proceedings. Since 2011, when the Family Justice Review was published, the average duration for the disposal of a care application has reduced from 56 weeks to 27.5 weeks (October-December 2015 quarterly statistics) (Ministry of Justice, 2015).² Previous phases of fieldwork for DfE investigating the impact of family justice reform (Research in Practice, 2015a and b) found that professionals broadly welcomed the changes, while noting a range of challenges in implementing the revised PLO and in the impact of significant judgments (e.g. *Re B-S*).

The current study builds on these previous research projects. The aim of the current study was to explore the range of factors which may contribute to variation in the average care case duration of individual local authorities.

Methodology

The study comprised 60 interviews with professionals (Assistant Directors, Heads of Service, lawyers and senior managers) in 21 local authorities (LAs) across 15 Local Family Justice Boards (LFJB). Local authorities were selected from each region of England to provide a sample made up of authorities with average care case durations above and below 26 weeks.

Findings

Local authority practice

- There is strong support for the system-wide focus on improved timeliness of decision-making that informed the revised PLO and the 26 week timeframe for completing care proceedings.

² The latest MoJ Statistics bulletin gives the average time for the disposal of a care or supervision application made in October to December 2015 as 28 weeks on p. 4 and 27.5 weeks on p. 9. We quote the lower figure here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512551/family-court-statistics-quarterly-q4-2015.pdf

- Although some participating authorities were not meeting the 26 week timeframe, there had been a reduction in the timescales for completing proceedings in all of the local authorities that participated in this study.
- One of the most striking features of this study was the degree of similarity between LAs in terms of their approaches to practice, and also the similarity in the challenges they faced in implementing the revised PLO. These similarities far outweighed any variations in practice between LAs.
- The majority of these local authorities had made substantial changes to pre-proceedings practice, which were markedly more embedded in some local authorities than others. There was an emphasis in pre-proceedings on providing support for parents to make the changes required to ensure their children are safe, as well as on gathering evidence in the event that proceedings are instigated. It was reported that families benefit from a clearer understanding of the changes required, and from earlier access to legal advice. Effective pre-proceedings practice can support changes in parents that enable children to remain at home and lead to diversion from care proceedings; contribute to improved care planning and to timely care proceedings.
- Participants in this study noted practice improvement in identifying extended family members as potential carers during pre-proceedings. All 21 local authorities were using either Family Group Conference (FGC), family meetings or a combination of both as a means to build family support and at the same time identify potential alternative carers. These processes were embedded in wider social work practice activities to varying degrees. Where the processes were well embedded, FGC or family meetings were generally held at an early stage (sometimes before pre-proceedings) for the majority of families.
- Participants also noted some challenges of implementing these changes in practice. One issue highlighted, for some cases, was parents' opportunity to demonstrate sustained capacity to change within the timeframe.
- Improvements to the quality of the assessments and reports local authorities produce for court had been achieved through training and development and the implementation of clear quality assurance processes. All these local authorities were using the Social Work Evidence Template (or a locally adapted version of this) which had helped them produce succinct and analytical reports for court.
- Many of the local authorities had introduced panels (comprising senior managers from children's services and legal services) timetabled at regular intervals to support robust and consistent decision-making. Examples included legal gateway panels, edge of care panels and permanency panels. Social workers present their evidence and recommendations at these panels providing an added level of scrutiny before a decision to issue proceedings is made.

- All these local authorities had processes in place to track/monitor cases through pre-proceedings and beyond, although there was variation as to how embedded these processes were, especially at the pre-proceedings stage. Very few of these local authorities had a case manager in post; in some cases a post-holder had left and the post was not replaced.
- There had been substantial changes to team structures in many of these local authorities (some as a result of the reforms, others through wider improvement activity and/or in the face of reduced resources). Alongside pressures resulting from this, benefits included that teams had become more integrated, with more co-working between teams and improved transition of cases between teams.
- Workforce stability was identified as a key factor in building and maintaining the quality of social work assessments and reports; for some of these authorities a high proportion of agency social workers created challenges here. The use of the Assisted and Supported Year in Employment (ASYE) programme was viewed as helpful, as were newer routes into social work such as Step Up to Social Work and Frontline by some, in supporting efforts to improve the quality of social work and potentially in supporting retention thereby reducing reliance on agency staff. It was acknowledged that it will take time for the benefits of these programmes to be fully realised.

Practice in the court arena

- The majority of these authorities noted good working relationships with local judiciary and Cafcass guardians, often facilitated through Local Family Justice Board (LFJB) meetings, and in some cases through forums for informal discussions with the judiciary. Local judicial leadership was viewed as key to LAs being able to meet the 26 week timeframe.
- The professional expertise of social workers is increasingly accepted in the court arena, with fewer experts being appointed by the court than in the period prior to reform. However, there were concerns that some judges did not have confidence in the work that LAs are doing at the pre-proceedings stage (or earlier) and were ordering repeat assessments. Concerns were also raised about judges at times going beyond their remit with regard to specifying the details of care plans, especially when adoption is recommended by the LA.
- Unintended consequences of the performance management strategies employed by courts were highlighted. Some participants noted the unwillingness of courts to allow purposeful delay, contributing to permanence decisions that were followed by reissuing of proceedings within a relatively short timeframe. Strategies to reduce care proceedings duration included listing cases at well below 26 weeks (in one court 18 weeks with provision to go to 22 weeks if necessary). This was

reported to be creating challenges for social workers and for families' ability to demonstrate the meaningful and sustained change required.

- Some local authorities noted an increase in the number of care orders at home being made. This was perceived to be an adaptation in response to the risk arising from the reduced time available to test whether positive changes in parenting capacity could be sustained over a longer period.
- Pressure from limited court availability to list cases within 26 weeks was discussed by many of these local authorities. This was seen to be a consequence of various factors including the increase in care applications being made and a sufficiency of judges to hear cases. In some court areas alternative judicial staff were being mobilised to ease the pressure which raised concerns about the maintenance of judicial continuity, a core aim of the reform agenda.

Accounting for local authority variation

All the local authorities in this study had seen substantial improvements in the timeliness of completing care proceedings, which is to be highly commended. They had worked extremely hard to do this, and were still in the process of making changes to practice to make further improvements. The following factors were identified as being crucial to meeting the 26 week timeframe and complying with the revised PLO:

- Clear, well-structured pre-proceedings practice with mechanisms for quality assurance of assessments and reports and for monitoring the progress of cases.
- Early identification of support for parents and/or identification of alternative family carers, either through FGC or family meetings that are well embedded within wider social work practice with the families concerned.
- Undertaking high quality and timely assessment of family members as potential carers.
- Strong leadership within the local authority and the local family court facilitated by good lines of communication and positive working relationships at a strategic level.
- A stable, committed, well-supported and well-trained workforce.
- Local authorities, courts, Cafcass, private practice solicitors and other agencies sharing responsibility, through collaborative working, towards meeting the 26 week timeframe for completing care proceedings.

1. Introduction

1.1. Background

The Children and Families Act (2014) brought into law a range of reforms to the family justice system. At the heart of these with regard to Public Law was the introduction of the 26 week time limit for completing care proceedings.

When the Family Justice Review was launched in 2011, the average duration for the disposal of a care application was 56 weeks (Norgrove, 2011). The latest figures show an average of 27.5 weeks, with the trend over the last full reported year stable at this level. Sixty per cent of care proceedings are currently disposed of within 26 weeks (Ministry of Justice, 2015).³ This significant acceleration in the timeliness of decision-making has been welcomed by the informants in this and the other studies for the Department for Education (DfE) in 2015 (Research in Practice 2015a and b) and is the result of concerted activity by all key stakeholder organisations in the system. Such a significant programme of change brings its own challenges, emerging evidence on some of which are discussed below.

These reductions in care proceedings duration have taken place in the context of increasing demand on the public family law system:

- The number of care applications continues to rise. Totals for April 2015 - March 2016 were fourteen per cent higher when compared to the same period 2014 -15. Cafcass received a total of 12,741 application between April 2015 and March 2016 compared to 11,159 in the previous financial year.⁴
- An increase in the total number of looked-after children in England, up one per cent to 69,540 in 2014 -15 and now higher than at any point since 1985.

This period of family justice reform implementation has also seen changing uses of some types of order:

- A rise in the use of special guardianship orders (SGOs) from five per cent of all children ceasing to be looked after in 2010, to 11 per cent in 2014 - 2015.
- Since September 2013, the number of decisions for adoption has almost halved.⁵ From 2012 adoption levels were rising and reached record levels in 2013 -14. From September 2013 this trend reversed, a change attributed by many to the impact of

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512551/family-court-statistics-quarterly-q4-2015.pdf

⁴ <https://www.cafcass.gov.uk/leaflets-resources/organisational-material/care-and-private-law-demand-statistics/care-demand-statistics.aspx>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512826/Adoption_Policy_Paper_30_March_2016.pdf

Re B-S and other court judgements.⁶ The number of children granted a placement order fell 24 per cent in the year to March 2015 in England and has halved since 2013.⁷

- In an appeal judgment published in November 2015 (*Re N*) the President of the Family Division voiced judicial concern about voluntary care agreements being used as a long “prelude to care proceedings” and set out guidance with regard to Section 20 arrangements. This has been followed up with practice guidance for local authorities from the ADCS and Cafcass.⁸

The present study builds upon learning from three earlier projects by Research in Practice for DfE (Research in Practice 2015a, b and c):

2015a: A 'deep-dive' study with six Local Authorities (LAs) and local Cafcass managers (undertaken between January and February 2015) explored the impact of family justice reforms and subsequent court judgments on local authority practice. The study found that professionals broadly welcomed reform while noting a range of challenges in implementing the revised PLO and in developing practice in response to *Re B-S*.

Robust and timely pre-proceedings practice was viewed as key to meeting the 26 week timescale, as was improving the quality of evidence produced for the court. Challenges identified in relation to pre-proceedings work included: the potential for poorly structured pre-proceedings practice to lead to delay in issuing proceedings; disjointed budgeting arrangements limiting the resources to carry out timely specialist assessments; ineffectively mobilised Family Group Conferencing and capacity issues for social workers.

2015b and c: Phase two of the study focused on the use of Special Guardianship Orders (SGOs). Participants identified difficulties in the timely identification and appropriate

⁶ Supreme Court and Court of Appeal judgments (*Re B* and *Re B-S*) during the piloting of the revised Public Law Outline (PLO) emphasised the significance of an order for adoption as ‘a very extreme thing, a last resort’ to be made ‘only in exceptional circumstances and where motivated by overriding requirements pertaining to the child’s welfare, in short, where nothing else will do’ (*Re B* para. 74 and 215). *Re B-S* cited *Re B* and emphasised the high standard of evidence and reasoning required by the court in non-consensual adoption cases and the need to present an analysis of the arguments for and against all realistic options for the child.

Following concerns that local authorities had misinterpreted the judgements in *Re B* and *Re B-S*, the National Adoption Leadership Board published a 'Myth-Buster' guide (National Adoption Leadership Board, 2014). The interpretation of *Re B-S* was also addressed by the President of the Family Division in a judgment handed down in December 2014 (*Re R*) which re-emphasised that there was no change in the law and that local authorities should not shy away from seeking care orders with a plan for adoption when it is in the best interests of the child.

"The fact is that there are occasions when nothing but adoption will do, and it is essential in such cases that a child's welfare should not be compromised by keeping them within their family at all costs" (*Re R*, para.44).

⁷ <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2014-to-2015>

⁸ <http://adcs.org.uk/care/article/section-20-practice-guidance>

assessment of potential special guardians; concerns regarding support provided to special guardians; SGOs being used for younger children than has previously been the case and in cases where there is no existing bond or relationship between the child and carer. These issues were explored in depth in a qualitative case file analysis of 51 SGO cases in five local authorities (2015c).

1.2 Study aims and design

The aim of the current study was to build upon the projects above (and upon other emerging evidence) to develop a deeper understanding of the impact of the family justice reforms. In particular the aim was to increase understanding of the factors underpinning the variation in LA care case duration evidence across the range of local authorities (LAs) and Local Family Justice Boards (LFJBs). While case duration averages out at 28 weeks nationally, individual local authorities' average case duration ranges from 18 weeks to 46 weeks.⁹ The commissioners were keen that any future activity to develop the family justice system should be informed by analysis of where and why reform has been more or less effective.

The project was conceived as one half of a 'stocktake' of public family law to be jointly undertaken by DfE and the Ministry of Justice (MoJ) to build understanding of the reforms and what more might need to be done, as well as to consider where efficiencies could be made in the system. The commissioning of the MoJ study is anticipated in 2016 and will be a vital means to triangulate the information in this report with the perspectives of professionals other than those in local authorities that were the focus of this study.

The research team undertook interviews with 21 local authorities across 15 LFJBs. The initial proposal was to engage up to 24 local authorities in nine LFJB areas (i.e. two to three LAs in each of the nine LFJBs). Drawing on data provided to the research team by the Ministry of Justice we developed a target list of 24 LAs with particularly high or low average case duration.¹⁰ Of the original 24 LAs contacted, 18 agreed to participate in the study. A reserve list was then drawn up in consultation with DfE and a further three LAs from this list agreed to participate.

Eleven of the 21 LAs were completing care proceedings within an average of 26 weeks (ranging from an average of 17.9 weeks to 26.1 weeks) while ten of the LAs were taking longer than an average of 26 weeks to complete proceedings (ranging from an average of 27.2 weeks to 37.9 weeks). An overview of the profile of each LA that participated in the study is provided in Appendix one.

⁹ Data supplied to the research team by the Ministry of Justice (November 2015).

¹⁰ It should be noted that three LAs disputed a difference between the performance data provided by the Ministry of Justice and their own data for the same period. We passed these concerns to the MoJ for their consideration.

LAs were requested to provide contact details for three professionals from the following groups to participate in face-to-face or telephone interviews:

- Assistant Director Children's Services/ Head of Service/Principal Social Worker
- Case manager (where there was one) or manager responsible for mentoring, quality assurance and other support to social workers writing court reports and appearing in court.
- LA lawyer leading on family court work.

A total of 60 individual or paired interviews were conducted, comprising:

- Six Assistants Directors (AD)
- 16 Heads of Service (HoS)
- 20 Lawyers
- 23 Managers

Interviews were conducted between December 2015 and February 2016. Participants were provided with the interview schedule prior to the interview, together with data (provided by MoJ) specific to the LA on average duration of care proceedings between April and September 2015. The interview schedule comprised questions to explore professionals' views and experiences of implementing the revised PLO and any changes in practice following the reforms. The questions also aimed to explore the challenges and enablers to implementing the revised PLO. The interview schedule comprised open-ended questions to probe the following areas:

- Practice pre-proceedings and during proceedings
- Connected person assessments
- Factors associated with LA specific performance data on average care case duration
- Relationships and practices within the court arena
- National trends on the use of SGOs, placement orders and care orders
- Suggestions for improving the family justice system for public law proceedings.

All interviews were recorded (with participants' permission) for later transcription. A combination of verbatim and summary transcriptions were made for each interview. A template based on the interview questions was devised for recording the data from the transcriptions. Thematic templates were also devised to facilitate in-depth analysis of the data. Data were analysed using the Framework approach developed by the National

Centre for Social Research.¹¹ This approach enabled qualitative comparisons to be made between practice in LAs completing proceedings within an average of 26 weeks and those not completing within this timeframe. Where comparisons are made between LAs completing proceedings within an average of 26 weeks and those not completing within this timeframe, it should be noted that these are based on the qualitative themes drawn out in the interviews.

Thematic analysis focuses on each LA rather than on individual professionals' responses. Where there are differences in professional opinion within a single LA this is noted in the findings.

The names and locations of the participating LAs are not disclosed. Profile of the LAs, and the codes attributed to individual LAs are provided in Appendix one. These codes are used throughout the report to contextualise the findings.

1.3 Limitations of the study

There are a number of limitations to the present study which must be borne in mind when reading this report.

First and foremost, this study presents the views and experiences of individual social work and legal professionals in the 21 LAs and cannot be considered representative. Their perspectives do provide valuable qualitative information informed by local experience from a sample group of LAs from different regions, with a wide range of average case durations and with both high and low case-loads.

The scope of the study did not allow the interview material to be augmented through other methods (e.g. ethnographic observation of practice or longitudinal tracking of pre-proceedings or family court cases).

Capturing the views and experiences of the children, young people and families involved was beyond the scope of the project, as was engaging with other key stakeholders (LFJBs, local Cafcass, judiciary etc).

In order to provide some opportunity for comment on interview material re. Inter-professional working and relationships we tested out some of the thematic analyses with two senior managers in Cafcass. Their views provide a valuable perspective on the messages from professionals with the LAs.

Finally, the study was conducted within a short timescale (between November 2015 and March 2016). This did not compromise the robustness and depth of the analysis, but does limit the level of detail that the report provides.

¹¹ https://mthoyibi.files.wordpress.com/2011/10/qualitative-research-practice_a-guide-for-social-science-students-and-researchers_jane-ritchie-and-jane-lewis-eds_20031.pdf

Despite these limitations, the findings provide a rich picture of the impact of the reforms and the variations in practice at these LAs with regard to the revised PLO. While it is beyond the remit of this study to make recommendations, we have drawn out emerging considerations arising from the data.

2. Changes in local authority practice

2.1 Overall views of the revised PLO

The focus on timely decision-making and reductions in delay for children being permanently placed were welcomed by all participants in the study.¹² Although not all the participating LAs were completing care proceedings within 26 weeks, all had seen a reduction in care proceedings duration since the reforms.

For me the real benefits are reducing delay in the court process. Previously we experienced child protection cases going on for over two years. That's a long time for a child. I think the reduction in timescales has had a positive impact for children (LA2, AD).

Alongside publication of 'Working together to safeguard children'¹³ the reforms and the revised PLO have provided social workers with a clear framework for working with and supporting families, whilst at the same time gathering evidence in the event that care proceedings are issued. This, it was felt, supports social workers to be clear with parents about their concerns, the changes they have identified as required in order to safeguard the child at home and the timescales for achieving those changes. Participants' observations on the challenges that these timescales present in terms of the timeframe for parents to demonstrate sustained capacity for change are discussed below.

It's two-fold - it gives social workers a very clear framework in which to work and get assessments done and understand what needs to happen within what timescales. Importantly for families it means that we, the LA and social workers, have to be really clear about what the concerns are and how they have escalated, then it allows the family to understand [the level of concern]. It allows them to have access to legal representation, it allows them to take in the consequences if things are not addressed. This can be the point where they start to engage with social workers so it can have positive outcomes with families, it's not necessarily a big stick (LA9, HoS).

2.2 Changes to pre-proceedings practice

'Front-loading' assessments

One factor contributing to extended case duration prior to reform was that it was not unusual for cases to come to court with incomplete, poorly structured assessment,

¹² These findings are consistent with our previous deep-dive study (Research in Practice, 2015a).

