

<p>Institution: University of Bristol</p>
<p>Unit of Assessment: 20 - Law</p>
<p>Title of case study: Understanding and improving the operation of child protection proceedings</p>
<p>1. Summary of the impact (indicative maximum 100 words) Masson's three linked studies of the operation of child protection proceedings led to changes in the ways in which the courts handle the 10,500 care proceedings annually concerning around 18,000 children in England and Wales. The findings from the research have directly impacted in three ways: on the Family Justice Review as well as the design and implementation of the 2013 reforms to care proceedings to reduce their cost and duration; through changes in local authority pre-proceedings practice; and on the better collation of statistics concerning care proceedings by court administrative staff. The research made an important contribution to the reduction in the average length of such proceedings from 55 weeks to 37 weeks between 2011 and 2013</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Judith Masson was appointed Professor of Socio-Legal Studies at the University of Bristol in August 2006. The research draws on Masson's lengthy engagement in care proceedings, brought by local authorities under the Children Act 1989, section 31 to protect children. These proceedings have been a focus for government concern because of their length (which impacts adversely on children's welfare) and their cost to the public purse for legal aid, the courts and local authority children's services.</p> <p>The research, conducted (2006-2010) with Julia Pearce (a senior research fellow at the University of Bristol Law School, who left in May 2010) and (2010-2012) with Dr Jonathan Dickens (Co I) Senior Lecturer in Social Work at UEA), offers three linked studies of care proceedings.</p> <p>"The care profiling study" [1] was funded by the Ministry of Justice and conducted from November 2006 to May 2007 [5]. It was designed to find baseline data against which reforms could be evaluated. It was a quantitative study of 386 cases from 10 Court Areas, using court files to derive a profile of each case in terms of the children and families involved; local authority and other agency activity; the court processes; and the outcome of the proceedings. It identified causes of delay and poor use of court resources. A further element of the analysis used costs data from the Legal Services Commission allowing the handling of cases to be linked to case costs. This showed that costs rose with duration [3]. It identified major flaws in the ways court recorded transfers to county courts This resulted in double counting of some cases and inflation in the numbers of these recorded in the <i>Judicial Statistics</i>. It also showed substantial differences in the way different courts managed these cases, in terms of transfer to higher courts, listing arrangements, directions for use of experts, the number of hearings and case duration [2].</p> <p>"The parents' representation study" [2] was funded by the ESRC and conducted from July 2008 to January 2010. It used ethnographic methods to study the legal representation of parents in care proceedings. This added depth to the earlier file-based study. It involved observing 109 court hearings as well as the discussions between the parties and their legal representatives, including 16 case studies followed to final hearing, and 61 interviews with lawyers/ judges. It was undertaken in four court areas, including two used in [6]. It provided a rich account of the work done by lawyers representing very disadvantaged parents whose children are the subject of these cases. It revealed how the course of care proceedings continued to be determined by the parties' lawyers, rather than being case managed by the judge as court rules and practice directions require, providing evidence of, and reasons, for the failure of the care proceedings reforms introduced in 2008 [4]. It identified a lack of continuity in professional involvement (lawyers, social workers, magistrates' legal advisers and judges) as impeding management and timely decision making. It explained how decisions are reached, why experts were appointed so frequently, and why legally weak cases involve (costly) contested hearings.</p> <p>"The pre-proceedings study" [3] funded by the ESRC and conducted between April 2010 and</p>

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June 2012 [1]. It used mixed methods to examine how local authorities operated, and families and courts responded to, a process introduced in 2008 with the aim of diverting cases from the courts and reducing the duration of those that did go to court. It established that the pre-proceedings process was effective in diverting almost a quarter of cases from care proceedings but showed that a lack of provision for monitoring cases resulted in substantial delays in taking some cases to court. Also, judicial disregard for local authority pre-court work meant that court proceedings for these cases were no quicker.

Together the studies provide a rich picture of the operation of care proceedings, which helps to explain why they take so long and cost so much to the public purse. They provide a picture, previously unavailable to policy makers and practitioners, about what care proceedings were really like, both in terms of the most common factors which resulted in court applications and how cases were handled in the courts. They highlight that (contrary to the impression held by the Judiciary and presented by the Law Reports) the majority of cases concerned child neglect and involved families who had been known to local authorities for a substantial time. They made clear that reforming care proceedings was not simply a matter of introducing new procedures but that changes in court culture and practice, and in the court's response to local authority evidence, were required.