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf

analysis and recommendations, leading to delay for the court through having to order expert assessments and other evidence gathering activity when proceedings were already underway (Norgrove 2011). 'Front-loading' assessment, preparation and analysis practice was an imperative of the PLO (2008) and underlined in the pre-proceedings checklist included in the revised PLO.¹⁴ Norgrove made connections between his work and that of the Munro review of child protection social work practice, underlining that his proposals were 'designed to work in tandem' with the social work reform informed by Munro and the work of the Social Work Reform Board (Norgrove 2011: 6).¹⁵

There was a consensus among respondents in this and our previous studies for DfE that improved local authority practice at the pre-proceedings stage is the factor that has the greatest impact in enabling them to meet the requirements of the revised PLO. Our previous study (2015a) found that practitioners were increasingly proactive in undertaking assessments prior to issuing proceedings and that these were more robust and analytical than pre-reform (in the view of both practitioners and Cafcass managers). The evidence from the current study shows that practitioners are continuing to front-load assessments and complete them at an earlier stage than before the reforms. This was true for parenting assessments¹⁶ as well as for connected person assessments.¹⁷

The front-loading of assessments was not just a way of gathering evidence in the event that care proceedings are issued, but also a means of ensuring that families have been given adequate support (e.g. to help them address drug and/or alcohol abuse, improve their parenting skills, access mental health services) to enable them to make the changes required to keep their child/children safe. One LA discussed how the front-loading of assessments has been helped by having in-house educational and clinical psychologists available to complete specialist assessments. Where assessments have been completed and the care plan agreed, there can be substantial reductions in the time for care proceedings to conclude, as illustrated below:

The focus is on 'getting the ducks in a row', knowing what the issues are, what we should have investigated, exploring the help and support the family need and testing that out in a fair and proportionate way (LA15, Manager).

¹⁴ The pre-pre-proceedings checklist is a list of documents that should be attached to the application form that is filed with the court:

https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a

¹⁵ Professor Eileen Munro's review set out proposals for wide ranging social work reform to enable professionals to make the best judgements about how to help children and young people suffering from abuse or neglect <https://www.gov.uk/government/collections/munro-review>

¹⁶ A parenting assessment assesses the parents' capacity to provide 'good enough' parenting when concerns about a child's welfare are raised: <https://www.nspcc.org.uk/globalassets/documents/information-service/factsheet-assessing-parenting-capacity.pdf?>

¹⁷ Before local authorities can consider a placement with a connected person (a member of the child's extended family or friends), the child's social worker must assess their suitability to care for the child and the level of support likely to be required: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441643/Children_Act_Guidance_2015.pdf

We are frequently going into court with a final plan if all the assessments have been done... We have been in and concluded within eight to ten weeks when there are no gaps in evidence and proceed to an early IRH [Issues Resolution Hearing], so this is a big change (LA6, Lawyer).

Residential assessments¹⁸

The Family Justice Review (FJR) expressed concern 'about the value of residential assessments of parenting capacity, particularly when set against their cost and lack of clear evidence of their benefits' (Norgrove, 2015: 18). Recent research found wide variation in their use (with some LAs not using residential parenting assessments at all). The research noted potential benefits, such as the provision of relative safety without separating children from parents while gathering evidence of parents' capacity to provide 'good enough' parenting, but underlined that local authorities and courts to be discerning in their use of residential parenting assessments' (Munro et al, 2014: 14).

Although participants were not specifically asked about residential assessments, some LAs discussed the change of practice away from residential-based parenting assessments and towards community-based assessments wherever possible, in part because of the costs, but more importantly to provide a clearer picture of the parent's capacity to care for the child in the community.

I don't like residential assessments, it's an unnatural clinical position for the family and it doesn't really test out their parenting in a natural environment. We have developed a better approach to community-based assessments, you get a better picture of families. We have introduced more support workers to do that (LA7, HoS).

Some parents are in [residential] placement up to the final hearing and then they go into the community and we don't have chance to test it out. The court sees that they've done very well in that placement so there is no reason to continue these proceedings... What we've found since the PLO is that we have a number of repeat cases because of that (LA15, Lawyer).

Challenges associated with front-loading assessments

Twelve of the 21 LAs identified (without prompting) instances of the court routinely rejecting assessments completed during pre-proceedings and asking for assessments to be repeated, with potential delay for the child. This finding was identified across LAs

¹⁸ Residential parenting assessment centres provide a setting in which parents' capacity to respond to their children's needs and to safeguard their welfare can be monitored or assessed and parents can be given advice and support. For further information see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331079/RR370_Residential_parenting_assessments_FINALREPORTJULY2014.pdf

completing proceedings within 26 weeks and those that were not. According to the views of the professionals interviewed, the need for the assessment to be repeated was rarely due to the quality of the initial assessment and often the final decision remained the same after the assessment was re-done.

By the time we get to court we are clear, but we may have to do further assessments. It is delaying the decision for the child. This usually happens when the guardian takes a different view [from that set out by the LA]. It can delay things if the LA think they have done everything and the court takes a different view (LA19, Manager).

We issue to court, have a detailed statement and information about families, but find when we get into court there is a request from parties for some of that work to be re-tested or re-done. In other LAs the courts have improved their relationship with social workers and they are seen as the expert, we struggle with that in [LA]. We get parties pushing for further assessment looking to challenge the initial assessments which have been done pre-proceedings; it's overly challenged (LA18, HoS).

Courts being 'disinclined]' (Norgrove 2011: 103) to rely on evidence provided by local authorities was noted in the FJR as one 'symptom of a poorly functioning system' (*ibid*). Our findings here are consistent with previous studies (Research in Practice a, b and c) and indicate varying levels of judicial confidence in social workers' analysis and professional judgment. It is beyond the scope of this study to objectively analyse the relationship between this lack of confidence and other aspects of variation in local family justice system performance. Nor was it possible within this study to investigate the extent to which this lack of confidence reflects issues with assessment quality and poorly presented evidence or whether it persists where the quality of social workers' assessments and reports are now 'appropriately detailed, evidence-based and clear in their arguments' (*ibid*: 113). Further research is needed to explore this in more depth.

One manager discussed the court's reluctance to give due consideration to social work/ assessments completed prior to the case being heard in court. According to the manager, the LA was considering (though not committing to) alternative approaches, including the possibility in some cases of issuing proceedings before all of the work is completed at the pre-proceedings stage.

The difficulty in [court] is we're trying to do all that work pre-proceedings and then when we get there we're being asked to do it all again so it feels like we are doing a significant amount of work and the court is not giving it due attention ... the judge is saying 'this is just the start of the process we're not interested in what happened before you got here'... We are considering looking at adopting a different approach or style of working, maybe going to court sooner and unprepared (LA2, Manager).

There is no doubt that robust challenge is a vital element of the family court process and indeed, well-informed challenge was welcomed by participants in this study (see section 3). Nevertheless, given the 'value' ascribed to pre-proceedings work in the FJR (e.g. Norgrove 2011: 17) and in light of the feedback from participants in this study on the impact of well-structured pre-proceedings work on timely decision-making, comments which suggest that a judge might see court as 'the start of the process' raise questions about the embedded implementation of the revised PLO. If such an approach might encourage a LA to go to court sooner and less prepared, this would certainly be counter to the aims of the revised PLO.

Other challenges that were identified in relation to front-loading assessments included:

- Delay in issuing proceedings due to the volume of work to be done pre-proceedings:

[One challenge is] The period pre-court in getting everything done and the potential criticism we face upon initiating proceeding of how it's taken eight weeks to submit this paperwork when in the past it might have only taken a couple of weeks because we didn't have to have everything in [court] (LA1, manager).

- Costs associated with LAs having to fund all of the assessments and tests that are done at the pre-proceedings stage.¹⁹

There's a significant financial impact. Tests and assessments are now done at pre-proceedings and fall to the LA: DNA testing, drug testing, hair strand testing, psychological and cognitive assessments. The whole cost is on the LA (LA20, AD).

- The limited availability of targeted support services to support parental capacity to change:

During the pre-proceedings stage we are saying to parents that we want to give them an opportunity, saying they need to do this work, but we don't have the resources to put workers in to do the work. It's been recognised by management that we need to do this, they are putting more family support in place (LA7, Lawyer).

- Challenges in meeting the 26 week timescale when there is an emergency and the case has not been through the pre-proceedings process.²⁰

¹⁹ Prior to the reforms, some of these costs would have been shared by the various parties in court if tests and assessments were ordered during proceedings.

²⁰ Although there is the facility for extending the 26 weeks, some LAs/ courts do not use this. This is discussed further in section three.

More than half the times we get into court we have not been through pre-proceedings because of an incident and it makes the proceedings very rushed. We can have to make long term decisions before we have fully assessed; work is very condensed, you do not have 26 weeks (LA13, HoS).

Family Group Conferences

Norgrove recommended that ‘the benefits of Family Group Conferences (FGC) should be more widely recognised and their use should be considered before proceedings’ (2011: 132).²¹ There has certainly been a resurgent interest in the use of FGC as a means for families to structure a plan and identify wider family support to help parents care for their children. FGC also offers an opportunity to identify alternative family members to care for children if they are not able to remain with their parents (Norgrove 2011; Department for Education 2014).²²

All the LAs in this study discussed their use of either FGC or family meetings at the pre-proceedings stage or earlier in the process.²³ Table 1 provides information on LA use of FGC and family meetings.

Table 1: LA use of FGC and Family Meetings

FGC	Combination of FGC and family meeting	Family meeting
LA10	LA1	LA2
LA11	LA3	LA6
LA12	LA4	LA7
LA14	LA5	LA8
LA15	LA20	LA9
LA18		LA13
LA19		LA16
LA21		LA17

²² Norgrove saw ‘real potential for FGCs to add value’ as an element of pre-proceedings practice. He also recommended research on ‘effectiveness, quality and cost’. The evaluation findings of two Innovations Programme projects (Leeds City Council and Daybreak working with Southwark and Wiltshire councils) will be of particular interest when they report later in 2016: springconsortium.com/projects-being-funded/

²³ A family group conference is a process led by family members to plan and make decisions for a child who is at risk. It is a voluntary process and families cannot be forced to have a family group conference. Families, including extended family members are assisted by an independent family group conference coordinator to prepare for the meeting. At the first part of the meeting, social workers and other professionals set out their concerns and what support could be made available. In the second part of the meeting family members then meet on their own to make a plan for the child. The family should be supported to carry out the plan, unless it is not safe: <http://www.frg.org.uk/involving-families/family-group-conferences>. By contrast, a family meeting is simply a meeting with family members convened and chaired by the social worker.

The majority of participants discussed the benefits of holding a FGC or family meeting in terms of identifying members of the extended family as potential alternative carers. Participants also recognised the benefit of holding a FGC/family meeting as a means of identifying support for the child and his/her parents from within the family network.²⁴

We use [name of external FGC provider]. It works well... It is used to identify family and friends, not just as alternative carers but also for supporting the plan. We are going to look at having an internal resource for FGC as it is working so well... The majority of families have FGC, it's standard practice, we don't go into proceedings without having one (LA11, Manager).

We will always hold [FGC] at the beginning of pre-proceedings unless it's been held before then. We can ask for a FGC at any point. The service does have capacity issues, but when they work families make good plans and they are very helpful (LA19, Manager).

FGCs are either facilitated by a dedicated team within the LA or commissioned externally.²⁵ Some LAs were confident of the arrangements for convening FGCs and were positive about the referral process and outcomes; others described more difficulties, were less confident in the use of FGCs and/or were limited by budgetary constraints, as illustrated below.

We are not doing it [FGC] as proactively as we should in the child protection plan stage. You might say that if we did that earlier you might prevent some of the compulsory intervention. It's driven by budget - we commission FGC, it's not in-house. We have a budget of x amount per year so it's commonly held within the pre-proceedings context (LA18, HoS).

We use FGC but I think it is weak in [this LA]. We have a service commissioned through [external provider]. It can be used across the organisation and all services can use it. But it is a bit hit and miss at the moment. There has not been a culture of using FGCs in [this LA]. It is seen as a bolt-on at present, it is not embedded at the moment (LA14, HoS).

We used to have a dedicated FGC coordinator in-house, it was better embedded two years ago than now. The post went with cuts, it's now commissioned out (LA1, HoS).

²⁴ These findings are consistent with those of our previous study (2015a).

²⁵ We did not specifically ask LAs whether FGC was facilitated by a team within the LA or commissioned externally so only have data on this for some of the LAs.

Limited capacity of providers to facilitate FGC and the potential for delay as a result of this was one of the main reasons why LAs that had been using FGC in the past were now using a combination of FGC and family meetings, and why some had moved from using FGC to using only family meetings. The requirements of the FGC method were seen as a barrier for some LAs that were using family group meetings instead.

There is an expectation that FGC are held, we have an in-house coordinator. Now a lot of social workers will hold their own family meetings because of the waiting list. We are looking at ways of commissioning to ensure a timely service (LA3, HoS).

We used to have a separate system, commissioned from [external provider]. It folded because it became too prescriptive about the right time to engage, how it was delivered. It was not able to be responsive in the timeframes, it wasn't working for us. We have family meetings instead (LA8, AD).

A number of LAs discussed the challenges of convening a FGC/family meeting when parents refuse to attend or refuse to provide details of their family network. One LA gave an example of holding a FGC without the parents present when the LA had parental responsibility:

Sometimes parents refuse FGC. You can have one [FGC where parents do not consent] if the LA has parental responsibility. The FGC people do a FGC if the person with parental responsibility agrees to it [so] it can be the LA [if they have parental responsibility], it's a new thing. We used it as an argument in court as to why we should have an interim care order. We wanted to organise a FGC; the child had been living with grandmother for a number of months, mother was refusing to have FGC as she wanted the child back. The child was not going back, we needed to look at supporting granny's needs. We argued that we needed an interim care order so we can look at how we can support granny, who in the family can support granny as the child gets older and granny gets older. The court said that was a very good, valid argument (LA21, Lawyer).

FGC is an explicitly family-led process; a local authority-led family meeting which does not include the birth parent/s (even where the LA has parental responsibility) is, arguably, a family meeting of a different kind. The issues raised in this section underline the imperative for robust research into the most effective methods for engaging families in planning, identifying and providing family support.

Quality assurance processes

As discussed above, the quality of local authority evidence presented to court has been the focus of criticism in policy (Norgrove, 2011) and case law (e.g. *Re B*, *Re B-S*).

The view amongst professionals in the current study²⁶ was that while the quality of reports had improved there was significant variation at the individual practitioner level and continued work and training in this area is essential to support continuous improvement. The 21 LAs employed similar processes for quality assuring reports. This generally involved reports being signed off by the team manager and senior manager, before being passed to the legal department for a final check. It was acknowledged that these processes were not always as robust as they might be, with some reports still needing additional work after they had been sent to the legal team. Some lawyers also discussed challenges in terms of receiving reports in sufficient time for them to be able to quality assure them.

Issues of timeliness and variability in the quality of reports were noted in around half of the ten LAs that were not meeting the 26 week timeframe and were not noted as a major issue in any of the eleven LAs that were meeting the 26 week timescale.

We still have issues around consistency of care plans and statements, but we are getting more commendations from the court about the quality of the work they are seeing. It's a mixed picture, largely due to the number of agency workers (LA9, Manager).

The key is for social workers to have training around detailed, good quality, multi-agency single assessments. If that was good it would be easy for them to carry it over to the first statement and take it through the pre-proceedings process. But everything is done in a rush so it's not done properly (LA18, Lawyer).

A great deal of time is spent QA-ing. The final approved draft evidence should be seen by the team manager and service manager and we ask for it to come to us three days before [filing] so we can QA and suggest amendments. Some social workers are very good at this, others are not (LA11, Lawyer).

Panels

The majority of LAs discussed (without prompting) the use of 'panels' to support robust and consistent decision-making. These panels comprised a team of senior managers (e.g. Head of Service, lawyer, senior social work managers) who are timetabled to meet on a regular basis. Social workers present their evidence and recommendations to the panel, who scrutinise this before decisions are made to hold a legal planning meeting, issue proceedings and to scrutinise the permanence plan for the child. Although the panels went by different names in different LAs (e.g. edge of care panel; legal gateway/legal protocol panel; care and permanence panel), the panels shared a number of common purposes including: decision-making around resources for supporting

²⁶ Which echoed the findings in Research in Practice 2015a

families; ensuring decisions to issue proceedings are based on robust evidence and monitoring the progress of cases where proceedings have been issued. An example of how panels are used in one LA is provided below:

[LA] have always had legal strategy meetings in place. These meetings have always happened but we have tightened up since the PLO. We have legal strategy meetings at various points:

- prior to the issue of a PLO letter.*
- once all pre-proceedings work is completed where a decision to issue or discharge the PLO process is completed.*
- a final legal strategy is held during proceedings once all assessments (if applicable) are received but prior to the filing of the final care plans.*

They can also be held at any time there is a change in the care plan or a change in circumstances that requires legal advice (LA16, Lawyer).

Although not all LAs held panel meetings at each stage of the process as described above, professionals were very positive about the work of these panels.

We have a legal protocol panel, all requests to go into proceedings go through this. It really helps in consistency of threshold. We have the legal planning meeting after this to plan the case (LA20, AD).

We now have a Children's Access to Resource panel before we go to pre-proceedings. It changed a year ago. The social worker and manager have to present the case to the panel. There's a senior manager, virtual school head, FGC co-ordinator, legal professional. It provides checks and balance about whether we are doing the right things at the right time. It is robust about what assessments have been done and still need to be done, is it the right time to go into proceedings, how to manage pre-proceedings time (LA21, Manager).

Although panels were seen as a useful forum for facilitating robust decision-making, this did not always work out in practice, for example, when social workers did not provide the panel with the paperwork required:

It's surprising how many come to [the edge of care] panel without a plan; 'we want to issue, that is the plan', they want to leave it until the legal planning meeting. When we have the legal planning meeting 50 per cent of cases have no paperwork at all, we are told verbally what they want, or are given a chronology at the time of meeting which can be 50 pages long. We have to rely entirely on what the social worker tells us. If you had time to scrutinise the evidence, you may advise something completely different (LA21, Lawyer).

This LA had recognised that the quality and timeliness of their written evidence was not as good as it should be and had commissioned training from a consultant on report

writing as well as on giving evidence in court. They also shared good practice and paperwork with other LAs in the region.

Tracking and monitoring cases

All 21 LAs had processes in place to track/monitor cases through pre-proceedings and beyond. Though there was variation between LAs in how embedded these processes were (particularly with regard to tracking at the pre-proceedings stage) and the perceived usefulness of the data provided, monitoring systems were seen to enable LAs to keep track of cases and avoid drift and also to use the data to improve practice.

Case tracking was a key element of the case manager role in the Tri-borough Pilot (Becket et al, 2013). This work in these 21 LAs was not dependent on having a case manager in post but it was seen as important to have a dedicated person to track and monitor cases, (whether that was part of a case manager or another person's job role).

The case progression officer maintained a very detailed spreadsheet of all cases in pre-proceedings and proceedings to track progress. We have maintained this. We review all cases, both good and bad to be able to learn from what works and what doesn't work. This also allows us to know about cases that are going to go beyond 26 weeks (LA13, Manager) [LA had but no longer has a case manager].

Each lawyer has a list of cases, pre-proceedings and in proceedings, it's shared with senior managers every month so they can see ongoing cases. We keep track of pre-proceedings cases; if it's been with us for around three months we ask the team to check if it can be closed so that we are not keeping PLO cases running for months on end (LA15, Lawyer) [LA never had case manager].

Monitoring and tracking systems were embedded in the processes of eight of the 11 LAs that were concluding proceedings within 26 weeks. By contrast, six of the ten LAs that were not concluding cases within an average timescale of 26 weeks had only recently introduced tracking systems.

There is a tracking process in place for all cases. We try to ensure there is a timescale set at the start of pre-proceedings (LA19, HoS). [LA never had case manager].

We've recently introduced a tracker to help manage proceedings better - we've acknowledged that we have seen some drift, particularly in the early stages. There needs to be some work in [this LA] around this (LA12, Manager) [LA had a case manager that had recently left the post and will not be replaced].

We are currently doing work on an internal tracking system for pre-proceedings so we can measure ourselves (LA2, AD) [Never had case manager].

Impact of pre-proceedings on families

Norgrove 'encouraged' the use of the 'Letter Before Proceedings' (2011: 17), a letter sent to parents when the LA makes a decision at the legal planning meeting to undertake pre-proceedings to give parents formal notification that proceedings are likely. It invites parents to a pre-proceedings meeting to address the problems which have led to concerns about the welfare of the child. At this stage, parents are entitled to receive non-means tested legal aid (Department for Education, 2014).

As in our previous study (2015a) participants in this study identified the benefits for families of the work that is done at the pre-proceedings stage, in particular through the Letter Before Proceedings and the pre-proceedings meeting. The main benefits discussed were a greater openness and clarity of LA concerns and greater clarity around the timeframe for parents to make the necessary changes. Some LAs attributed cases being diverted from proceedings as a consequence of work being done at the pre-proceedings stage:

It has the effect of saying to parents this is not a never ending story, there is a timeframe for this. It's sometimes a good thing, sometimes not, but at least there is a dialogue now around timeframes. Previously sometimes there wasn't and it sometimes lulled parents into a false sense of belief that nothing was going to happen as it just went on and on (LA20, AD).

There is more openness and transparency regarding worries... In the past we lost momentum and families did too, it used to drag on. It is beneficial for families to know where they are and what is required. About 50 per cent of cases are resolved in pre-proceedings (LA 19, HoS).

The majority of LAs thought that it was helpful for families to have legal representation at the pre-proceedings stage as solicitors could help to explain to families what the implications of failure to make changes could be.

Families have said they are really listening and understand the urgency. We tell them it is about us advocating for your child. The Letter Before Proceedings tells them what we are worried about and what they need to do and how we will support them, it is more focussed. Parents have an advocate, legal representation; child protection planning does not offer them that structure and support. They feel more empowered having a legal representative (LA18, HoS).

Although there are benefits for families as a result of pre-proceeding practice, there are also a number of challenges, particularly with regard to the 26 week timescale for concluding proceedings. The main challenge identified was around giving families sufficient time to demonstrate positive and sustained change, which can lead to parents appealing the court's decision. The challenges in completing proceedings within 26 weeks is discussed further in section three of the report.

2.3 Other changes in practice

Permanency planning

LAs identified a number of changes to permanency planning following the reforms, recent case law and also through wider improvement work across children's services. Changes included the increased focus on gathering and analysing evidence; having a greater focus on the needs of the child; the increased complexity of care plans because of the need to consider a number of options for the child and doing twin or triple track planning; introducing foster to adopt care plans.

We are more focused on analysis, there is more focus on this following the family justice review and case law. There is a change in the quality [of reports] and providing balanced, strength-based evidence (LA11, Manager).

Almost half of the LAs discussed (without prompting) the importance of the IRO (Independent Reviewing Officer) role in the care planning process in terms of both quality assuring plans and in challenging LA decisions in the manner consistent with the recommendations in the FJR. All professionals who discussed this were very positive about the work of the IRO.

Scrutiny by IROs has become more rigorous, [this is] true for all care plans (LA16, HoS).

The IRO process now dove-tails and fits with the PLO process... Fewer tensions arise in terms of fitting in review meetings (LA2, AD).

The care plan

The FJR recommended that a progressive extension of courts' scrutiny of care plans (since 1989) should be halted and that courts should 'refocus' on the core components of the care plan; 'the detail of the care plan should be the responsibility of the local authority' (2011: 14). Norgrove recommended that 'the courts should consider only the [following] core or essential components of a child's plan':

- planned return of the child to their family
- a plan to place (or explore placing) a child with family or friends
- alternative care arrangements
- contact with birth family (*ibid*).

Some LAs in this study expressed their increased confidence in presenting care plans to the court and care plans not being challenged as much as previously.

Previously our initial care plans and statements said we will do whatever the court or guardian wants us to do. Now [LA] are saying this is what we've done, this is

what is missing, this is what we want the outcome to be. It's to do with the reforms and being more focussed and not leaving it to others (LA21, Manager).

The PLO is good for planning for removals and gathering evidence for court so we are not getting care plan challenges so much (LA3, Lawyer).

However, some LAs noted that courts were at times going beyond what the LA considered to be their remit with regard to the details of the plan, especially when the recommendation is for adoption. There was no evidence of LAs challenging the court around this.

The guardian and courts want to be much more involved in care planning than they would have been. We have assessed an adopter, put forward a care plan for adoption and they ask for information on every single adopter we have and how we can deliver that plan [in terms of ensuring there is an adopter for the child]. That is not the court's or the guardian's role, that is for the LA to implement. The court is more interested in that than they were (LA10, Manager).

We had three children, placed in three different placements. [The issues with this were that] mum had not changed after plenty of opportunities but the court felt she needed another chance. Not to miss the 26 weeks deadline the final order was made but in it was written that [LA] would have to do a range of things for mum to give her more chances and we would provide residential care for the three children together. How is it that the court is giving that level of instruction to us within the context of a final order? ²⁷ (LA8, AD).

We had a child with a disability and we were going for a placement order with a plan for adoption. The guardian's view was that we wouldn't find a placement for her because of the disability and she should stay where she was [in foster care]. In the evidence the adoption worker stated that she had never not placed a Down's child, they are one of the easiest groups [of children] to place. The court went with the guardian's view. It gave us permission to look for adopters for nine months, but there was no placement order and without that it was really difficult. We had to go back to court when we found a family to get the placement order. It created delay; the child was placed, but a year later than she should have been (LA12, Manager).

Social work evidence template

The Social Work Evidence Template (SWET) was launched in 2014 to improve social work practice by helping social workers to focus on analysis rather than producing lengthy narrative reports. An updated version of the SWET, introduced in February

²⁷ Our data does not include information on whether or not the LA challenged this decision.

2016,²⁸ reflects *Re B-S* case law and recent concerns around special guardianship assessments and includes a full version of welfare checklists related to the Children Act 1989 and the Adoption and Children Act 2001.²⁹

When LAs present their proposed care plan to the court they must set out all realistic permanence options for the child. The revised SWET includes the following guidance around the realistic options for the child:

- *To be defined as realistic, the proposed placement at the heart of the court care plan must be assessed as sufficiently resilient and sustainable to justify the label of 'permanent'.*
- *No arbitrary numerical limit can be placed on the number of realistic options available for the child, but one option must always be preferred. A clear reason or reasons must always be given for this preferred status in the body of this document.*
- *The preferred placement should offer the child the prospect of recovering from any trauma she or he has experienced.*
- *Determining the rank order between realistic options is a matter of professional judgment.*³⁰

Seventeen of the 21 LAs in the current study were using the SWET and the remaining four LAs were using a locally adapted version of the SWET. The section of the SWET setting out the permanence plan and the evaluation of realistic placement options for the child, was viewed as particularly useful:

We have just reviewed our court care plan guidance and we are about to roll it out. It's more succinct by putting care plan information into the statement and then we are more focused upon the plan for the child in the SWET (LA1, AD).

If it [SWET] is used properly it is very helpful. I think social workers struggled initially but it has helped over time. Historically care plans and statements did not link but we are now better at this (LA13, Manager).

Some LAs were critical about some aspects of the SWET, in particular the restriction on narrative that more complex cases might require. Some courts had requested LAs to provide a narrative account and/or a separate care plan in addition to the SWET.

²⁸ After this fieldwork was completed.

²⁹ See: <http://adcs.org.uk/care/article/SWET> and coppguidance.rip.org.uk/social-work-evidence-template/

³⁰ <http://adcs.org.uk/care/article/SWET>

The SWET needs to be revised, it's cumbersome. I like the analysis bits and the balance sheet, but it's not that helpful in complex cases. Some judges want narrative (LA12, Manager).

The SWET reduces paperwork for court, but in striving to do this you can lose important information about the case. It's better in terms of punchy analysis and getting social workers to think about the case, but the lack of information and evidence that we are allowed to put to court makes me feel that I don't have the same grip of cases as I used to do (LA7, Lawyer).

The SWET has been embraced by practitioners. There were teething issues and we debated about the care plan being woven into the statement; here we reproduce care plans in addition to SWET as judges like care plans (LA2, Manager).

One LA discussed how the Designated Family Judge (DFJ) only required them to present the two most realistic options for the child and how this had reduced the narrative in the SWET.

The Judge has said that we don't need to include all the options, [if] some options like the child staying at home are ridiculous; we can cut it down to the two close options, it cuts down the discursive element (LA15, Manager).

Training and development

Participants discussed the challenges that social workers face in producing court reports and in giving evidence in court. These included lack of social worker skills and confidence in presenting analysis and convincing arguments in court and in operating effectively within the court arena:

There is variable experience and confidence. It's hard to find social workers that are good at everything. The main problem in [LA] is analysis, understanding how to write good analysis and how to put a convincing argument across. We see a lot of regurgitation of chronology etc. (LA4, Manager).

Some are not by nature analytical but are very good with the family. Some are not good with the family but are very analytical... For some they cannot manage standing up and having a row of barristers taking pieces out of them. Some social workers can deal with that and know it is not personal, others cannot. Court is still a very combative environment (LA14, Manager).

The judge says we still have workers who come to court where confidence is an issue. Hearings may be adjourned as the social worker is not confident at dealing with a request to change the plan at court... A confident social worker would be able to manage that, but they are coming away and having to discuss it with their

manager. We are trying to stop that as the judge says that has an impact (LA10, Manager).

Social workers are provided with a range of training to improve their court-related skills, often led by the legal department. Examples of training included mock trials with judges and barristers; training around *Re B-S*; using analysis and evidence; and completion of the SWET. One LA in particular stood out in its description of the training and development programme:

*Once or twice a year we do a mock trial for newly qualified and long-term social workers. It's a trial with the judge, court staff, local solicitors, each take a role. It's getting them used to the court arena, understanding the types of questions they are likely to be asked. We also have a lot of social workers shadowing [in court]. Social workers have had training on the impact of *Re B-S*, the template has been amended to reflect this (LA15, Lawyer).*

We have introduced Signs of Safety, there is full fidelity to the model. It was triggered by the PLO in terms of having a good understanding of the parenting gap and parents' capacity to change. It means we've checked everything out before we go to court. We have introduced Video Interactive Guidance,³¹ it's not directly related to the PLO, but if social workers are expected to be experts we need to be able to demonstrate that. We are committed to pro-social learning rather than interventionism. We have challenge and reflective supervision. It's all part of the core curriculum. We have introduced adult attachment style interviews and are moving towards child attachment style interviews as a move towards exploring all alternatives prior to going to court and also informing the plan when we are in court (LA15, HoS).

Alternative interventions

Recurrent care proceedings (birth mothers experiencing court-ordered removal of more than one child, often in infancy) was an area of concern expressed by a number of LAs. The level of repeat care proceedings has been estimated to be around 24 per cent, with young women aged 16 to 19 years most at risk of recurrence (Broadhurst et al, 2015). Some of these LAs expressed an interest in the Pause project,³² which provides intensive support for mothers who have had other children removed, though none were using Pause or similar approaches at the time of the interviews.

Another approach that has the potential to help parents avoid repeat care proceedings is the Family Drug and Alcohol Court (FDAC), which takes a non-adversarial, problem-solving approach and supports parents to overcome the substance misuse, mental health

³¹ Video Interactive Guidance is a video feedback intervention through which a practitioner helps a client to enhance communication within relationships.

³² For more information see: <http://www.pause.org.uk/>

and domestic abuse problems that have put their children at risk of serious harm.³³ Three of the LAs in this study were implementing FDAC (two of these funded by DfE's Children's Social Care Innovation Funding³⁴). All three LAs using FDAC are linked into the national pilot but are at an early stage of implementation and had few cases at the time of the study. The evaluations of the Innovation Programme FDAC projects will augment recent evidence which suggests that FDAC can fact lead to savings to the public purse over the long-term.³⁵

Other LAs had considered using FDAC but were not actively pursuing it. The main reason given was lack of interest from the judiciary. This related in particular to the lack of evidence around the costs and benefits of the intervention, particularly where there were other underlying factors in families' circumstances:

There is no appetite for FDAC in [court area]. Even if you took away drugs and alcohol issues there are too many underlying factors in family circumstances that would lead to it not working (LA3, AD).

This particular LA discussed their involvement with the Strengthening Families model³⁶ which they found to offer good support and challenge into the reasons for children being removed in the past.

One LA in our study had received Innovation Programme funding to appoint three workers to each team to build specialist expertise in domestic violence, drugs and alcohol and mental health issues. Two other LAs were delivering the Cafcass Plus model, where Family Court Advisers work with the LA during pre-proceedings with the aim of diverting cases from care proceedings.³⁷

2.4 Changes in team structures and responsibilities

Social work teams

Many LAs had restructured their social work teams, some as a result of the reforms others through wider improvement activity and/or in the face of reduced resources. There was a drive towards having teams that are more integrated and/or involve co-working

³³ For more information see: <http://fdac.org.uk/>

³⁴ For more information see: <http://springconsortium.com/projects-being-funded/>

³⁵ New research estimates that for each £1 spent there is a saving to the public purse of £2.30 over five years, with savings generated by FDAC exceeding the cost of the service within two years of the start of the case (Centre for Justice Innovation, 2016).

³⁶ An approach to risk assessment and planning in child protection conferences developed in Minnesota, USA (Lohrbach and Sawyer 2004) informed by the Signs of Safety model of practice (Edwards and Turnell (1999).

³⁷ For more information see: <http://www.cafcass.gov.uk/news/2013/july-/pre-proceedings-pilot-report.aspx>

and also having smoother transition points when cases transfer between teams. The following quotes provide examples of some of the changes that had been made:

We've changed the pathways between teams in terms of cases being transferred from the Children in Need service to the Looked after Children (LAC) service, there's a new transfer protocol where that happens far earlier. Now, the LAC social worker will wherever possible go to the first hearing and take the case from that point, especially if it is clear we are going to be arguing for permanence away from the family. It does build in a change of social worker, but it's worth it because of the experience in the LAC team around permanence (LA12, HoS).

Court work was in the LAC team, it's now back in the locality team; it's the same social worker for PLO and court, it prevents another transition and loss of knowledge through transferring the case (LA20, Manager).

We had already set up a permanence team but then a decision was made to set up a court team alongside the reform agenda. An experienced social worker takes on cases at the case management hearing stage once it's in court. A further change in that court team is that they are tending to get involved prior to issue for a smoother transition (LA9, Lawyer).

Although there are advantages to having teams that incorporate both child protection and court work, some LAs discussed the challenges in prioritising work in such teams:

The volume of work and its complexity [is a challenge]; the team do child protection as well as court work. There are a lot of child protection cases that require a lot of work to prevent them from escalating into court. In court there are complex cases, often with siblings that require a lot of time and work. The reduced management capacity in the service affects the frequency of supervision and keeping on top of timescales. We are not getting pre-birth assessments done in a timely way, we are only completing assessments a day or two before the child is born. That's far too late given that we have probably known about the family in advance (LA7, HoS).

Although this LA did not specifically outline steps they were taking to improve pre-birth assessments, they recognised the need for a cultural shift in the child and family team who do the parenting assessments before going to court. This LA had introduced changes to team structures in the first part of 2015, creating a dedicated court and child protection team. They had also improved the wider pre-proceedings process in relation to having clearer, outcome-focused plans so that families know what is expected of them. Although improvements had been made as a result of these changes, there was a recognition that this was still a work in progress.

Case (progression) managers

The LA case manager role was developed in the course of the revised PLO piloting phase. An independent evaluation of the Tri-Borough Care Proceedings pilot found that the case manager role provided additional capacity to: maintain an overview of cases being considered and brought to court; advise social workers on the quality of their assessments and statements; track cases and analyse causes of delay; support social workers during proceedings; liaise with the local courts (Becket et al, 2013). Findings from the previous study (Research in Practice, 2015a) and from the South London Care Proceedings Partnership (2015) were consistent with those of the pilot.

Seven of the 21 LAs in this study had introduced a case manager post at the early stages of implementing the revised PLO; these included LAs that were meeting the 26 week timeframe and others that were not. Case managers were seen as a facilitating communication across various professional groups and having a good oversight of cases, as well as helping to introduce new systems and processes to meet the requirements of the revised PLO. At the time of the interviews most of the case manager posts (5/7) had been either vacated or deleted. It was not possible to determine the impact of removing the case managers as the posts had only recently been vacated/deleted.

We had a case manager, he has just left the post but will be replaced. The advantage of having a case manager is the huge amount of chasing up social workers, tracking, supporting them to provide evidence and organising joint training. Social workers valued his advice and support. For us, his intermediary role has been really helpful (LA11, Lawyer).

We had a care proceedings case manager who was responsible for managing the process of cases and every month or so I would sit down with that person and other senior managers and identify where any problems were occurring and what we could do about these. There was better oversight of cases... The post is now vacant and has not been filled. It's now more difficult without [post-holder] (LA14, Lawyer).

Having a case manager was not reported as essential to establishing good working relationships across professional groups or for providing oversight of cases; other processes for tracking cases and for developing relationships across the court arena had been developed by LAs, many of which were working well.³⁸

³⁸ Relationships across the court arena are discussed in section three.

Social worker recruitment and retention

The use of agency workers nationally increased by 13 per cent between 2014 and 2015, from 4,310 FTE in 2014 to 4,860 in 2015. The proportion of agency workers in LA social work averages at around 16 per cent, although there is variation between the regions ranging from six per cent in Yorkshire and the Humber to 25 per cent in Inner London and 30 per cent in Outer London (Department for Education, 2016a).

Some LAs discussed having a motivated and well-trained workforce with a strong learning and development ethos, which they credited as helping them retain social workers. However, challenges around the recruitment and retention of social workers was a common theme, with some LAs reliant on large numbers of agency staff.

We have well supported and trained social workers, there is a learning culture. We are well resourced in terms of the number of social workers, which means they have low caseloads (LA3, AD).