3. References to the research (indicative maximum of six references)

Outputs

[1] J Masson and J Dickens, K. Bader and J. Young, *Partnership by law? The pre-proceedings process for families on the edge of care proceedings* Bristol: School of Law, University of Bristol and Centre for Research on Children and Families University of East Anglia, 2013 (and summary) <http://www.bristol.ac.uk/law/research/researchpublications/2013/partnershipbylaw.pdf>. Listed in REF2. Peer reviewed publication based on ESRC grant through competitive process; available on request.

[2] J. Masson, J. Pearce, K. Bader, O. Joyner, J. Marsden, and D. Westlake, *Care Profiling Study* MoJ Research Series 4/08 London: MoJ, 2008. <http://webarchive.nationalarchives.gov.uk/20100505212400/http://www.justice.gov.uk/publications/research030308.htm>. Publication based on [1]; Listed in REF2.

[3] J. Masson, "Controlling costs and maintaining services - The reform of legal aid fees for care proceedings", [2008] *Child and Family Law Quarterly* 425-445, ISSN: 1358-8184. Listed in REF2. Peer-reviewed publication.

[4] J. Pearce, J. Masson and K. Bader, *Just following instructions? The representation of parents in care proceedings*, Bristol: University of Bristol Law School, 2011. <http://www.bristol.ac.uk/law/research/researchpublications/2011/justfollowinginstructions.pdf>. Peer reviewed publication based on [2]; Listed in REF2.

Grants

[5] J. Masson (PI), *Profiling Public Law S.31 Cases*, DCA (subsequently MoJ) and Department for Children, Schools and Families, October 2006-November 2007, £200,000

Evidence of quality: The MoJ statement, added on the Report's Publication, is "The Research Unit supports effective policy development and delivery within the Ministry of Justice by providing high-quality social research to influence decision-making and encourage informed debate." The MoJ obtained a positive Peer Review Report before publishing the report.

[6] J. Pearce (PI) and J. Masson (Co-I), *The Legal Representation of Parents in Care Proceedings: Problems and Strategies*, ESRC Grant Reference No RES 063-23-1163, 1 June 2008 – 31 May 2010, £244,007.16; Evidence of Quality: ESRC End of Grant Report – Very Good

4. Details of the impact (indicative maximum 750 words)

There are 10,500 care proceedings annually concerning around 18,000 children in England and Wales. In 2011, the average length of proceedings was over 55 weeks. Responses to problems identified in the research have reduced this to 37 weeks, with a plan to complete proceedings within 26 weeks. The findings from the research have directly impacted in three ways: on the

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Family Justice Review, as well as the design and implementation of the 2013 reforms to care proceedings which will reduce their cost and duration; through changes in local authority pre-proceedings practice; and on the better collation of statistics concerning care proceedings by court administrative staff.

Family Justice Review and the reform of care proceedings

The findings on the wide variations in case duration between courts [5] and [2], the impact this has on costs [3], the role played by lawyers in progressing cases and the barriers to effective judicial case management [6] and [4] made it clear why previous attempts to reduce case duration through directives to judges were ineffective. Rather, more substantial changes were necessary so that judges were fully familiar with the cases they were expected to manage. The President of the Family Division and the Judicial College are undertaking work to improve case management on the basis of this research (and within the context of longstanding and acute concern about costs and delays in care proceedings: [a](i) and [f]).

Masson's research was used extensively in the Family Justice Review Interim Report ([a](i)). For example, it relied on [5] and [2] for its account of the excessive use of experts in care proceedings ([a](i): pp 109-110). Throughout the Family Justice Review Final Report, key messages from the body of Masson's research provided the empirical basis for many of the Review's recommendations to support case management (training, judicial continuity and management of judges) and the need for engagement with service users ([a](ii)). These reforms are being implemented; legislation has been introduced to curtail the use of experts - the use of experts and the length of proceedings are already reducing, for the benefit of children who will have more timely decisions about their future, local authorities and the tax payer. A subsequent Parliamentary Select Committee, designed in part to provide democratic overview of the proposals in the Interim Review, employed Masson as its specialist adviser ([b]) and her research formed the underpinning for much of the discussion in that report, providing, for example, corroboration of the anecdotal views of judges and others who gave evidence to the committee ([b]: paras 247 & 263).