We have to rely on agency staff. There is work to be done to create an environment where social workers feel safe and confident in their practice. A lot of families complain that they are dealing with the most complex experience in their life, yet they get an agency social worker because someone leaves part way through. It undermines the confidence the court has in us because we are losing people, there is a perception that the evidence is weaker (LA18, HoS).

LAs discussed (without prompting) the value of the Assessed and Supported Year in Employment (ASYE) programme to support newly qualified social workers during their first year of employment. In some cases this was seen to have contributed to a reduction in use of agency staff. Some also discussed the value of programmes such as Frontline³⁹ and Step Up to Social Work⁴⁰ in providing high calibre social workers to the workforce, although it was also recognised that it would take time for the benefits of these programmes to be seen in LAs.

We have more newly qualified social workers than we did so they need greater support. There are benefits to having newly qualified staff, they have no history and you can say this is how it is and they say OK. They pick up and do. They will grow up knowing you do a permanency report at eight weeks and not at the end of care proceedings (LA14, Manager).

We have a robust ASYE. Fifty per cent of our staff were agency at one point, it was difficult to manage in terms of continuity. We're down to ten per cent agency...

³⁹ <http://www.thefrontline.org.uk/>

⁴⁰ <https://www.gov.uk/guidance/step-up-to-social-work-information-for-applicants>

We've also recruited people at manager level - assistant team managers who are there to support ASYEs (LA21, Manager).

We are part of Frontline and Step Up. I believe in recruiting high calibre graduates, we have very impressive people, particularly post-graduates. In terms of analysis of information and risk assessments, it's of very high quality, we have been commended on a number of occasions in court. [It is good] having a bright, emotionally intelligent workforce, who are able to engage with families in an effective way (LA11, AD).

Although there were advantages to having ASYEs, LAs also noted that it could create challenges because of the types of work newly qualified social workers are able to do and the need for experienced social workers to work alongside them. One Outer London LA also discussed the challenges of retaining ASYEs because they were not able to match salaries offered by other London Boroughs.

We can't use ASYEs in child protection and care proceedings. There has been an increase in ASYEs from ten per cent to about 30 per cent of the workforce so it's a real challenge here. We use ASYEs to work alongside the social worker with families in pre-proceedings and court work, to do intensive support to try to divert them [families from having to go to court] (LA5, HoS).

Having to take more ASYEs means we have to redeploy some of our more experienced agency workers. It puts us in a vulnerable position in terms of pre-proceedings work (LA7, Manager).

We are not able to match our competitors for salaries to attract social workers [so] they want to get their ASYE and then move on. Frontline and Step up will take time to build up in the system and have a positive impact. Now we have a 'dog eat dog' between LAs in competing for the same person. Some LAs can afford to pay more. We're involved in Frontline and will see the benefits of this going forward. We've had some ASYEs we've supported and trained but they've left after two years as they are not contracted to us (LA12, Manager).

Changes in the legal department

The majority of LAs discussed having a closer, more transparent working relationship with the legal team than they had prior to the reforms. In some LAs there had been an increase in the numbers of legal staff, and in some cases a reconfiguration of how legal services operate.

There have definitely been changes to the way we work with the legal team. We see a lot more of them, they come to PLO review meetings, they are more visible within teams, and the manager sits on the placement panel and comes to some management meetings to go through issues. We restructured legal planning

meetings to be on Monday afternoons, it was previously ad hoc. It helps as legal come to those and if there is no [specific case to discuss] we have that time to talk about cases (LA12, Manager).

Legal services have been reconfigured, there is increased legal assistant support because of the intensity of pre-proceedings work. We are trialling having dedicated solicitors to do legal planning meeting work. It was difficult when lawyers had a mixed caseload of court work and pre-proceedings work; it was difficult to prioritise pre-proceedings work. More resource are going into pre-proceedings work than before to give it momentum and priority (LA7, Lawyer).

There were contrasting pictures presented by two LAs in terms of the relationships between children's services and the legal department. One LA discussed having a historically poor working relationship with the legal department. They described the legal team taking the lead in decision-making around issuing proceedings, but following improvement work in the LA, children's services had become much more pro-active in this, which had created some tension. An action plan to address these challenges had subsequently been put in place, with regular meetings and joint training sessions. Another LA discussed the important role of the legal team and how good leadership within the team has helped with the transition to the revised PLO.

We have a very good legal team, one of the best I've ever worked with. The principal legal officer has developed a very good, straight-talking adversarial relationship in court. There is massive trust from court in her and her team. The leadership of the legal team has made it a much easier transition for us (LA15, HoS).

Specific local authority challenges

LAs faced a number of common challenges in meeting the requirements of the revised PLO, as discussed throughout the report. However, some challenges were specific to individual LAs. One Outer London LA discussed the challenges that had arisen as a result of recent welfare benefit reforms, with families with complex needs being moved from more expensive areas of London to this LA:

We've had lots of families in from other LAs, cases where they were going to go into proceedings but they didn't because the family moved, or they started proceedings and we got designation. They are moving in because families are being evicted and housing is cheaper [here]. A lot of families recently have gone into high profile situations like child protection or proceedings very quickly. We need to do work with housing colleagues to see how to manage this large influx. Other boroughs place the family in our area and remove their responsibility (LA12, Manager).

One LA discussed organised crime in the area and the challenges they faced in making decisions for children in these cases:

There is organised crime and threat to life. Under child protection they are the best parents you could see. They are well cared for kids, so traditional child protection [issues are not] there, but there is risk to life because of the father - not them but him. How do you manage PLO in those kinds of circumstances? All you can say is he has to move out, but there is no reason why there shouldn't be contact. All we're doing is damaging emotional wellbeing, but there is no other option to deal with it. The judiciary are saying we should be going into court for an interim care order, but you're never going to stop organised crime in [LA] (LA3, AD).

Another discussed extremism and radicalisation:

[LA] is often in the news for particular issues like radicalisation. This can also mask a lot of deprivation. We are a busy borough with quite complex issues and we are finding our way. In some ways we are a pathfinder. There is nothing to draw on in terms of extremism. We are holding a lot of conflict issues and we have a small resource (LA14, HoS).

2.5 Connected persons: identification and assessment

Identifying alternative family members

One of the main challenges highlighted in our previous studies was the difficulty in identifying extended family members as potential alternative carers for children (Research in Practice, 2015a and b). One factor identified was parents' reluctance to provide details of their family network at the pre-proceedings stage, with the result that alternative family members are only identified once care proceedings have been issued. This challenge was also noted by professionals in the current study.

LAs identified a range of changes they had made to improve the early identification and assessment of extended family members. As previously discussed, one of the main processes for identifying alternative carers at the pre-proceedings stage or earlier was the use of FGC or a family meeting. Some LAs discussed the process of identification of family members starting when the child is on a child protection plan.

When we have the child protection conference we always ask parents who the significant people are in the child's life, we think about how the case could go at the outset. The motto is all cases could end up in court, so we treat every case as a court case and get to know who the family members are. If no family members are put forward we try and understand the family dynamics early on (LA7, Manager).

LAs also described how they had become more proactive in identifying alternative carers, in particular from the paternal side, and some ways in which they had managed parents' resistance to providing them with the names of family members. This included gathering family members' names from other branches of the family and judges putting the parent in the witness box.

We are now more diligent in making sure we have exhausted everybody so we are more proactive with enquiries with DWP (Department of Work and Pensions) or enquiry agents to trace people if we need to, here and abroad... We are more assertive about the right to contact other family members (LA6, Manager).

We have developed training around this. It should happen at the front door, we should be doing a genogram at the earliest possibility. Judges are keen to support us around families, particularly mothers giving us information about prospective fathers. On that basis, if they haven't given us that information by a certain stage the judge will be happy to get the person in the witness box to encourage them to provide the information (LA11, Manager).

There are examples of where someone has not been mentioned, but because we have known other branches of the family we've got information in a different way and approached them - we go back to the parents to get their view and go to legal for advice (LA8, HoS).

Assessment process

A robust assessment of potential special guardians is crucial in ensuring that children who are the subject of a special guardianship order (SGO) are safe. Previous studies and the report following the government review of special guardianship suggested that in some cases rushed and/or of poor quality assessments may be contributing to potentially risky placements being made (Research in Practice 2015b and c; Department for Education, 2015). Following the review, DfE amended in legislation the Schedule to the Special Guardianship Regulations (2005) and produced new statutory guidance to reflect these changes (Department for Education, 2016b).⁴¹

In the current study, all but three of the LAs used viability assessments before moving on to a full assessment (if the viability assessment was positive). The three LAs that were not using a viability assessment used initial screening (e.g. checks on criminal history,

⁴¹ Regulation 4 of the legislation amends the 2005 Regulations by requiring the report to deal with any harm which the child has suffered and any risk of future harm to the child posed by their parents, relatives or any other person considered relevant. It also amends the provision relating to the child's needs to ensure that both the child's current needs and their likely future needs are dealt with in the report. Regulation 5 of the legislation amends the 2005 Regulations by requiring an assessment of the nature of the child's relationship with the prospective special guardian, both at the time of the assessment and in the past. It also substitutes a new and more detailed provision relating to the parenting capacity of the prospective special guardian. <http://www.legislation.gov.uk/ukxi/2016/111/contents/made>

health, family relationships and reasons for putting themselves forward), and if there were no reasons to exclude the person as a carer, automatically proceeded to a full assessment.

[We] developed a screening assessment rather than a viability between the social worker and the family placement team. It has dispelled some of the issues between the two parts of the service. It works well (LA4, Lawyer).

In almost all LAs, the child's social worker completes the viability/screening assessment. In five LAs, there was joint working between the case-holding social worker and the fostering/connected person team to complete viability assessments, with the aim being to have some joint visits, although it was not always possible to achieve this in practice.

We now do joint assessments with the fostering service, it's much better now. The fostering service are involved from day one. It means we have a holistic view around assessment and not just the social worker immersed in the family, so it's more objective and independent (LA1, HoS).

The aim was for the child's social worker and the fostering assessment team to go together to do the viability assessment. But there are too many and it's too difficult to arrange. This remains good practice. Sometimes fostering do the viability and sometimes children's social workers. We are still adjusting to the number of viabilities and assessments (LA16, HoS).

There was evidence of LAs strengthening their assessment processes to make them more robust. One LA was moving towards having the fostering team complete viability assessments. Another LA was strengthening their viability assessments to ensure that there was a fuller exploration of what the family can offer. Some LAs were using the same or similar assessment and panel processes as that for fostering and adoption.

Each district was doing its own thing in terms of viability assessments. Then we had Re B-S and we had even more families that needed to be looked at. Now we have developed an approach across the [area]... We have a differentiated approach, moving from A, B to C etc. The important thing was being able to evidence why we were exiting at a particular point... The feedback from court is that the quality of the viability assessment is very good (LA8, Manager).

There have been significant changes. I believe assessment of connected persons should be as robust as it is for adoption. We have introduced an assessment process panel for foster care and viability assessments for special guardians. It goes through the same process. It all goes to the Agency Decision-Maker the same as with foster carers and adopters. We don't have a two-tier level, but we take into account the 2002 Act and family connections when assessing (LA15, HoS).

Kinship foster care assessments were done by the fostering or family placement team, but there was no consistent pattern as to which team completed special guardian assessments; these were done by fostering teams; family placement/connected person/SGO teams within the fostering team; the child's social worker; adoption team (see Wade et al, 2014 for a discussion on specialist versus non-specialist models of service). Table two below summarises the models of service for completing full special guardian assessments for the LAs in this study.

Table 2: Models for completing special guardian assessments

Child's social worker	Specialist team (sometimes within fostering team)	Fostering team	Adoption team
LA2	LA3	LA1	LA17
LA8	LA4	LA7	
LA13	LA6	LA12	
LA15	LA9	LA14	
	LA10	LA20	
	LA11		
	LA16		
	LA18		
	LA21		

Challenges associated with the assessment of special guardians

The new statutory guidance on the Special Guardianship Regulations states that the local authority must prepare a report for the court dealing with the suitability of the applicant to be a special guardian and that 'the information required for the local authority report is the same whether there is an application or the court has asked the local authority to prepare a report' (Department for Education, 2016b: 24-25). Previous research has found that the main challenge for social workers in terms of completing special guardian assessments is the number of assessments they need to complete and the timescales in which to do so, especially when potential carers come forward late during proceedings (Wade et al, 2014; Research in Practice 2015a and b).

Number of assessments

The findings from the current study are consistent with this. Around three-quarters of the 21 LAs discussing challenges with regard to the number of assessments they need to complete and their capacity to do this within the 26 week timescale, as well as the costs of completing large numbers of assessments. The challenges were consistent across LAs that were completing proceedings within 26 weeks and those that were taking over 26 weeks to complete proceedings:

There is an increase in the volume of work around viability assessments. The requirement for workers is substantial. We have difficulty having enough time to do this work and most posts are filled by newly qualified social workers (LA8, HoS).

We have made very clear to everyone that all family members put forward must be explored (LA13, Lawyer).

We are spending a fortune commissioning assessments in case family members are viable as we need to do it in 26 weeks, but a lot fail. We have been ordered by the court before now, to keep within timescales, to look at five different family members. We were asked to assess them all. One was in Canada. In terms of the cost of resource, there seems to be very little allowance for that in terms of DfE or whoever sets our budget and the judiciary (LA12, HoS).

The main challenge is not enough staff, alongside the number of assessments we are being asked to do, it's so high. Previously we would determine which members are most suitable. If we were running the FGC model we would explore this and seek agreement. Now we are having all sorts putting themselves forward and having to do a viability on everyone. It's court directed. (LA6, Manager).

In LA6, the Head of Service confirmed the challenge around the volume of assessments noting that this was 'becoming more of a pressure point and needs to be looked at over circuit with the courts' (LA6, HoS). This LA discussed having good relationships within the court through the LFJB and a 'willingness to resolve issues across all levels' (LA6, HoS).

Although LAs were supportive of children being cared for within their extended family where appropriate, there was a feeling amongst some that potential carers were being assessed simply so that they could be ruled out, as illustrated below.

While we are committed to exploring family and friends, by nature of the circumstances some parents find themselves in it is quite clear that it is not an extended family we are going to use. People start to get into language of let's assess them so that we can rule them out (LA12, Manager).

Approaches to addressing the challenge of large numbers of family members putting themselves forward as potential carers included one LA stating that they only assess family members where there is 'evidence of a connection with a child' (LA7, HoS) while another talked about working with parents to prioritise who might be the best carer for the child.

Timescales for assessments

The majority of LAs discussed challenges in meeting the timescales for the court as a result of the number of relatives they are assessing as prospective carers for the child, often within truncated timescales. Two of the LAs in this study discussed courts ordering assessments to be completed within 24 hours, when family members came forward late

in proceedings and the very real challenge this presents for social workers in producing a robust assessment.

Following Re B-S we are doing far more [assessments] and being given them to do right at the very end of proceedings. If somebody comes along at the last minute we are sent off to do an assessment because of the case law and judges are so wary of challenge so we are having to go over every stone and crevice to make sure there is no alternative if the plan is for adoption. There was a point at which judges would cut off and say to families this is the last opportunity but now we have social workers coming out of court at 5.30 pm and going to a family member and trying to do a viability until 7.30 and then writing it up at 11pm and sending to the team manager in the early hours of the morning so we can lodge it in the court the following day. That's not OK for anybody. We are back in court the following day and the judge is delighted and commends the social worker, but it's not a good way of doing it... We have had instances where literally we've done it overnight for court the next day so the judge hasn't had to delay a hearing (LA5, HoS).

On the first day of a final contested hearing the judge was instructing us to do a 24 hour re-assessment of grandparents who we'd ruled out in the early stages because they turn up and say they haven't been properly assessed, so I've got two social workers working overnight trying to put a position statement together to satisfy a judge... the idea for a social worker to return to court the day after having completed a viability assessment is just not credible (LA2, Manager).

Our data do not include any information on what if any steps these LAs were taking to challenge these courts' directions to complete an assessment at such short notice.

International assessments

Challenges related to assessment of potential carers living abroad or at a distance from the LA were discussed by almost a third of LAs in this study, not only in terms of meeting the timescales required by the court but also in relation to navigating international laws and languages:

Cases which go on for a long time almost always have a foreign element, particularly Eastern European nations that are cautious about allowing external people to do assessments. So we have to rely on their assessments and processes and to get those is incredibly slow as you have to go through their agency, who contact their equivalent in the country, then someone has one visit with the family, then it has to be translated, then the court asks you to clarify certain points, and it has to go through the same process again (LA12, Lawyer).

Conflicting opinions in different teams

As previously discussed there are various approaches as to which team completes viability and full special guardian assessments. In the majority of these LAs, the child's social worker does the initial viability assessment and the full assessment is completed by either the fostering, family placement or SGO team. Some LAs discussed the potential for conflicting opinions between the social worker who carries out the viability assessment and the social worker who does the full assessment with regard to the suitability of the potential special guardian. Examples of conflicting opinions between the child's social worker and the fostering team social worker are provided below, together with how the conflict was resolved:

Sometimes they don't meet the threshold to be a foster carer, but sometimes the child had been with them for six or seven months. There is no evidence that they can't meet the child's needs. It sometimes ends up with conflict. The fostering team have standards they have to go through and we have a different threshold for court. We have to prove that the child is at risk of significant harm in that family in that placement. Sometimes we can't evidence it... Sometimes we are in a position where the fostering team won't authorise a placement. We have to justify why we are not supporting them as foster carers, but would support them as a family placement [SGO] under a private law application (LA7, Manager).

There are times where it is good enough for some children being with a relative... where it is the right plan. That can give some challenging conversations with our fostering service who go in often with a much higher level. We had a recent challenge meeting... the relative failed the viability [carried out by] the fostering social worker. We felt strongly that the young person had been placed there since February and is doing well, but the adult has a 'hairy' background so the fostering team were saying no to the viability and SGO. [We had discussions with the fostering team] and decided it was good enough and we got an SGO with a support package... there were very interesting debates to get there (LA5, HoS).

Pressure on social workers to recommend SGOs

There were relatively few cases where professionals discussed concerns about the court's decision to award a SGO against the LAs recommendation for another order. However, three of the LAs discussed the pressure that social workers sometimes feel to recommend a SGO and to sometimes accept levels of care that, they believe, may put the child's welfare at risk.

The key challenge locally in the wider culture in [this LA] is the view that people should 'look after their own'. There is pressure to go down that path. It's reflected by the court and legal representatives. The 2002 Act is very attuned to [this LA]. We have very tight communities. The pressure on social workers to go down the connected persons route is very strong (LA15, HoS).

In one LA, even though social workers may feel pressure to recommend a SGO to court, they have found ways to resist that pressure and put forward a plan that they think best meets a child's needs.

We are also now going into court saying this is our decision, we go in with an informed recommendation. We don't accept being sent out to review a care plan unless something substantive comes up. I would rather we lost than did not stand by our assessments (LA17, AD).

Challenges for special guardians

Completing robust assessments within the 26 week timeframe was seen as not only a challenge for the LA, but also for potential carers who are having to make life changing decisions in a relatively short period of time, without the opportunity to fully prepare themselves and consider the long-term consequences of their decision to be a permanent carer for a child. This was seen as creating a potential risk of placements breaking down in the future if relative carers found that they were no longer able to care for children, with potentially more challenges subsequently in finding children adoptive placements because of them being older than at the time of the initial proceedings.

Truncated timescales put pressure on that person to make themselves available and to make their own children understand that there may be someone else coming to live with them, they don't get to do any preparation for this (LA20, AD).

Back in the day assessments were carried out over a fairly long time, probably too long. Social workers were emphatic about the need for a period of time for reflection to be built into assessment, people need time out from the assessment to think what they're doing and reflect really carefully on it. Assessments are done fairly quickly now, in pre-proceedings or the court process. We might end up with a load of children we are removing from relatives further down the line when they are too old to be adopted if it's not thought through properly (LA18, Lawyer).

Previous research has found that the main types of support provided to special guardians are financial packages and support with contact arrangements (Research in Practice 2015b and c; Wade et al, 2014). Although we did not specifically ask participants in this study about support for special guardians, it was noted by five of the 21 LAs to be a challenge for them in terms of having the capacity to supervise contact and provide other forms of support in the longer-term.

They often want us involved with contact. The SGO plan is often based on the need for the LA to be involved with contact. I like the idea of keeping a child in their family but I don't really want to be involved for years because of contact (LA7, HoS).

Post-order support is under a considerable amount of pressure. We have a post-order team for adoption and special guardianship, but we don't have an unlimited

amount of resources so it's difficult to support some SGO carers (LA 10, Manager).

Not all LAs viewed financial resources to be a challenge in providing support to special guardians; one LA discussed the financial package they offer to all foster carers who become special guardians.

We are better at financially supporting families, we have a good SGO package of support so that families are more able to take on the children financially. We have foster carers who have taken on SGOs. All foster carers who are long-term for the child are asked to consider SGO, we offer a good financial package. Previously we offered it for two years and it was means tested... Now we have agreed a package for them to stay there until they are 18 and we'll fund it... We make savings on social worker, IRO and travel time (LA21, Manager).

Summary

This section has considered changes in local authorities' practice to meet the revised PLO as well as some of the challenges they face in implementing the PLO.

- There is an increased emphasis on front-loading assessments and on considering permanence options at an early stage.
- LAs are identifying relatives as prospective carers for children earlier through the use of FGC or family meetings. However, the number of assessments they are having to complete and the timescales in which they are having to do this present real challenges for social workers. In some cases, courts are ordering assessments to be completed within 24 hours, which compromises the quality of the assessment and the understanding of risks for the child.
- Overall the quality and robustness of assessments and evidence produced for court is seen to have improved. There is recognition that continued work is needed to sustain improvement and to address variations in quality. All LAs were either using the SWET or a locally adapted version of this.
- Despite the perceived improvements in the robustness of assessments, some LAs noted the court's lack of confidence in their evidence, leading to assessments completed during pre-proceedings having to be re-done. Repeating assessments is resource intensive and places extra pressure on social workers who are already facing challenges completing the work required within the 26 week timeframe.
- The majority of these LAs have tracking systems in place to monitor the progress of cases during pre-proceedings and proceedings. There was variation in how developed and embedded the processes were, especially with regard to monitoring cases at the pre-proceedings stage. This is an area that LAs need to continue to

develop to ensure that issues of drift and delay are not transferred from proceedings to pre-proceedings.

The next section explores LAs' views and experiences of practice within the court arena, and the challenges associated with this.

3. Practice in the court arena

This section explores professionals' views and experiences of practice in court. Our study explores only LA perspectives so these are not contextualised with the views of other professionals who operate within their local family court arena, nor with the experiences of children, young people and families at the centre of proceedings. This limitation needs to be borne in mind when considering and interpreting the findings.

3.1 Local authority relationships with others in the family court arena

The Local Family Justice Board (LFJB)

LFJBs were established as part of the Government response to the Family Justice Review to drive significant improvements in performance at the local level. LFJBs have a number of specific objectives, one of which is the development of inter-disciplinary working across the family justice system.⁴²

The LFJB was a valued forum for facilitating closer working relationships amongst professionals (consistent with findings of Research in Practice 2015b). LAs discussed the increased opportunity the LFJB provided to improve LA practice; work alongside other professionals; develop a consistent approach across the LFJB area and better understand the requirements of the court:

There is a strong relationship; there is challenge, a willingness to look at issues and try to understand and tackle them. There is more shared ownership of challenges. When we started out there was a feeling it was the LA that was poor. Now it [the LFJB] also looks at the guardian's approach, judges, private practice. There is a willingness to self-reflect, it's taken a while to get to that point. We work really well together (LA7, Lawyer).

The LFJB is really useful, it's better than court user group meetings. We sit around a big table at the court user group with around 100 people in a big room. [The LFJB] can be quite frank where things are going wrong, and where things are positive... We report to the judge where things are not going well and vice versa. It's helped with our bundles - we have a protocol for this (LA21, Lawyer).

However, one small LA noted challenges in being part of a large LFJB:

We need some other mechanisms to learn about practice with judges. The LFJB is too big, it does not suit us (LA17, AD).

⁴² <https://www.justice.gov.uk/downloads/about/moj/advisory-groups/local-family-justice-boards.pdf>

One LA provided an example of how they had worked with the LFJB to improve processes with regard to cases that do not need to go through the pre-proceedings stage, in particular in cases where there is a suspected non-accidental injury.

[There was] agreement with the LFJB about the criteria for cases where the LA should issue proceedings without going through a pre-proceedings phase, in particular where there was a significant non-accidental injury. The court took the view that if it was likely that a finding of fact hearing would be required, it was better to proceed straight to court and resolve this matter rather than delay. The reason is that it is really key, before going down a process, that where parents are not accepting the reason for concern and deny non-accidental injury, this must be addressed at court and cannot be addressed in pre-proceedings (LA19, HoS).

The judiciary

Judges are required to be impartial and independent of external pressures, and must be able to decide cases on the evidence presented, in accordance with the law. They also need leadership and management skills; the FJR recommended that 'judges with leadership responsibilities should have clearer management responsibilities. There should be stronger job descriptions, detailing clear expectations of management responsibilities and inter-agency working' (Norgrove, 2011: 9). It also recommended a core training programme for senior judges on leadership and management as well as visits to the work areas of other professionals and joint training activities.

Most of the 21 LAs noted improvements in their relationship with the judiciary since the reforms, often citing individual relationships with particular judges, whilst at the same time recognising judicial independence. Relationships had developed through working together at LFJB meetings as well as on a more informal basis. Around a third of the 21 LAs (including both LAs meeting the 26 week timescale and others that were not) discussed (without prompting) the value of being able to have informal discussions with the senior judge:

On one level it [relationships] have improved as we have got that communication going. Previously it was unheard of for me to phone the senior judge at [court] about some issues. Now we are able to have a proper discussion and understand each other's issues (LA12, Manager).

We have a new family judge who is more open door, more willing to make herself available. She is genuinely interested in the pressure for social workers and how we can all work together (LA4, Lawyer).

Some judges are fair and balanced, some are known not to be fair and balanced in their attitude to the LA. They are not a group - no one is their boss... Each is a strong individual who goes about their work in their own way (LA 16, HoS).

The leadership of the judiciary and the relationship between the LA and the judiciary were viewed as key to LAs being able to meet the 26 week timescale for concluding proceedings. There were more examples of strong judicial leadership in LAs that were meeting the 26 weeks than those that were not, although good relationships with the judiciary was noted across LAs in both groups. One LA specifically discussed the lack of judicial leadership in the court area.

The lead judge is proactive and has a clear vision about what she wants and expects and consults on this. The judge is open to ideas from others. The value of a proactive judge cannot be underestimated (LA17, Lawyer).

We've not got a proactive judge here - there is not a strong enough message about expectations (LA9, Manager).

The potential risks of having a close working relationship with the lead judge was discussed by one LA, which recognised the need to stay vigilant for collusion.

We've always had a good relationship [with judge] - we are all singing from the same hymn sheet, we all know what is expected of us... We have a fiercely independently-minded lead judge, he will do things he thinks are right for children and families and not lamely follow strictures. He puts his weight behind what is right. We are generally co-operative here. One of the dangers is the potential for collusion, we need to stay vigilant for collusion or compliance or second guessing the court (LA15, HoS).

An area of concern for two LAs was 'naming and shaming' by judges when they judged practice to be poor, without first discussing the issues with the LA. The LAs concerned viewed this as detrimental to their professional relationship and also to the recruitment and retention of social workers.

Over the last few years [the relationship with the judiciary] has improved, but there is also some serious friction between the judiciary and social workers, naming and shaming the LA and even social workers on Bailii⁴³ has not assisted relationships in any way. It's not frequent but all LAs in this area have been named and shamed at some point on Bailii. It has an impact on recruitment and retention... It is not fed back before it goes public; the judge doesn't like to discuss it, he tells you how it is (LA20, Manager).

Since the quality assurance processes for evidence presented to the court requires that reports are signed off by senior managers and lawyers (as discussed in section two, above) it seems unfair to single out individual workers for criticism in a public forum.

⁴³ British and Irish Legal Information Institute (Baillii) provides legal information and reports of cases decided by courts, in the United Kingdom. See: <http://www.baillii.org/>

Children and Family Court Advisory and Support Service (Cafcass)

Around three-quarters of the LAs in this study discussed the good working relationships they have with Cafcass managers. These relationships were facilitated not only through the LFJB, but also through opportunities for joint training and meetings outside the LFJB, as illustrated below.

We also have meetings with Cafcass, once a quarter for the three [county] authorities and less often they come here. These are really useful meetings in terms of picking up good and bad practice, both ways (LA13, Lawyer).

We have a positive relationship with Cafcass. We did joint training a couple of months ago and they have a standing invitation to senior management meetings. There is more open communication between the organisations (LA6, HoS).

Professionals valued the role of guardians in terms of contributing to LA decision-making. Some LAs expressed a perception that guardians were having less of a role with respect to this than in the past:

We have difficulty trying get the view of the guardian in relation to the plan. It's problematic for court as it should be influencing us, that view is very important to take into account when taking a decision (LA15, HoS).

Their view has been diluted. Decisions are not made until the last minute. It's good to have triangulation; it's not happening anywhere near as much as it used to (LA15, Manager).

I think guardians used to contribute enormously to the outcome of cases and used to be an invaluable source for children. They used to be highly experienced social workers and highly respected by social workers, they would actually come up with ideas, make suggestions. They were very open about sharing their views of things. The whole guardian service has moved away from that. Quite often they are not giving a view until they have the final care plan, whereas I think they could actually be influencing the care plan. They don't have time to build relationships with families as they used to, yet their opinion holds such sway with the court still. We don't have a poor relationship with guardians, but I don't think that they play such a valuable role as they once did (LA18, Lawyer).

The relationships between social workers and Cafcass officers has got considerably worse. The complaint from our side is that we do not know what guardians are going to say when they walk into the final hearing. We have guardians who change their views when they walk into the final hearing (LA14, Lawyer).

There was also a perception in twelve of the LAs that guardians were not spending as much time with families as they did in the past, but that nevertheless the courts were giving credence to the guardian's view over that of the LA.

Guardians used to see a lot of the child and family, they really got to grips with cases. They do less of this now but the weight that is given to their opinion is the same (LA13, Lawyer).

One of the issues is the volume of work Cafcass has now, it seems to be growing. They spend less time with families but are still making serious decisions about the right disposal for these children and sometimes you think 'where did you get that evidence from'? You haven't visited the family, or only visited once or twice (LA7, HoS).

There is still a lack of [the court] believing in social worker assessments. We are being told we are the experts. When you have known the family for many months and in some cases several years. If the assessment says the concerns are such that you don't think the child should return home it's not given as much weight as the guardian going out and doing one visit. That hasn't changed (LA8, HoS).

One LA discussed the challenges relating to the number of available guardians in the local area and difficulties in establishing communication and trust with them in the face of some flux:

The problem is that there are not enough Cafcass guardians, numbers have halved. There has been an increase in the numbers we are issuing on, but we only have two guardians and one is off sick. We've lost four since summer and they have not been replaced. There are a lot of guardians we don't know, they are brought in from elsewhere and social workers have no relationship with them and are suspicious of them until they get to know each other... There has been a breakdown in communication between social workers and guardians. Sometimes they don't have a conversation until they have got to court (LA21, Lawyer).

Cafcass views on the findings

Although interviews with Cafcass were not part of the initial brief for this study, we were keen to seek Cafcass' perspective on these interviews. We therefore arranged a phone conference with two senior managers, which yielded useful reflection from their perspective on the issues raised above.

The Cafcass managers differentiated between issues raised about guardians having direct contact and forming relationships with children and young people.

Direct contact: Their view was that it is 'extremely rare' for guardians not to have direct contact with the child or young person at the centre of a case and that this had not been raised in any LFJBs as a performance issue nor picked up in internal audits of practice.

One aspect of a robust programme of practice development at Cafcass has focused on supporting guardians to engage in direct contact at the rate and level that is required in individual cases.

Forming relationships: The managers highlighted that it is not the guardian's role to build relationships with children and young people. 'They are not there to be the social worker' and will never know the child to the same extent as a social worker, whose role it is to work with and understand the child within the family context.

They stressed that it is Cafcass' role to 'look at this through a completely different lens', the aim being to take a 'meta position' one step back from the direct practice perspective. They highlighted that a guardian's core role is to establish the child's wishes and feelings and understand their needs, to interrogate the plan and examine what is in place to keep the child safe.

As is the case with LA social workers, there is a challenge around recruitment and retention of experienced guardians. Nevertheless, in terms of LAs' perception of a decrease in guardians' expertise, Cafcass recruitment requires at least three years post-qualifying experience. Cafcass has a small number of NQSWs on a 'grow your own' three year programme but these staff do not take on public law work until after three years and are trained and mentored into the role.

Cafcass' organisational focus on learning and development has focused on developing proportionate working and gathering information on the most pertinent areas of the case to inform an evidence-informed assessment. Other practice changes include guardians no longer attending fact finding reviews nor undertaking extended examination of LA case files. Quality assurance processes and the use of the Cafcass evidence template are supporting more focused and analytical reports to court.

The current study, our previous studies for DfE and other Research in Practice engagement in this arena over a number of years have all identified a widespread and enduring perception that family court judges give more credence to guardians' evidence than that of LA social workers. Cafcass managers acknowledged the prevalence of this view and offered their perspective on it:

This has always been the case. It comes down to the guardian commonly being perceived as devoid of other interests, independent, and their evidence being given more weight on that basis... The only way [for local authorities] to counter this perception is to redouble efforts to raise the quality of social work evidence... to have that aspiration and come up with the goods... It will be interesting to know if this perception is changing in relation to LAs where the quality of social work evidence has systemically improved (Cafcass manager).

Cafcass managers identified challenges for some LA social workers in having to come to court and "front up" work that was not entirely in their gift'. This could be particularly

difficult if there was not a consistently high standard of work or expertise in the case. For example, if a number of agency social workers are involved in a case the quality of the work is likely to be affected. They also highlighted issues around respect for the court and direction to file a report on time and at good quality.

You still get social workers turning up late; dress issues are a concern. Image is part of it. The professional view of the self in court builds towards that [respect for the court] (Cafcass manager).

Some LAs in this study discussed challenges around not having guardians' position statement or knowing their views on the permanence plan until the final hearing. When asked about this, managers noted that sometimes guardians have no fixed view until the final hearing because of the dynamics of the cases. In some cases they may be waiting for assessments to be completed and to see the evidence before they make a final decision (e.g. for a SGO).

Cafcass managers highlighted the importance of good quality pre-proceedings work, completing parenting assessments, kinship assessments and, in some cases, psychological assessments, as the key areas that enable LAs to produce robust evidence in a consistent way. The importance of these areas was also noted by LAs, as discussed in section four.

3.2 Use of experts

Expert witnesses to public law proceedings come from a range of professions⁴⁴ and are appointed by the court to assist them in making decisions. The FJR concluded that the 'over use' of experts in family law proceedings was a significant factor in delayed decision-making and recommended that expert testimony should only be commissioned when it is necessary to resolve a case (Norgrove, 2011). New rules regarding the use of experts came into force in the Children and Families Act 2014.

Recent research indicated a decline in the instruction of experts between November 2013 and December 2014 (Brown et al, 2015), a finding consistent with the perceptions of most of the professionals in the current study. However, four LAs discussed a recent increase in the use of experts.

Social workers are taking on the mantle of being the expert and having to develop competence and confidence in what they have to say. They are seen more as

⁴⁴ Brophy (2011) found the most common types of expert report in the family court were adult psychiatric reports; parents' psychological reports; independent social worker reports; paediatric reports; drug test reports; residential parenting assessments; non-residential parenting assessments and other medical reports.

experts than previously, the social work voice in court has grown in strength (LA8, AD).

There has been a reduction in the number of expert assessments - it was virtually every other case we had a psychologist's assessment and it would take four months to produce. If expert assessments are required we are noticing now that it's done quickly otherwise another expert is commissioned, we have more timely expert assessments (LA6, Lawyer).

We've seen an increase in requests for specialist assessments recently and they are being granted. If you asked me in September or October, I would have said there were fewer of those, but it's starting to creep back in (LA12, Manager).

One LA noted that the number of experts being used in the court area was particularly high and that they were collecting data on their use to establish if there were any patterns to this.

The court circuit has a high number of expert assessment approvals. It's not [LA] positively advocating for these - the court is allowing them. We are not getting feedback that it is because [LA] has not done what it should, there is no feedback that our assessments are poor... In the last six months we have been keeping data on the use of experts, who applied, the position the LA took on it, whether it was allowed by the court... We have sampled cases to look at the type of experts being allowed. If we want to reduce the number of experts locally we need to understand why it is happening (LA7, Lawyer).

3.3. Challenges associated with the 26 week timeframe

Performance management

The issue of performance management is central to the FJR. In spite of anxieties that 'stronger leadership and management might reduce judicial independence' (Norgrove: 64), the Review recommended that robust information (using key indicators such as case numbers, case length, number of experts) should be gathered and monitored by the judiciary to support case management and performance (*ibid*: 66).

There is no doubt that stronger case management and more effective case progression are widely evident in the wake of Norgrove's review and the Children and Families Act 2014, and the hard work of all parties should be recognised in relation to distance travelled in recent years. Nevertheless, the data returns, augmented by the qualitative information from this and our previous studies do indicate room for further improvement:

- Variations in case management practice across LFJBs: while data collection has developed there are issues with some local authorities contesting the case duration data held by MoJ on their performance.⁴⁵
- Adaptions to practice in response to performance management systems: The current study and our previous reports suggest that some judicial initiatives intended to ensure that proceedings are disposed within 26 weeks may raise new areas of concern.