Masson was invited to give a seminar to the civil servants supporting the Family Justice Review team, to speak to the Review about care proceedings and case management, asked to review draft proposals and research undertaken for the Review. In addition to the specific references to the research, the Review also referred to evidence given by Masson and others which relied on the first two studies, including the Family Justice Council and the Council of Circuit Judges. For example, findings from [6] and [4] formed the basis both for the framing of issues of case management ([a](ii): paras 3.54-7) and the recommendations (eg para 3.83; 3.96), as a result of which Sir Nicholas Wall publicly announced the creation of a Family Business Authority ([d]: para 20 [referring to Masson's research] and accepting that, as Masson suggested, the fundamental problems are cultural, para 30); Masson's Consultation Response highlighted the need for better service user engagement by courts and the Review agreed with Masson's important comment that better data and research could improve public understanding of family justice ([a](ii): para 2.105); Masson shared the preliminary results from [1] with the review ([a](ii): para 3.108) and the Review recommended that their use should be revisited in the light of Masson's research (para 3.110). Masson's research on legal representation was cited by the President of the Family Division as '*nailling three particular canards about solicitors who undertake publicly funded Children Act work*' ([f]: para 42) and concerns highlighted by Masson about the best practitioners leaving the field were accepted by the Justice Select Committee ([g]: para 44).

Findings of [1] were first shared with The President of the Family Division and Ryder J (who was responsible for the Family Justice Modernisation Programme) in June 2012. Pre-proceedings work is given far greater emphasis in the 2013 reforms. The President has identified local authority pre-proceedings work as '*vital*', noting that '*it can divert a case along the route which avoids the need for care proceedings*', the evidence for this is Masson's research ([h]). All judges who hear care proceedings have been provided with a summary of Masson's findings by the Judicial College ([e]).

Changes to local authority pre-proceedings practice

The pre-proceedings research [1] identified the effectiveness of the process for pre-birth planning,

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importance of close monitoring of cases in pre-proceedings to avoid drift, and drawing the court's attention to the work undertaken. Local authorities have made such changes as a result of the research: this has been endorsed in a good practice guide for social workers ([i]) and RiP, the organisation providing national training on the care proceedings reforms has filmed a lecture by Masson and Dickens on pre-proceedings work, for use in training social workers.

Judicial Statistics

The findings in the care profiling study [5] and [2] that Final Hearings were routinely booked at the start of cases for 3 or 5 days, but were frequently much shorter, led to new instructions to courts in the "Public Law Outline" (a court Practice Direction) in April 2008 about listing final hearings. There was evidence that later listing did unblock court time tables ([j]). The identification during the fieldwork of wide scale mis-entry of cases into the county court database, which is used for the *Judicial Statistics*, led to a review and a change of method to reduce the problem of double counting ([c]). The published statistics are now more reliable ([b]).

5. Sources to corroborate the impact (indicative maximum of 10 references)

[a] *Family Justice Review*:

i. *Interim Report* (March 2011) <http://www.justice.gov.uk/about/moj/independent-reviews/family-justice-review/interim-report.htm>, which draws on Masson's research as evidence for a number of recommendations;

ii. *Final Report* (November 2011) <http://www.justice.gov.uk/publications/policy/moj/family-justice-review-final.htm>, which draws on Masson's research as evidence for a number of recommendations

[b] Justice Select Committee, *Sixth Report 2010-11: Operation of the Family Courts 2011*, HC 518 <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/518/51802.htm>, which made a number of recommendations based on Masson's research and to which Masson was the specialist advisor.

[c] Ministry of Justice, *Judicial and Court Statistics 2007*, Cm 7467, London: MoJ, 2008 <http://www.official-documents.gov.uk/document/cm74/7467/7467.pdf>, which corroborates the increased reliability of judicial statistics.

[d] President of the Family Division, "Changing the culture, the role of the bar and the bench in the management of cases involving children", Speech to The Law Reform Committee of the Bar Council, 29 November 2011

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/pfd-speech-changing-the-culture-29112011.pdf>, citing the research finding about cultural problems as the basis for the creation of a Family Business Authority.

[e] Course Director, Public Law Family work, Judicial College, corroborating the claim that Masson's findings have been provided to all judges who hear care proceedings.

[f] President of the Family Division Speech at Resolution National Conference 2012

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/pfd-speech-resolution-annual-conference-240312.pdf>, corroborating impact of legal representation study as "nailing" three misrepresentations of lawyers undertaking publicly funded children work.

[g] Justice Select Committee, *Eighth Report 2008-9: Family Legal Aid Reform*, 2009 HC 714 <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/714/714.pdf>, accepts findings of legal representation study that the best practitioners leave the field.

[h] Munby P., The view from the President's Chambers May 2013

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/pfd-process-reform-revised-plo-may-2013.pdf>, noting the significance of pre-proceedings work as a result of Masson's research.

[i] Research in Practice, *Evidence Matters in Family Justice*, London: RiP, 2013, filmed a lecture by Masson on pre-proceedings work for use in training social workers.

[j] Jessiman, P., Keogh, P and Brophy, J, *An Early Process Evaluation of the Public law Outline in the Family Courts*, MoJ research series 10/09, London: MoJ, 2009, providing evidence that Masson's findings did unblock court timetables.