The performance of Designated Family Judge areas is now a matter of professional and public scrutiny (through the ‘heat maps’ published by Cafcass).⁴⁶ It is worth recalling the analysis made by Munro of the adverse, unintended consequences of performance indicators becoming the drivers of child protection practice (to a degree that was never intended by those who introduced them) and reflecting on any transferable learning for the family justice system. Munro found that ‘the focus of performance indicators and targets on specific aspects of process as opposed to practice, has skewed and misdirected local priorities’ (Munro, 2011: 3.33). Performance indicators provide only part of the picture and can slant attention to process over the quality and effectiveness of practice, but ‘it is crucial that performance information is not treated as an unambiguous measure of good or bad performance as performance indicators tend to be’ (ibid: 14).

Purposeful delay

Statutory guidance provides the court with ‘discretion to extend the 26 week timeframe where it is necessary to enable the court to resolve the proceedings justly’ (Department for Education, 2014: p 22). Extensions may be granted for periods of up to eight weeks at a time (with no limit on the number of extensions).

Norgrove approached the proposition raised by some respondents to his consultation of ‘purposeful delay’ with caution and underlined that ‘purposeful delay can be an excuse for poor decision-making which is not consistent with the child’s timescale. The needs of the child must be the true test if all decisions are to be made in the child’s best interests’ (Norgrove 2011: 95).

Although all the LAs were clear about the benefits of the revised PLO for reducing delay, they also discussed the potentially negative impact of the court being overly-focused on

⁴⁵ The FJR recognised that ‘fundamental and sustainable improvement in performance is unlikely to be achieved until improvements are made [to IT systems]. This will need investment’ (2011:61). A scoping study funded by the Nuffield Foundation for a family justice observatory will begin in June 2016. A major component of the work will be to scope data sources and address the technical and governance issues that currently stand in the way of better use of administrative, survey and cohort datasets.

<http://www.nuffieldfoundation.org/news/team-lancaster-university-and-alliance-useful-evidence-establish-scope-and-delivery-new-family->

⁴⁶ https://www.cafcass.gov.uk/media/261059/s31_application_with_service_area_q1_1516.pdf

meeting the 26 week timescale if this is to the detriment of making robust and balanced decisions for children.

National figures might indicate that things are moving in the right direction and we are getting things through in 26 weeks. It's good, but what I always say at the LFJB is that 26 weeks isn't a measure of success it's the outcome and quality of work that matter more than the 26 weeks. Provided practice is robust that's good, but if corners are being cut to meet the 26 weeks in terms of robustness of assessments etc., then it's not a positive indicator (LA7, Lawyer).

The current study found some courts recognising the necessity in some instances to allow purposeful delay in the interests of the child.

The Designated Family Judge has said he is more concerned to do the right thing than stick to the 26 weeks (LA14, Lawyer).

26 weeks is a framework. We are very clear down here that we don't say all cases should be in 26 weeks, the judge certainly wouldn't like that. If anything we are more inclined to allow cases to go beyond 26 weeks between us [the LA and the judge], that's why it's gone from 16 weeks to 19 weeks. You should be able to do it within 26 weeks. That's a long time within a child's life (LA15, HoS).

Other LAs provided examples of where courts' focus on 'performance' (in terms of meeting the 26 week timeframe) may be contributing to rushed permanence decisions being made for children. According to ten of the LAs that participated in this study, purposeful delay was only agreed by courts in exceptional circumstances.

There is a risk of being completely focused upon the timescale and sometimes you need purposeful delay for a child because sometimes the work needed is very complex. If 26 weeks is looming the focus upon the child can get pushed aside. It's making sure there is a balance between right outcome and timeliness... It is only extended if there is a very good reason, but still the court will try to push it into 26 weeks (LA6, HoS).

It is a laudable objective and should generally be met but there are times when it should be extended. Courts are not agreeing to our request to extend beyond 26 weeks (LA17, Lawyer).

One LA discussed how the court was going ahead with a contested hearing without the guardian being present. Even though the judge would seek the guardian's evidence before the hearing, the LA was concerned that it would not give them the opportunity to cross-examine the guardian.

Next week we have got a contested hearing listed [LA/guardian contestation] and the guardian is not available. The judge is going ahead without [the guardian]. It's ridiculous, especially if the guardian is opposed to the plan, we want an

opportunity to cross-examine the guardian... The judge wouldn't make a final order without the guardian expressing their view about the LA plan. He might not have it in writing in terms of the final report, but he would make reference to it in his judgement, he will have spoken to the guardian (LA15, Lawyer).

Where the court agrees that there are exceptional circumstances in a case and an extension to the 26 weeks is granted, these cases go on an 'alternative track' in terms of measuring the court's performance against the 26 week timetable. Examples provided where cases might be extended included cases: where there is non-accidental injury and expert medical evidence may be needed; with an international element; where there is/has been a police investigation. Some LAs acknowledged that cases that are granted an extension to the 26 weeks can drift because they become less urgent.

Once it's gone over 26 weeks, it's like the spotlight is off - it's either full steam ahead let's finish in 26 weeks or we're not going to get this as a performance indicator so cases go on for some time. There is less urgency when cases go off on the alternative track (LA12, HoS).

Reducing the timescale further

Four LAs (two that were completing care proceedings in less than 26 weeks and two that were not) discussed the drive from the court to reduce the timescales even further. In one court area cases were being listed at 18 weeks, with the provision to go to 22 weeks if necessary. None of these four LAs believed that reducing the timescales to this degree was realistic.

[Cases are] listed within 18 weeks and if it looks like it's going to go over they are listed within 22 weeks. The judge rarely wants us to go to the full 26 weeks. The speed of assessment required [is difficult] - even if we had the full 26 weeks it would be more acceptable (LA8, HoS).

This kind of performance strategy creates real challenges for social workers and for families' ability to demonstrate the meaningful and sustained change required. Whilst it may be possible to complete some cases in much less than 26 weeks, a drive to a target of 18 weeks is likely to place undue pressure on social workers to complete robust assessments and gather all the evidence needed to make decisions that are in the best interests of children.

Re-issuing proceedings

Another challenge of the 26 week timeframe is ensuring sufficient time to test a placement, and the risk that proceedings may have to be re-issued in the event the placement subsequently breaks down, resulting in delayed permanency for the child. This was flagged as a particular issue by the LAs in this study in relation to:

- cases where parents had been in a residential setting and made good progress, but there had been insufficient time to test out whether positive changes could be sustained in the community.
- SGOs where the child had not previously lived or had a significant relationship with the potential special guardian.

There has been an increase in proceedings we are having to issue again for the same family - the same children, same parents. Because we've finished prematurely, things have gone wrong within 12 months and we are having to issue again. For example, we might have had a residential assessment with mum and it's concluded and it's positive, then they've gone straight into the community and because it's been so close to 26 weeks we've immediately finished the case and not had any time of the family in the community to be assessed. Normally we would have had another three months of proceedings (LA21, Lawyer).

We've had some family placements broken down recently, SGO and child arrangement orders. We would have tested it out longer in the past within the court process. It's led to fresh proceedings (LA1, Lawyer).

One LA provided an example where purposeful delay could have prevented a placement breakdown and having to re-issue proceedings.

At the moment we're in that culture where you've failed if you haven't done it in 26 weeks, you're almost criticised, whereas if that pressure was taken off and there was an element that would allow for further assessment in the community, you could have another ten weeks and not be penalised for it, I think we would see a reduction in the number of cases coming back... A recent example is we concluded eight weeks ago and asked for an adjournment to go beyond 26 weeks as prior to the final hearing the dad, who was going to care for child, split up with his partner. We had assessed them together positively, but we wanted more time to see if he could do it on his own. But the judge wouldn't have that and made a final order. Within three weeks we'd removed that child and were back in proceedings because there'd been a serious incident with the dad (LA15, Lawyer).

Court and judicial availability

Eleven of the 21 LAs (including both LAs that were concluding proceedings within 26 weeks and others that were not) identified issues with judicial or court availability as a barrier to meeting the 26 week timetable:

There is a big judicial availability problem. Even in cases that we can meet 26 weeks the courts haven't got the availability to list us within the 26 week timescale. The courts are busy as we are issuing so many proceedings (LA10, Lawyer).

The aim for judicial continuity in all family law cases and the development of specialist judicial expertise in family matters were recommended in the FJR as key elements underpinning case management and confident decision-making (Norgrove 2011: 12). In the current study, lack of judicial availability was identified as an issue in relation to maintaining a consistent approach to a case across the course of proceedings. Continuity may also contribute to delay as a new judge will need time to read the files and gain an understanding of the case.

Judicial continuity is a real problem, the court was asking us to complain about it at a meeting. Judges in courts move around, the more senior judges have various tickets⁴⁷ and they do a bit of crime, a bit of high court, a bit of this and that - so they are in different courts at different times. Although a case may be allocated to them, they may not be able to do the hearing as they are in another court, so cases get handed round. They've started using Recorders [but] even though they have a family ticket they may specialise in other areas and not have a grasp of the issues. It can be a cause of delay if there is no judicial continuity. If it's the same judge they don't have to read it all up - there are sometimes 2,000 pages in a bundle. If they've read it before and know the case they can bring themselves up to speed fairly quickly. If the judge has to start afresh in a complicated six day hearing there is at least half a day, if not longer, reading time for the judge to work out what the issues are, it's automatic delay before you've even started. There are not enough judges, too many cases, not enough courts, hearings are taking place all over the place (LA12, Lawyer).

There have been some issues in judges not being able to follow through to completion and another judge has been asked to step in... Workers have to repeat the work that has been done before. Sometimes they [judges] ask for new evidence, it sets things in motion that maybe the original judge wouldn't have done. But it doesn't happen all the time (LA7, HoS).

Lack of court availability can mean families and social workers may be required to travel some distance to attend a different court in order that the case can be heard within the 26 week timetable. This was a problem mentioned by the two London LAs (which were both in the same court area):

We frequently find ourselves at [non-local court] which is in [name of place], it's an absolute nightmare to get to from here. In terms of resources when we are sent [there] for something that will take half an hour, we are spending the whole day doing it as we have to wait around forever. No one thought through what that costs the LA. There are no facilities for Wi-Fi so you can't even do work while you're waiting, you can't charge your phone. It creates real frustration... It frustrates

⁴⁷ Ticketing is the process of accreditation to hear various types of proceedings.

families as well as they have other children, they have to make child care arrangements... It's a new building and there is absolutely no privacy, there is no confidentiality. We are talking to parents about losing their children, talking about mental health and there are so few rooms [to do that in]. I've never had a room, I've always been outside [in the main court area] with barristers, solicitors, parents, it's appalling (LA12, HoS).

Other stakeholders

There was a view expressed by some that, while LAs had introduced a raft of measures to comply with the requirements of the revised PLO, this had not necessarily been embraced by other stakeholders such as private practice solicitors and barristers.

Other stakeholders have been slower to embrace the cultural changes that the PLO requires; private practice barristers continue to manage cases 'old style', which means more contested hearings. My lawyers have to be more robust and fight to keep things on track. It's hard work (LA7, Lawyer).

Some LAs talked about what they consider to be a poor service for families from private practice solicitors who are funded through legal aid.

There have been substantial cuts in legal aid and a lot of times parents' solicitors are telling us that they aren't funded to do this, that and the other and are expecting the LA to pick up the shortfall. We asked the solicitor to get the parent's medical certificate and were told they are not funded for that... They quite often send unqualified staff along [to the pre-proceedings meeting]. I find myself wading in sometimes on the parents' behalf. Parents are not getting a good enough service (LA18, lawyer).

One LA discussed how they and private practice solicitors are held jointly responsible for filing on time and how they are required to report on each other if anything is filed late.

We have a good relationship [with private practice solicitors], but now we have to report to the judge anytime anything is filed late. I'd rather report even if we get on well than get told off by the judge at the hearing. We are all jointly responsible for making sure the case sticks to the timetable. We had one case where the social worker broke an arm and couldn't file by Friday, but said the court would have it on Monday. She got reported. When it's reported, if there is a serious breach we are called before the judge to explain. In really serious cases wasted costs are filed against us - it's happened on one occasion (LA21, Lawyer).

Increases in the number of care proceedings cases

Almost half of the LAs had seen a large increase in the number of cases on which they were issuing proceedings. In some LAs, care proceedings had been issued on historical

cases that had been identified following reviews of cases for Ofsted inspections or following the recent judgment on section 20 arrangements. Many of the historical cases were described as complex and required longer than 26 weeks to complete. In small LAs, such cases can skew their performance data.

When I came into post the average duration was 38 weeks. There were some legacy cases which were complex. [LA] is very small compared to some neighbours. There were some complex cases, cases with an international element, cases with people coming out of the woodwork during proceedings. A small number of cases can really skew our figures. Once we got rid of those cases there was a significant impact [on performance] (LA11, Manager).

In that period we had some very big cases with very large families. One case went on for about two years as it had foreign links and the family kept on producing more relatives to assess. The number of care proceeding cases that we are issuing on at the moment is massive. We've issued eight or nine in the past month (LA12, Lawyer).

3.4 Courts' responses to the challenges

Managing court availability

One LA discussed how the court was working around the problem of court availability by having hearings running in tandem (i.e. listing a final hearing for a non-complex case on the same day as another case that has been listed). Another LA talked about the judge listing two dates for a final hearing with the expectation that some cases will conclude at the IRH (issues resolution hearing), thereby freeing up court space for another case to be heard. In one LA, some hearings had been conducted in chambers, but this practice had been stopped after a judge was 'threatened' by a child's father.

When you haven't physically got a court the hearing is cancelled; that's not helpful. Sometimes you just need ten minutes with a judge, if you can get everyone there it's surprising how many settle. Quite often at IRH they haven't got the message about what is happening. By the time they've got to the final hearing they've had time to think about it. A lot of cases for SGO or long-term foster care can be settled in one day in court just popping in and out with the judge and trying to get their heads banged together. The judge has agreed to that, if she's doing one that's listed for all day she's just going to keep people coming in and out and asking which bits they are not agreeing to (LA21, Lawyer).

A lot of our cases finish at IRH, it frees up final hearing time for other cases. We get given a date for the final hearing at the first hearing. Sometimes the judge lists two dates so it overlaps with other cases, thinking that the other case that is listed for the final hearing may fall short [finish at IRH] (LA15, Lawyer).

Use of additional judicial professionals

Some courts are managing the lack of judicial availability by bringing in additional district and circuit judges or by using the expertise of magistrates. However, one LA questioned whether magistrates should hear cases that involve the removal of children from families. Some LAs also noted that cases that are heard by a magistrate generally take longer to conclude than cases that are heard by a judge.

The DFJ [Designated Family Judge] here is looking at how she can use the expertise of magistrates. Circuit judges' lists are heaving and not all cases are that complicated (LA1, Lawyer).

From January to March we will have an extra circuit judge, an extra bench and an extra district judge with a care ticket sitting. It will clear some of it but it has its own complications in terms of judicial continuity, it's not a long-term solution (LA10, Manager).

The issue for me is about care proceedings being managed by magistrates. The most basic of human rights, the possibility of losing your child, should never be heard by a magistrate. If you are heard by a magistrate it takes longer as they need a lot of input from clerks, and also because they are very cautious, because it's not their day job. How can you lose your children through a lay person? (LA12, Manager).

Using alternative disposals and hearings

In one LA the DFJ had introduced a version of a supervision order, known locally as a 'community assessment and monitoring supervision order' (CASMO), as described below.⁴⁸ The LA expressed concerns about this order being used to make sure proceedings conclude within 26 weeks.

⁴⁸ The following explains the legal basis for this order:

Supervision Orders sit at S.35 of the Children Act 1989. S.35 (2) relates to further provisions with respect to Supervision Orders. There is power to attach requirements to a Supervision Order. Schedule 3 of the Children Act 1989 is entitled Supervision Orders and gives more information about these requirements/conditions.

A supervision order may contain the following requirements;

1. A requirement for the supervised child to comply with the directions of the supervisor [social worker] on certain specific matters. This directions imposed by the LA can include:
 - to live at a place specified;
 - to present him/herself to a person specified at a day and a place specified;
 - to participate in specific activities;
 - to keep the supervisor informed of any change in address;
 - to allow the supervisor to visit.

[Thus imposing a requirement to a Supervision Order enables the LA to impose directions on the child which facilitate ongoing assessment and monitoring].

CASMO is an enhanced supervision order - it's a supervision, assessment and monitoring order. It is being made a lot to meet the 26 weeks; it's used to make the final order but it still needs assessments, support and to monitor. None of us really like it. If you have all the evidence and think it should be a supervision order there is a responsibility to support, assess and monitor. I don't think it's right to use such an order to shorten proceedings when work hasn't been done to make the final decision. That's what the order is being used for (LA21, Manager).

Two LAs in another court area discussed how the DFJ encourages parties to the case to have a 'settlement hearing' to try and get all parties to agree. The main reason suggested for this by the two LAs was that judges are being pressured to reach the 26 week target, and because they are not able to look at parental change over time and do not have all the expert reports that they used to have, it affects their confidence in making a decision. However, the same LA noted the increasingly adversarial nature of proceedings and an alternative explanation could be that it is linked with the increasing appetite for having a less adversarial public law system, as evidenced with the FDAC.

'They [judges] don't want to make decisions. I guess because the timescale is so short they don't feel they have enough evidence to see what is happening over an extended period of time and therefore seem more reluctant to adjudicate. They encourage us to go to settlement hearings to get all parties to agree... They seem to be encouraging parties to reach agreement rather than them [judges] making a decision (LA6, Lawyer).

It [court] is more adversarial - I think there are more criminal barristers coming into the family court arena since the reduction of legal aid (LA6, HoS).

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2. With the consent of any person with parental responsibility for the child and with whom the child lives a requirement for the responsible person to take certain steps or to comply with the supervisors directions.

[This is a mechanism to enable the LA to 'impose with consent' directions upon the parents/carers to facilitate ongoing assessment and monitoring of the parents/carers].

3. A requirement that the supervised child submits to specified medical or psychiatric examination.
4. Provided certain conditions are satisfied, a requirement that the supervised child shall submit for such treatment concerning his mental health as may be specified.

The decision to add a requirement is subject to the paramountcy principle. The scope for attaching conditions to a supervision order is limited to the conditions above (1-4).

3.5 Changes in types of orders being made

Rise in care applications and care orders

As discussed in section one, there has been a year-on-year rise in the number of care applications being issued. Professionals were asked for their views on the reasons for this increase as well as the increase in care orders being made nationally. They proposed a number of reasons for this including:

- LAs getting better at identifying risk of significant harm
- LAs being more risk averse following high profile cases of serious harm or child deaths
- Reviews of child protection cases leading to proceedings being issued
- Wider pressures on families, in particular the pressures of poverty and the detrimental impact of this on children and families
- More awareness and reporting of neglect and abuse
- Cuts in LA preventative/early help services.

Some examples to illustrate these propositions are provided below.

In these economic times people are under so much pressure - families who are short of money and having to worry about moving house, worried about becoming unemployed - that's when you get things like domestic violence, neglect etc. There is more of that for purely economic reasons. Alongside that LAs are having to endure such massive cuts along with cuts to health services, drugs services all sorts of things are being shut down so you can't do the preventative work (LA18, Lawyer).

We had a rise here before the PLO as result of reviewing cases that had been on child protection plans for some time. It's linked to the Baby Peter case. [The rise came about] as a result of tracking cases and the permanency panel's work. Also, changes around section 20 arrangements have resulted in us issuing more (LA11, Lawyer).

There was a national rise in child protection following Baby P. Safeguarding is much more embedded; those children who might have slipped through are no longer staying in such situations. I think we will see a greater increase when we tackle neglect. We are looking at children who have been on child protection plans [and] bringing greater scrutiny to these plans (LA17, AD).

Threshold for removal

Although nationally there has been an increase in the number of care applications, there was a perception in over half of the LAs that the threshold for removing children on an

interim care order was higher than in the past. Of particular concern for LAs were children remaining in potentially risky situations.

When we say to the court that we have got no further work to do and we are looking for interim removal, the court says this is not about interim removal, this is a question for the final hearing. We are then not getting removal of children - they are then left in situations, where in our view they are not safe, until the final hearing and unfortunately we have one case which is now subject to a serious case review (LA13, Lawyer).

I worry about children remaining at home within care proceedings with no order. Sometimes we don't get removal at an early stage - we ask for it when we go to court and don't get it. [Q: Why?] Case law - the pendulum has swung pro-parent, Re B-S has created that climate. The balance sheet⁴⁹ is a really useful exercise, it's good to have this, but it's changed the way people think. Now LAs are not getting the benefit of the doubt, which is why we are not getting removal (LA12, Lawyer).

Two LAs also talked about the challenges in getting an EPO (Emergency Protection Orders).

EPOs are an area of concern - the threshold is so high. Courts are under so much pressure that there is often delay in getting first hearings. Sometimes a critical incident happens and the court won't hear the EPO unless the parent is absolutely intoxicated there and then. It's mostly because of the threshold, but also because of court time not being available (LA11, Manager).

Care orders at home/ with extended family

Eight of the LAs discussed, without prompting, the increasing use of care orders for children to remain at home, often made by the court when the LA had not made such a recommendation. These orders were being made in LAs that were concluding within 26 weeks as well as those that were not. One of the main reasons proposed for this increased use of care orders at home was the shorter period available for testing out whether positive changes in parenting capacity can be sustained, because of the 26 week timescale. None of the LAs thought that care orders at home were a suitable disposal for concluding cases.

⁴⁹ In *Re B-S* the Court of Appeal cited that, when a court is asked to approve a care plan for adoption or make a non-consensual placement or adoption order, evidence from the local authority and the guardian should address all the options and contain an analysis for and against each option with fully reasoned recommendations. A 'balance sheet' style approach was commended to do this:
<http://www.familylawweek.co.uk/site.aspx?i=ed117472>

We've had 17 this year, ten we didn't ask for and seven others we either asked for or conceded in court on the balance of circumstances. It's inevitable because previously a lot of assessment work was tested out during prolonged care proceedings. Now it's shorter so testing out is coming at the end of proceedings. We need to address this now as we are seeing more of these (LA5, HoS).

We are seeing an increase in care orders at home, the court is saying the situation is not tested. We go in with plans for SGOs or child arrangement orders but guardians are not supporting this and we are getting a lot more care orders at home, with instruction to come back in six months to discharge the order. It's not conducive in terms of being a swift plan for the child... I consider this to be a result of the 26 week timescale and also the impact of Re B-S. It's very significant and potentially leaves children in very risky, vulnerable situations (LA1, HoS).

Because the timeframe is much tighter we find the court will make care orders for children to go home more often now. It's a challenge as placement with parents is more difficult to manage, and places a long-term resource commitment on the LA. There is an increase in cases where the LA want to see parents consolidate positive change in their parenting capacity, but the court says the timeframe is 26 weeks. We haven't got time to allow parents to consolidate their skills so you have a care order and the child goes home with parents [after being in foster care]... We would rather have an extended timeframe to manage them going home more carefully (LA18, HoS).

Three LAs discussed the use of care orders with extended family members before an SGO is made. This was attributed to the short period of time available to test the placement with special guardians, as well as caution amongst some special guardians in becoming permanent carers. Some LAs viewed the use of a care order with potential special guardians as a positive step to test the placement, while others viewed this negatively.

It's difficult for connected persons to make their mind up [in the time] if they are going to look after this child for the rest of their life. They are more likely to make a less reasoned decision than if they took longer. They are also cautious and want to remain long-term foster carers. We have ended up with more children in care with connected persons who are cautious about becoming special guardians (LA16, HoS).

Courts are using them [care orders] as they are not sure about decisions about connected carers. It's easier to make a care order with a child with the grandparents to see if they can cope because if they can't cope then you can pull it back in and get a placement order fairly quickly... You shouldn't be having children two, three, four years old coming out with care orders. Either give an SGO or don't, stop leaving the LA holding the baby with a care order (LA20, AD).

We ask for a section 20 then assess them as a connected person. If there are no concerns we support application, if we have any doubt we test the placement for 12 months [with a care order] before the SGO application (LA7, Manager).

The increasing use of care orders at home is an area that needs further investigation.

SGOs and placement/adoption orders

A recent Department for Education policy paper on adoption has highlighted the reduction in the number of decisions to pursue adoption, and the intention to change the law 'to ensure that adoption is always pursued when it is in a child's best interests' (Department for Education, 2016c: 8). The reasons behind the reduction are thought to stem from:

- A mistaken view that the legal test for adoption has changed and the bar that must be met for an adoption placement order to be made has risen.
- A misunderstanding resulting in the view that if any extended family placement can provide 'good enough' parenting at the current time, this should be pursued over adoption, even if professionals have concerns about the ability of the carer to look after the child, or feel the placement is unlikely to be sustainable over the whole childhood and into adulthood; and
- A drive to eliminate delay in the family courts and conclude care cases within 26 weeks, which is leading some local authorities to believe adoption is difficult to pursue within the timescales (Department for Education, 2016c: 20).

In the current study the increased use of SGOs was seen as positive by all LAs, when it is in the best interests of the child. When asked for their views on the reasons for there being an increase in SGOs and a decrease in placement orders, the majority of LAs attributed this to *Re B-S*, even after the judgment had been 'myth-busted'. Better identification of family members and improved assessment processes were also attributed to the rise in the number of SGOs.

More connected persons are coming forward, and that's right. The LA is getting better at considering them - we have an SGO team to focus on this and make sure we are doing robust assessments (LA21, Manager).

There is an increased focus on placement with families, but sometimes it feels like there is an emphasis on family even when there are problems with doing this. The courts are now very difficult to persuade against placement with families and guardians are also very difficult to persuade (LA13, Lawyer).

[Re B-S] has been myth-busted and I know that was not what B-S was saying but it just seems to have made people's approach change and they are looking at adoption differently. Even when we are recommending adoption the court and guardians seem reluctant to consider it as a plan (LA5, lawyer).

There was a view amongst some that misconceptions following *Re B-S* were now shifting and that there was a move towards a much more balanced approach.

There was a misconception following Re B-S that placement orders were out and family placements were in. There was more of a steer and push towards that... I think there's been turn around on this following further case law around the best interest of the child. There was an increase in family placements but I think it is recovering (LA10, Lawyer).

Some LAs discussed the use of supervision orders with SGOs and SGO placements breaking down. This is consistent with Research in Practice's previous studies (Research in Practice, 2015b and c) and recent research from Brunel University (Harwin et al, 2015).

We are seeing a rise in SGOs alongside supervision orders. Courts think that if there is another order, like a care order or a supervision order, it directs the LA to provide services whereas if it's just SGO then they may not get anything... It's a route for children to receive support particularly in times of reducing resources (LA6, Manager).

*We are seeing breakdown of SGOs, there have been ten from SGOs made this year where we've had to go back to court to apply for a care order. It's cases where the special guardian has never experienced the child living with them. The combination of *Re B-S* with the 26 weeks has had the most significant impact... Three months testing out will do. The ones that have broken down usually do so within the first three months (LA21, Manager).*

Although there was a general view that LAs are under pressure from the court to find a family placement, some LAs stressed that they do not budge on their plans for adoption when they consider that it is in the child's best interest.

*The reduction in placement orders is tied up with courts' interpretation of *B-S*, not the LA interpretation, I feel this really strongly. We are not applying for fewer placement orders, but it's the prevailing ethos in court in terms of SGOs... Although they (judges) are not supposed to be able to control the care plan, they do and we get the message of go away and come back with a plan of special guardianship and we'll talk. We get very strong indications that we won't get a placement order on this case (LA12, HoS).*

*There has been a misinterpretation of case law, *Re B-S* and *Re R*, people have still got *Re B-S* in their minds and they can't get away from that. Anything other than adoption will do is still very much at the forefront of social workers' minds, also local solicitors. It's having the confidence to say 'no, that SGO is not good enough, the plan is still adoption' and seeing that through and evidencing it in*

court rather than just accepting that the family member is OK and they will be back in court in six months' time (LA15, Lawyer).

Section 20 arrangements

The recent judgment and guidance from the President of the Family Division on Section 20 arrangements had led LAs in the current study to review the cases that they held under a section 20 arrangement, and in many cases this had led to care proceedings being issued. Although section 20 arrangements were not an issue for all LAs, those that discussed it were in broad agreement with the spirit of the directive. However, they also saw it as an encroachment by the court on LA decision-making. Recent guidance from the ADCS and Cafcass has provided further information for practitioners on the use of section 20 arrangements, which should help in establishing good practice.⁵⁰

We've reviewed it for under tens. I don't agree there's been systemic abuse of section 20s... We operate under the welfare checklist, the 'no order principle'. If we are working in partnership with the family section 20 is a good vehicle to do it. But there are cases where you need to be sure it doesn't drift, particularly young children, cases where the parent has mental health or capacity issues. We need to revisit every six months to make sure they are still happy with the legal status (LA20, AD).

It's encroachment of the judiciary into core LA business. We've had a number of cases where children started off in section 20 accommodation and then moved into care proceedings. One particular judge asked the head of service to write a statement on the delay. It was not a delay, it was a form of family support within a particular family context. The interpretation is that any child that has been in section 20 accommodation and subsequently comes to proceedings, that's somehow been a form of delay in achieving permanence... Any use of section 20 accommodation now is viewed with suspicion (LA8, AD).

Contested cases and appeals

LAs were asked about the types of cases that are contested in court. These centred on cases where parents sought leave to appeal against a placement/adoption order or where a relative had a negative viability assessment. Two LAs discussed how recent case law and appeals against adoption orders are having a negative impact on the recruitment of adopters.

Contested negative viability is not unusual. It causes some tension because the LA has processes and standards in place for assessments (LA5, Lawyer).

⁵⁰ <http://adcs.org.uk/care/article/section-20-practice-guidance>

We are starting to see parents some months into placement orders being made challenging how robust our evidence was before the court. Parents say the timeframe to hear evidence about positive changes has been reduced and they have not had enough opportunity to demonstrate their strengths (LA18, HoS).

[Contestation is] usually when there is a plan for adoption or if the child is at home on an order and we are looking for removal; these are highly contested. We've had demonstrations outside the building in adoption cases because of social media, more so since Re B-S... The level of challenge from adoption appeals is a real issue for recruitment of adopters (LA6, HoS).

There is an emerging challenge of getting people to come forward for adoption since the reforms and B-S- because of all the pitfalls there are now (LA2, Manager).

Some LAs discussed how they try to avoid contested hearings, sometimes through pre-court discussions. However, in one LA there was a move to challenge the court's position more.

Pre-court discussions take place as they always have done. There is a lot of time trying to get to an agreed order, we try not to have a contested hearing unless absolutely necessary (LA7, Manager).

The court invites us to reconsider, which means they will not agree. Usually we would go with what the court are going to do. Usually this is when the court want to place with a family member. [LA] often go for care orders in such circumstances and agree that the child will live with relatives. Often the squeezed timescales force these decisions. We have seen some of these children come back into care [placements breakdown] (LA16, HoS).

We tended to avoid contest, now the position is changing. The more senior view is that we should contest more and cut through some of the PLO process and get into proceedings quicker. It's a result of feedback on what the LA are subjected to in court and managers being concerned at the level of risk being held by the teams. Too often we are in a position where children are suffering ongoing harm... and the view is that we should be making less use of the advocates' views and being more adversarial and contesting more on issue and being less PLO compliant. It's difficult to contest because judges are openly saying that they have made their mind up (LA2, Manager).

One LA discussed a case they had taken to appeal and won. This same LA also discussed the difficulties in finding grounds for appealing the court's decision.

We did appeal one where the LA wanted adoption as a plan and the judge did not agree, I think he felt they weren't adoptable. We won that one. We often end up

thinking we would want to appeal but are told we don't have the grounds because of the way the judgment has been given (LA9, Manager).

Summary

This section has discussed LAs' views and experiences of working within the court arena, where relationships were reported as good, but a number of challenges were described.

- Strong leadership and management within the judiciary were viewed as key to LAs being able to meet the 26 week timeframe.
- LAs valued the independence of Cafcass guardians and the role that they play in informing and challenging decisions about permanence for children. The view expressed by some that guardians have a less 'hands-on' role than in the past was refuted by Cafcass managers who stressed that guardians gather the most pertinent information for a case to inform an evidence-informed assessment.
- Performance management to meet the 26 week timeframe was reported as leading to some unintended consequences. Some examples of unintended consequences noted by participants include:
 - the unwillingness of courts to allow purposeful delay, leading to untested permanence decisions being made and in some cases proceedings having to be re-issued within a relatively short timeframe
 - a performance management strategy in some courts which reduces the timescales even further
 - use of alternative disposals (e.g. care order at home)
- An increasing use of care orders for children to remain at home was attributed to courts having less time in which to test placements and make a definitive decision about permanence. Placing a child on a care order at home means that the LA remains involved in the case and has to undertake regular reviews, with the order subject to discharge at six to twelve months. Further research is needed to explore the use of this order.
- Lack of court and/or judicial availability in some LFJB areas is seen to contribute to delays in concluding proceedings. Courts are finding ways to try and manage this, including having hearings running in tandem and bringing in additional judges from elsewhere to fill the gaps. These workarounds may not be sustainable in the long-term and alternative solutions will need to be found to ease the pressure on courts.
- Recent judgements and guidance on section 20 arrangements have led to a review of cases and an increase in the number of proceedings being issued. This is likely to be a short-term spike and the additional guidance from ADCS and Cafcass will be helpful in improving frontline practice.

The next section brings the various strands of evidence together to explore the variation in LA performance (in terms of meeting the 26 week timeframe) and practice.

4. Variation in LAs' practice and performance

The key aim of this study was to explore variation in LA practice and performance in terms of meeting the 26 week timeframe and the reasons for this. Meeting the timeframe is a key performance indicator for courts but it does not take account of outcomes for children in terms of them being placed in long-term, stable and safe placements.

This section considers the factors and processes that LAs consider are behind the 'ability' of LAs to meet the timeframe. It also discusses the changes to the family justice system that LAs believe would help them achieve the best outcomes for children.

A summary of the variation across LAs in relation to key themes discussed in the report can be found in the table in appendix two. Themes that were discussed spontaneously by participants without prompting are highlighted in the table.

4.1 Accounting for similarities and differences between LAs

One of the most striking features of this study was the degree of similarity between LAs in terms of their approaches to practice, and also the similarity in the challenges they faced in implementing the revised PLO. These similarities far outweighed any variations in practice between LAs.

Individual LA data

LAs were provided with a summary of data collated by the Ministry of Justice (MoJ) and asked to comment on whether it was consistent with their own data. They were also asked about factors underlying the data. The data covered the period April to September 2015 and comprised:

- The average duration of section 31 cases⁵¹
- Percentage of cases completed within 26 weeks
- Number of section 31 cases completed
- Final rank (average rank of average duration of section 31 cases and average rank of cases completed within 26 weeks)
- Change in the final rank compared to the same period the previous year.

Although the majority of LAs stated that the data were consistent with their own data, three LAs highlighted that it was not. One LA had scrutinised the data they had received from MoJ (outside of this study) and noted that it included data from neighbouring LAs.

⁵¹ Under section 31 of the Children Act 1989 the LA (or any other authorised person) can apply to the court for a child or young person to become the subject of a care order.

As a result, there were discrepancies in the number of section 31 cases being concluded (with the LA recording a lower number than MoJ) and in the average duration of section 31 cases (LA had recorded a lower duration than MoJ). This and another LA were in the process of querying the data with MoJ.

We got the Assistant Director to write [to MoJ] about where these figures come from as it's different from our own data - there is a dispute. Sometimes the court has the wrong information. There is an issue around where you measure from and to as our data has always been slightly better (LA12, Manager).

Ofsted ratings

We should be cautious of deducing a clear link between Ofsted rating and performance against the 26 week timeframe. Three of the ten LAs that were not meeting the 26 week timeframe and one of the eleven that were meeting this timeframe had been judged as inadequate by Ofsted and issued with a notice to improve at some point in the last three years. The overarching challenges faced by these LAs meant that it had sometimes taken them longer to implement changes to meet the PLO than some other LAs. However, as noted in the example below, the PLO had been crucial in providing the LA with a framework in which to work.

The context for [LA] is that we are an improving LA. We were given a direction to improve and an improvement board was set up in 2013. PLO improvements need to be set in that context where we had significant staff changes, with reliance on agencies - just under 50 per cent agency workers - and we were moving to improve across all aspects of social care. When we were looking to improve work in the PLO we were doing it in the context of a really poor performing LA, one of the worst in the country. When the PLO started we were at the beginning of our improvement journey. At that point care proceeding cases were taking around 60 weeks. Pre-proceedings was non-existent. Having the PLO was essential as it gave us really clear expectation about how to do both pre-proceedings work and court work. We've adopted it in its 'purest form' [i.e. with fidelity to the FGC principle of being a family-led process] until we get to a position where we are seeing improvements (LA10, Manager).

One LA that had previously had an inadequate Ofsted rating had been paired with a neighbouring LA in the same LFJB area following the inspection as part of their improvement plan. The incoming managers found that the PLO had not been properly implemented and used their leadership and experience of implementing this in the neighbouring LA and made substantial improvements as a result. The improvements have been such that the LA is now completing care proceedings in less than 26 weeks.

The importance of pre-proceedings practice

When asked about their performance data, all the LAs meeting the 26 week timeframe credited this, in part, to good pre-proceedings practice. These LAs tended to have well-embedded pre-proceedings processes that had been developed ahead of or shortly after the revised PLO was implemented. These LAs discussed, in particular, the importance of front-loading assessments, the early identification of potential family carers, and robust tracking arrangements for cases in pre-proceedings and proceedings.

We have had a drive to start assessments earlier, and finish when we are asked to finish. We are better at keeping to court deadlines. We have placed a big emphasis on this (LA17, Lawyer).

The quality of work we do with families before proceedings is of high quality. We are front-loading and will have explored lots of things so that when we get to court it is good to go. As a LA we like to please, we recognise we are one player within a system. If other players have to meet performance indicators we want to support them in achieving that through our pre-proceedings work. We go out of our way to get things done. Our protocols following the PLO are more robust now (LA8, AD).

We have refocused on social work practice and how they need to think about permanence from day one... You need to have managers who are au fait with court process. We have focussed on good quality staff, not using legal for discussions about what should happen which frees them up to focus on what they need to do. There is sign off at my level for all stages. We also ensure that when we file care plans we consider everything (LA19, HoS).

Although LAs not meeting the 26 week timeframe discussed improvements in their pre-proceedings practice, these LAs tended to have less embedded pre-proceedings processes that had often been started some time after the PLO was implemented. There was a recognition amongst these LAs that they still had further work to do in this area.

We are still getting social workers and team managers to understand the requirements of the PLO, what the pre-proceedings stage is about, and how the courts have changed and how court expectations have changed. It's a work in progress (LA9, HoS).

We are still behind in getting permanency planning up and going as quickly as we want to and need to. We are getting our heads around the idea that we have to start parallel planning from day one, not just when we get to court. This has improved significantly but it is not there yet (LA14, manager).

Some LAs noted the variation in the quality of their court reports and statements, although this was not generally discussed in relation to having to complete re-assessments and the impact of this on meeting the 26 week timeframe. However, there

was a recognition amongst almost all LAs that ongoing work was needed to ensure consistency in the quality and robustness of assessments and reports.

Leadership and management

The importance of strong leadership and management were discussed by some of the LAs that were meeting the 26 week timeframe and, to a lesser extent, those that were not. Some LAs that identified historically weaker management and/or leadership had found that their practice had improved once new management and leadership structures were in place.

[There is] Improving performance in the LA. Social care has been on an improvement plan. We were in special measures so we had new leadership. Through interim and permanent leaderships there has been a real focus on improving performance. The director is a very strong leader, she operates very strategically and is a driver, this is reflected in the appointments she has made (LA2, Lawyer).

What has really helped is having a stable management team (LA7, Manager).

[LA] has become more strategic in adopting national standards and requirements. This has enabled us to be much clearer on plans for children (LA16, Lawyer).

Strong leadership is important in building a common ethos and ensuring that professionals feel supported and valued, which contributes to improved retention and a more stable workforce.

Judicial leadership and management was seen as being important, in the most part by LAs who were meeting the timescale. It was seen as undermined at times by lack of court or judicial availability.

I feel credit [for meeting the 26 weeks] must go to the court. We've got a very robust DFJ, there is robust case management here. No cases would go beyond [26 weeks], we only have a few and for babies he wouldn't consider 26 weeks. It's more like 12 weeks providing pre-proceedings work is done properly, which we tend to do (LA1, Lawyer).

The judge is behind this - he won't list things for more than two days in most circumstances. He is very clear what evidence he wants to hear at the final hearing to make a decision. He is very strict on instruction of experts, that's a good thing. He is very good at timekeeping when we are in a contested hearing, he is very good at gate-keeping in terms of witnesses. We are paperless; bundles are sent to the judge electronically and judges access everything on a laptop. The only bundle we print off is the witness bundle; you don't have to spend ages flicking through bundles at court (LA15, Lawyer).

The judge has always been focussed on timescales, so 26 weeks is not a massive problem for us. We now have a gate-keeping approach. The magistrate's clerk looks at the paperwork when it comes in. It's not unusual for it to come back to us at this stage with questions (LA8, Lawyer).

The impact of complex cases on average case duration

A number of factors that must be addressed to counter delay have been discussed throughout the report, including:

- Identification of extended family members early in the process;
- Completion of assessments in a timely manner;
- Timely return of reports and other checks (e.g. police checks) from other agencies;
- Court and judicial availability.

Delay can be amplified when there are greater complexities in a case. Complex cases identified by participants in this study included those with:

- Large sibling groups, often with multiple fathers;
- International elements;
- Allegations and disclosure that come out during proceedings;
- Criminal proceedings running alongside care proceedings;
- The need for expert medical reports where there is a suspected non-accidental injury.

LAs with a relatively low number of section 31 cases highlighted the impact of having a few complex cases that significantly over-run the 26 week timeframe on the average duration data. These types of cases were more often mentioned by LAs not meeting the 26 week timeframe.

During that period we had a number of massive cases that were never going to be concluded in 26 weeks. For example, there was one case with eight children where there was sibling sexual abuse; it was heard in front of a judge in the High Court, it was never going to be resolved in the time. In another case there were two children from a Brazilian family - they had lived in Brazil, the USA and Germany before they came to England, we had to get medical records from all around the world. In other cases there have been concurrent criminal proceedings. We are getting through things more quickly than the data suggests (LA18, Lawyer).

We had better performance in the last quarter than the preceding ones - we have a pattern of achieving generally within 26 weeks. The September data includes a number of long running cases with non-accidental injury and foreign elements and

family members coming forward at a late stage. One case was 50 plus weeks; the grandparent who had withdrawn from assessments earlier then decided later on that she wanted to be assessed. It was a case with a final plan for adoption so we had to start again. You only need a couple of longer ones to skew the data in smaller LAs (LA6, Lawyer).

We did not have access to any data on complex cases to gain a deeper understanding of these cases.

4.2 Suggestions for improving the family justice system

LAs were asked what further changes they would like to see to improve the family justice system. LAs were clear that they did not want to see further major change to the system; suggestions were generally focused on tweaks that would support the family justice system in its present form to operate more effectively.

The feedback from workers is that the direction of travel is correct. I wouldn't want to see any changes while we are embedding and consolidating the changes (LA7, HoS).

It would be good if it could be acknowledged how hard everyone's working to comply and it would be good to have a bit of space for everyone to get on with it (LA11, Lawyer).

Flexibility in the 26 week timeframe

The majority of LAs thought that there needed to be greater flexibility within the system to be able to extend some care proceeding cases beyond 26 weeks. This was noted in particular when relatives come forward as potential carers late in proceedings.

There has to be not just a drive focusing on 26 weeks, we can get fixed on this. There can be a need for some children to be in care proceedings longer (LA19, Manager).

There needs to be more scope on time from the court and there needs to be more flexibility. It's great having a 26 week window, but actually there are some times when it just can't be achieved (LA7, Manager).

The drive to meet 26 weeks can have unintended consequences. I am concerned that some assessments we are being asked to do are within hugely truncated timescales (LA8, AD).

The implementation of a system focussing on timeliness as a performance indicator has been enormously effective in driving down care proceedings duration. Future work towards an integrated IT system may offer opportunities to develop the means to monitor

and analyse performance in relation to short, medium and longer-term outcomes for children and families.

Court capacity and facilities

The court's capacity to hear the increasing number of care proceedings cases was highlighted as a challenge for many of the LAs in this study and more than half discussed the need for changes to be made with respect to this.

What the judge would say is that he needs support with regards to court capacity - it's fine to have standards, but when court capacity is really stretched they are having to bounce out some adoption hearings to make way for new proceedings because they are urgent (LA10, Manager).

Courts need to change the way they work so they don't have a huge number of cases listed, resulting in people hanging about in court all day. Courts need to be less focused upon the judge and more focused on users of the service - parents (LA5, Lawyer).

Some LAs also discussed the need for improved facilities in court (e.g. internet access, more meeting rooms). Other LAs discussed the possibility of having simple hearings conducted by telephone or videoconference.

Court resources are not conducive to good practice - [we need] Wi-Fi, meeting room space or consultation rooms (LA2, Manager).

I'd like courts to consider having simple hearings by telephone or maybe video conference to save time (LA9, Lawyer).

Case law and government policy

Since the revised PLO was first implemented there have been significant government policy developments around adoption and special guardianship and some significant case law judgements. Some LAs discussed the 'tension' and perceived conflict between the government drive on adoption and the judgments and practice guidelines being issued by the High Court/Court of Appeal. One LA suggested that primary legislation was needed to bring the different Children Acts together.

I think there is tension between the family justice system and the government drive [on adoption], it's not worked out when you think of Re B-S. That needs to be resolved and sorted out (LA2, AD).

We need to have a forum to have conversations before massive edicts go out [from courts]. Social workers on the frontline are tearing their hair out because judgments are often at odds with other policy and guidance, they are caught in the middle of this dilemma. There needs to be some way that if they want to make

change, someone considers it from a systemic perspective, working within family systems, before someone just fires out an edict (LA20, AD).

Improving relationships in court

It was apparent in this study that some courts still lack confidence in the evidence that social workers provide to the court:

Social workers should be treated as specialists, we need to embed this culture more. There needs to be recognition of [social workers] being professionals in the court arena (LA1, Manager).

Some LAs welcomed opportunities for judges to gain a greater understanding of the work that social workers do, and vice versa:

[There should be] a better understanding from judges of our work. They should spend a day with us. Judges do not understand the pressures on social workers (LA19, Manager).

I'd like to see social workers being invited into court for seminars or training, more access to the judiciary at a practitioner level and gaining a greater understanding of judges and their decision-making (LA3, HoS).

Further guidance on SGOs

The Department for Education had published the report from the special guardianship review⁵² shortly before the interviews for this study commenced. However, the revised statutory guidance on special guardianship⁵³ and the most recent adoption policy paper⁵⁴ had not been published at that time.

LAs welcomed the drive by DfE to improve the assessment of special guardians. There was recognition that there had been a change in the circumstances in which SGOs were being granted, and that further guidance/legislation was needed to make the process more robust.

[Changes to] The assessment of special guardians and the right level and standards for this. We need policy guidance on the gap between standards for adoption and SGOs (LA2, Lawyer).

⁵²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487243/SGR_Final_Combined_Report.pdf

⁵³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503547/special_guardianship_guidance.pdf

⁵⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512826/Adoption_Policy_Paper_30_March_2016.pdf

It's trickier being a special guardian than an adopter, so why would you have less robust processes and support for special guardians? Practice has superseded the legislation - we need to bring in some legislative change and make it a more robust process. You can't leave to the LA, you need to build in legislation (LA15, HoS).

Summary

This section has explored the factors underlying LA specific performance data with regard to meeting the 26 week timeframe for completing care proceedings.

- Although there were more similarities than differences in LAs' practice, one area where there appeared to be some difference between LAs meeting the 26 week timeframe and those that were not was the degree to which pre-proceedings processes were embedded in LA practice. The LAs that described processes that had a clear structure and which started at an early stage of the child protection process tended to be those that were meeting the 26 week timeframe. LAs that were not meeting the timeframe tended to recognise that they were starting assessments and care planning later than they should and that improvements needed to be made with regard to this.
- Strong leadership and management, in both LAs and courts, were seen as crucial to be able to meet the 26 week timeframe. Within LAs positive leadership and management was seen to contribute to staff retention and the stability of the workforce.
- Issues of court and judicial availability and their impact on delay require further investigation.
- It may be useful to revisit the concept of purposeful delay and develop a shared understanding of its application in practice. There was a strong call amongst many professionals in this study for increased flexibility in the system to allow purposeful delay in proceedings when it is in the best interests of a child.
- Future work towards an integrated IT system may offer opportunities to develop the means to monitor and analyse performance in relation to short, medium and longer-term outcomes for children and families.

5. Conclusion

This study presents findings from interviews with senior staff in 21 local authorities. The study did not include interviews with frontline social workers; members of the judiciary, Cafcass guardians or children, young people and families and their views and experiences are not represented in this report.

Within these limitations, the findings provide a rich picture of how the PLO is being implemented from the local authority perspective. It shows that local authorities have embraced the changes in practice required to comply with the PLO and have made substantial progress in reducing the time taken to complete proceedings, with many completing within or slightly over the 26 week timeframe.

Local authorities have made significant changes to pre-proceedings practice and incorporated processes for identifying both support for parents and family members as potential carers, through family group conferencing or less formal family meetings. They have also developed systems for quality assuring and scrutinising assessments and reports, and all are using the SWET (or a locally adapted version of the SWET).

Well-structured practice at the pre-proceedings stage is key to local authorities' ability to meet the 26 week timeframe, and such practice tends to be more embedded in some local authorities (generally those meeting the 26 week timescale) than others. However, the benefits of this well-structured practice can be compromised by lack of court or judicial availability to complete cases within the timescale.

Relationships within the court arena are, on the whole, good with some LA leads having the opportunity to have informal discussions with the lead judge outside of the court room. While maintaining judicial independence was recognised as vital, opportunities for informal working across the court and local authority were widely welcomed.

All stakeholders need to be alert to unintended consequences arising as a result of activity aimed at reducing delay for children being permanently placed. Concerns were expressed that in some cases decisions are being unduly rushed which could lead to potentially detrimental outcomes for children. Late assessments of family members as potential carers ordered by the court required to be completed within 24 hours were felt to place unrealistic pressures on social workers' ability to conduct a robust assessment.

There was felt to be a reluctance in some courts to allow purposeful delay, leading to decisions being made without sufficient time to test the placement and in some cases proceedings having to be re-issued within a short timeframe. A perceived increase in disposals such as care orders at home was attributed to the court not having sufficient time to make an informed decision as to whether it was safe for the child to return to/remain at home.

Of particular note is the reported drive in some courts to reduce the timescales even further, in some cases aiming to reach a target of 18 weeks to complete proceedings. Whilst this may be possible in cases where there is no contestation and parties agree to the local authority plan, in more complex cases a drive to achieve this timescale is likely to create undue pressure on already over-stretched social workers, with the potential risk of unsafe decision-making and detrimental outcomes for children.

Some policy and practice considerations

Much has been achieved in advancing family justice reform and it is hoped that this study can offer useful areas for consideration as this work to improve the family justice system continues. Some areas offered for consideration include:

- All parties within the court arena need to understand the time required to complete a robust, high quality assessment so that decisions on the best permanence option for a child can be made based upon a robust assessment process. LFJBs have a key role to play in facilitating opportunities for shared learning and development across the court arena.
- Both the objective quality of social work assessments and reports to court and judges' perceptions of local authority social workers as professional experts in court are areas of ongoing development. Logically the latter should develop in response to consistent levels of quality being delivered; local authorities must build on the significant progress achieved in developing a competent, well-trained workforce to produce high quality assessments and reports. Ongoing communication between senior managers in local authorities and the judiciary may also be advantageous in establishing what more needs to be done to improve the quality of social worker evidence and/or enable judges to recognise the expertise held by good quality social workers.
- It is important that those in the court arena understand the work that local authorities do prior to entering the court arena and that they also have an understanding of development and attachment issues that children who have been abused or neglected face. There should be a forum for feedback and discussion of cases and their outcomes through Local Family Justice Boards. Tracking data on children re-entering the care system and sharing this with the LFJB can inform judges and magistrates about the outcomes of decision-making.
- Flexibility within the PLO to understand purposeful delay and the appropriate extension of timescales might usefully be explored. LFJBs have a key role to play in developing a common approach and in sharing best practice.
- Court and judicial capacity may need monitoring and attention if judicial continuity is not to be compromised, especially in the face of increasing numbers of care proceedings being issued.

- Next steps in developing integrated IT should explore the potential for systems that can monitor and inform performance in relation to short, medium and long-term outcomes for children, young people and families.

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Appendix 1: LA profiles

Table 3: Profile of LAs (Data supplied by Ministry of Justice)

Region	LFJB Number	LA Number	Average no. weeks to conclude*	Per cent cases complete in 26 weeks	No. cases**	Ofsted rating (2013-2016)
R1	LFJB1	LA1	1	90	1	3
	LFJB2	LA2	3	68	3	3
R2	LFJB3	LA3	2	70	2	2
		LA4	5	31	5	4
R3	LFJB4	LA5	2	77	1	No data
		LA6	3	45	3	2
R4	LFJB5	LA7	2	61	1	No data
	LFJB6	LA8	2	90	4	2
	LFJB7	LA9	3	46	4	2
	LFJB8	LA10	3	40	5	4
R5	LFJB9	LA11	2	83	1	No data
		LA12	5	32	1	2
R6	LFJB10	LA13	3	66	2	No data
		LA14	4	53	2	No data
R7	LFJB11	LA15	1	88	3	3
	LFJB12	LA16	2	68	5	2
		LA17	2	58	1	4
		LA18	4	32	3	3
	LFJB13	LA19	1	92	1	3
	LFJB14	LA20	3	43	1	No data
	LFJB15	LA21	3	69	5	3

* Less than 22 weeks = 1; 22.1- 26 weeks = 2; 26.1- 30 weeks = 3; 30.1 - 34 weeks = 4; over 34 week = 5

** 20-50 cases = 1; 51- 80 cases = 2; 81- 110 cases = 3; 111- 140 cases = 4; over 140 cases = 5

Appendix 2: LA variation across key themes (* denotes non-prompted response)

LA	Av. duration weeks	Ofsted rating (year)	Case Manager	Embedded case tracking	Panel process*	Embedded pre-proceeding practice	Court often requests repeat assessment*	Court reluctant grant extension*	Care Order at home*	Court availability issue*
1	21.9	3 (2016)	Never	Introduced recently	Yes	Yes	Yes	Yes	Yes	Yes
2	27.7	3 (2014)	Never	Introduced recently	No	No	Yes	Yes	Not noted	Not noted
3	23.5	2 (2015)	Never	No-Improving	Not noted	Yes	Yes	Not noted	Yes	Not noted
4	36.1	4 (2014)	In past	Introduced recently	Yes	No	Yes	Not noted	Yes	Yes
5	24	No data	Never	No-Improving	Yes	Yes	Not noted	Yes	Yes	Not noted
6	29.8	2 (2016)	Never	Yes	Not noted	Yes	Not noted	Yes	Yes	Not noted
7	25.4	No data	Never	Yes	Not noted	Yes	High number experts	Yes	No	Yes
8	22.9	2 (2014)	Never	No- Improving	Yes	Yes	Not noted	Yes	Not noted	Not noted
9	30	2 (2015)	Never	No- improving	Not noted	No	Yes	No	Not noted	Yes
10	31.5	4 (2013)	Yes	Introduced recently	Yes	No	Not noted	Not noted	Not noted	Yes
11	23.6	No data	Left - to be	Yes	Yes	Yes	Yes	No	Not noted	Yes
12	37.9	2 (2015)	In past	Yes	No	Yes	Yes	No	Not noted	Yes
13	26.1	No data	In past	Yes	Yes	Yes	Not noted	Not noted	Not noted	Yes
14	31	No data	In past	Yes	Yes	No	Not noted	No	Not noted	Yes
15	19.9	3 (2013)	Never	Yes	Yes	Yes	Not noted	Yes	Not noted	No
16	24	2 (2014)	Never	Yes	Yes	Yes	Yes	Not noted	Yes	Yes
17	24.3	4 (2014)	In past	Yes	Yes	Yes	Not noted	Yes	Yes	Not noted
18	33.8	3 (2014)	Never	Introduced recently	Not noted	No	Yes	Yes	Yes	Not noted
19	17.9	3 (2014)	Never	Yes	Yes	Yes	Yes	Not noted	Not noted	Not noted
20	28.4	No data	Never	Introduced recently	Yes	No	Yes	Not noted	Not noted	Not noted
21	27.2	3 (2015)	Never	Yes	Yes	Yes	Yes	Yes	Not noted	Yes



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